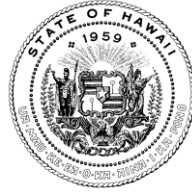


HB2317 HD2

Measure Title:	RELATING TO SECURITIES.
Report Title:	Uniform Securities Act; Vulnerable Adult; Elder; Financial Exploitation
Description:	Protects elders and vulnerable adults from financial exploitation in relation to securities. Effective 12/31/2059. (HD2)
Companion:	SB2873
Package:	Governor
Current Referral:	CPH, JDC
Introducer(s):	SAIKI (Introduced by request of another party)



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
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HONOLULU, HAWAII 96809
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, June 23, 2020
10:15 a.m.
State Capitol, Conference Room 229**

**On the following measure:
H.B. 2317, H.D. 2, PROPOSED S.D. 1, RELATING TO SECURITIES**

WRITTEN TESTIMONY ONLY

Chair Baker and Members of the Committee:

My name is Ty Nohara, and I am the Commissioner of Securities of the Department of Commerce and Consumer Affairs' (DCCA or Department) Business Registration Division. The Department supports this administration bill.

The purpose of this bill is to protect elders and vulnerable adults from financial exploitation in relation to securities. Proposed S.D. 1 represents consensus language between the DCCA, the Securities Industry Association of Hawaii, the Securities Industry and Financial Markets Association, the Executive Office on Aging, the Department of Human Services' Adult Protective and Community Services Branch, and the National Association of Insurance Agents and Financial Advisors of Hawaii.

This bill requires a qualified person to report to the Commissioner of Securities upon a reasonable belief of suspected financial exploitation and authorizes the qualified person to notify an individual reasonably associated with the elder, the vulnerable adult,

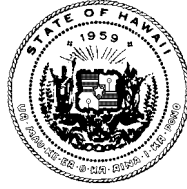
or the account, or any third party previously designated by the vulnerable adult, of the suspected financial exploitation. It also requires qualified persons to share records with the Commissioner of Securities, the Department of Human Services, or law enforcement in connection with any investigation of financial exploitation of an elder or a vulnerable adult and authorizes the temporary delay of a disbursement or a transaction from an account if financial exploitation of an elder or a vulnerable adult is suspected.

In addition, this bill provides immunity from civil or administrative liability to qualified persons who report suspected financial exploitation and delay disbursements in good faith and while exercising reasonable care. Consequently, this bill addresses existing privacy rules and concerns about potential legal exposure to liability that may make it difficult for securities professionals to contact regulators and other government authorities to report suspected financial exploitation.

This bill is especially critical during this time, as financial exploitation of the elderly and vulnerable adults has steadily increased during the COVID-19 pandemic. The financial consequences for those who fall victim to financial exploitation are often devastating and irreparable.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

June 22, 2020

TO: The Honorable Rosalyn Baker, Chair
Senate Committee on Commerce, Consumer Protection and Health

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2317 HD2 Proposed SD1 - RELATING TO SECURITIES**

Hearing: June 23, 2020, 10:15 a.m.
Conference Room 229, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill, the proposed SD1, and requests two amendments for clarity and consistency.

PURPOSE: Protects elders and vulnerable adults from financial exploitation in relation to securities. Effective on 12/31/2059. (HD2)

DHS agrees with the proposed SD1.

However, for purposes of clarity and consistency, DHS requests additional amendments in SECTION 1:

- to add "elder or the" to the proposed section 485A-A, at page 2, lines 5 – 6, as follows:

(B) Convert money, assets, or property of the elder or the vulnerable adult to deprive the elder or the vulnerable adult of the ownership, use, benefit, or possession of the elder's or the vulnerable adult's money, assets, or property.

- and to delete "the person's" in the proposed definition of "vulnerable adult" (at page 3, lines 1-2) to be consistent with the definition as it appears in section 346-222, Hawaii Revised Statutes¹:

"Vulnerable adult" means a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:

- (1) Communicate or make responsible decisions to manage the person's own care or resources;
- (2) Carry out or arrange for essential activities of ~~the person's~~ daily living; or
- (3) Protect oneself from abuse, as defined in section 346-222.

DHS appreciates the efforts of the Legislature to strengthen efforts to address financial exploitation of elders and vulnerable adults; this measure is one step to building a more collaborative response. In the future, DHS anticipates requiring more human resources to address the increasing numbers of investigations.

Thank you for the opportunity to provide testimony on this bill.

¹ https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0346/HRS_0346-0222.htm

OFFICE OF INFORMATION PRACTICES

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NO. 1 CAPITOL DISTRICT BUILDING
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TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: June 23, 2020, 10:15 a.m.
State Capitol, Conference Room 229

Re: Testimony on H.B. No. 2317, H.D. 2, Proposed S.D. 1
Relating to Securities

Thank you for the opportunity to submit testimony on this bill, which would allow financial service providers to report suspected financial exploitation of vulnerable adults. The Office of Information Practices (OIP) takes no position on the substance of this bill, but **offers a technical amendment** to a provision on page 7 of the proposed S.D. 1 version of this bill that would make specified records not government records as defined in the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA).

OIP does not object to providing confidentiality for financial records shared by a financial service provider in connection with an investigation of alleged financial exploitation. However, OIP notes that this provision would not just have the effect of making the records confidential, but actually provide that the records are not even government records such that an agency would not be required to even deny a request in writing or state the basis for its denial as the UIPA normally requires when responding to a written request for confidential records. **If this Committee wishes to make the records clearly exempt from disclosure in response to any type of UIPA request without making them an exception**

to the UIPA's normal scheme for how agencies must respond to record requests from the public, OIP would recommend that the sentence at bill page 7, lines 16-17 instead read:

All records made available under this section shall be exempt from disclosure under chapter 92F.

Thank you for the opportunity to testify.



June 22, 2020

Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair
Committee on Commerce and Consumer Protection and Health
Hawaii State Capitol
415 Beretania St.
Honolulu, HI 96813

RE: HB 2317, An Act Protecting Vulnerable Adults from Financial Exploitation.

Dear Chair Baker and Vice Chair Chang:

The Securities Industry Association of Hawaii (SIAH) was formed over 20 years ago to foster communications among securities firms, regulators, and the legislature.

SIAH strongly supports efforts to protect our Kupuna. The bill is based on a five - year old model rule that has, over time, been enacted by more than two dozen states. SIAH strongly supports the Securities Industry and Financial Markets Association (SIFMA) suggested additions that include: (1) including holds on transactions as well as disbursements, (2) allowing the securities division to extend the hold period, (3) changing the seven day reporting requirement to "upon request", and (4) aligning the start dates with existing federal requirements. In addition, we support changing the definition of a "reasonably associated individual" to include any person reasonably associated with the vulnerable adult.

Thus, we support, and are in agreement with, the revised language in H.B. 2317 H.D. 2, proposed S.D.1 as proposed by the Commissioner of Securities of the Department of Commerce and Consumer Affairs.

The SIAH appreciates the opportunity to provide support and suggestions. Please do not hesitate to contact me at 808-625-2596 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Goodrum", is written over a horizontal line.

Tony Goodrum
President.



June 22, 2020

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

RE: Support of HB 2317 HD 2 SD 1

Dear Chair Baker, Vice Chair Chang and Members of the Senate Committee on Commerce, Consumer Protection, and Health:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association representing over 350 large, medium and small broker-dealers, investment banks and asset managers, many of whom have a strong presence in Hawaii. In fact, more than 16,000 people in the state work in the finance and insurance industries, 1,000 of them work at securities firms, and 5 broker-dealer main offices call Hawaii home.

SIFMA is proud to be a vocal advocate in the fight against senior financial exploitation. Among other things, SIFMA has worked to educate policymakers and the general public on the need for increased senior protections and founded a large working group for member firms to share ideas and best practices. SIFMA has also worked with federal and state legislatures and regulators on various “Report and Hold” proposals that would allow reporting firms to place temporary holds on suspicious transactions and/or disbursements. Such laws are now in place in 29 states, and the Financial Industry Regulatory Authority (the industry’s national regulator) has had similar rules in effect for over two years.²

We are writing today in strong support of HB 2317 HD 2 SD 1. Americans lose approximately \$2.9 billion annually in media-reported cases of financial exploitation.³ Sadly, these numbers are quite low as it is estimated that only 1 out of every 44 instances of financial abuse is reported to the authorities, much less in the media.⁴ Moreover, the devastating impact of abuse is not just economic. Financial exploitation can result in a loss of independence, a reduced quality of life and even death.⁵

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Financial Industry Regulatory Authority Rule [2165](#).

³ MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America’s Elders (2011).

⁴ National Adult Protective Services Association, “Elder Financial Exploitation,” available at: <https://www.napsa-now.org/get-informed/exploitation-resources/>.

⁵ Burnett, Jason, “Elder Financial Exploitation: More than Just Financial [Loss](#),” SIFMA, February 2019.

HB 2317 HD 2 SD 1 helps protect investors in a variety of ways. It provides firms that suspect exploitation with a reporting pathway to the Securities Division which can then investigate the financial exploitation. It also permits firms to notify third parties reasonably associated with the vulnerable adult of the suspected exploitation so that they can be aware of and assist in stopping the suspected abuse. Perhaps most importantly, HB 2317 HD 2 SD 1 would give firms the ability to place a temporary hold on suspicious transactions or disbursements while the suspected exploitation is being investigated - so that the investor is not irreparably harmed before the investigation is completed.

We believe HB 2317 HD 2 SD 1 is a fair and balanced tool that will help curb both the economic and psychological damage associated with financial exploitation. We thank you both for your commitment to assisting vulnerable adults and for your willingness to consider our views.

Please do not hesitate to contact me at 202-962-7411 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Kim Chamberlain". The signature is written in a cursive, flowing style.

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

HB-2317-HD-2

Submitted on: 6/21/2020 4:29:27 PM

Testimony for CPH on 6/23/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	No

Comments: