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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Thursday, February 6, 2020  
9:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 2873, RELATING TO SECURITIES**

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' (Department) Business Registration Division. The Department supports this administration bill.

The purpose of this bill is to protect vulnerable adults from financial exploitation in relation to securities.

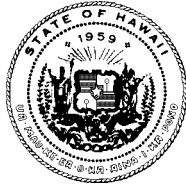
This bill is based upon the North American Securities Administrators Association's (NASAA's) Model Act to Protect Vulnerable Adults from Financial Exploitation, which NASAA members adopted on January 22, 2016. As of September 30, 2019, 24 jurisdictions have enacted legislation based upon NASAA's Model Act, and one jurisdiction has adopted the Model Act by regulation.

This bill aims to more closely align the interests and responsibilities of securities professionals, regulators, and law enforcement with regard to the reporting and prevention of financial exploitation of the elderly and other vulnerable adults. In

particular, 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 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, other agencies administering adult protective services laws, or law enforcement in connection with any investigation of financial exploitation of a vulnerable adult and authorizes the temporary delay in the disbursement of funds from an account if financial exploitation of 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.

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

February 4, 2020

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

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2873 - RELATING TO SECURITIES**

Hearing: February 6, 2020, 9:30 a.m.  
Conference Room 229, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of this administration bill, suggests amendments, and offers comments.

**PURPOSE:** SB 2873 protects vulnerable adults from financial exploitation in relation to securities.

DHS recommends amending the definition of "vulnerable adult" by removing "a person sixty-two years of age or older." A clear distinction is required between "elder" and "vulnerable adult" because not all elders meet the department's statutory criteria of "vulnerable adult" per section 346-222.

DHS Adult Protective & Community Services Branch responds to reports of abuse or neglect of a "vulnerable adult" which is defined as:

"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 daily living; or

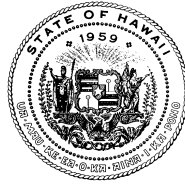
(3) Protect oneself from abuse, as defined in this part."

DHS recommends the Legislature conform the definition of "elder," adding a new definition of "elder" that "elder" means a person who is sixty years of age or older. This age will be consistent with the department's recommendations in HB 2220, to consistently define the age of an elder victim as sixty years of age or older. This will also support consistency with SB 2334 which lowers the age of crimes against seniors to sixty years of age. A consistent age of "elder" will support efforts to improve the protection and well-being of elders.

DHS appreciates that SB 2873 strengthens efforts to address financial exploitation of elders and vulnerable adults in relation to securities by utilizing the Department of Commerce and Consumer Affairs' Securities Enforcement Branch, which investigates and prosecutes violations of Hawaii's securities laws. Although these actions are currently beyond the scope and capacity of DHS, SB 2873 will reinforce multidisciplinary efforts by supporting referrals to DHS for possible investigation of other forms of financial exploitation or other types of abuse or neglect that may be present.

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

DAVID Y. IGE  
GOVERNOR OF HAWAII



CAROLINE CADIRAO  
DIRECTOR

BRUCE S. ANDERSON, Ph.D.  
DIRECTOR OF HEALTH

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**Testimony COMMENTING on SB2873  
Relating to Securities**

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH  
SENATOR ROSALYN BAKER, CHAIR  
SENATOR STANLEY CHANG, VICE CHAIR

Testimony of Caroline Cadirao  
Director, Executive Office on Aging  
Attached Agency to the Department of Health

Hearing Date: FEBRUARY 6, 2020  
9:30 am

Room Number: 229

1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency to the Department  
2 of Health, offers comments to the bill. This measure is a Department of Commerce and  
3 Consumer Affairs administration bill.

4 **Fiscal Implications:** SB 2873 adds a new part to Chapter 485A, HRS, Uniform Securities Act  
5 to protect vulnerable adults from financial exploitation. An individual who is a victim of  
6 financial exploitation may subsequently become reliant on taxpayer funds for housing, food and  
7 healthcare.

8 **Purpose and Justification:** The purpose of this bill is to prevent and deter financial exploitation  
9 and abuse of elders by: 1) adding the offense of financial exploitation of an elder to Chapter  
10 485A, HRS; 2) establishing enhanced penalties for those convicted of the offense; and 3)  
11 requiring financial institutions to report instances of financial abuse of an elder directly to the  
12 police and report suspected financial abuse to the Department of Human Services. The Executive

1 Office on Aging (EOA) appreciates establishing more protection for our kupuna. Financial  
2 exploitation has been described as the fastest growing form of elder abuse. Additionally,  
3 financial exploitation is often unreported because the perpetrator is often someone entrusted by  
4 the victim, the victim is ashamed or embarrassed, reliant on the perpetrator for care or support,  
5 fearful of retaliation or unaware of the abuse. Imposing stricter penalties will hopefully be a  
6 deterrent for this type of abuse of our elders.

7 **Recommendation:** EOA would like to amend the definition of “vulnerable adult” used in this  
8 bill (page 2, line 15) from sixty-two (62) years of age to sixty (60) years of age. Sixty (60) is the  
9 age that is also being proposed by prosecutors in HB1874 Relating to Criminal Offenses Against  
10 Seniors amending Chapters 707 and 708, HRS. Additionally, sixty (60) years old is the age that  
11 is used in the Older Americans Act which EOA uses as the basis for our programs. It would be  
12 beneficial to align and be consistent in our policies.

13 Thank you for the opportunity to testify.



January 31, 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 S. Beretania St.  
Honolulu, HI 96813

**RE: SB 2873, An Act Protecting Vulnerable Adults from Financial Exploitation**

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

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is a national trade association which represents hundreds of large, medium and small broker-dealers, banks and asset managers, many of whom have a presence in Hawaii. SIFMA is proud to be a vocal advocate in the fight against senior financial exploitation. Among other things, SIFMA has educated policymakers and the general public on the need for increased senior protections, founded a large working group for member firms to share ideas and best practices, and worked with more than two-dozen federal and state legislatures and regulators on various “Report and Hold” proposals similar to SB 2873.

SIFMA strongly supports efforts to protect senior and vulnerable investors and commends the Securities Division and state policymakers for pursuing this legislation. SB 2873 is based in part on a model rule adopted more than 5 years ago before the FINRA rules were finalized and many states enacted Report & Hold laws. We commend the bill sponsors for already including some of the best practices adopted in newer laws. We have several additional suggestions for you to consider:

1. Expanding Investor Protections by Allowing Holds on Transactions. Permitting holds on transactions as well as disbursements provides substantial additional protection for seniors and other vulnerable adults.
  - Certainly, a hold on a disbursement is very helpful as it prevents a client’s assets from leaving the account while the suspected financial exploitation is being investigated.
  - Yet, there are various scenarios in which failing to place a hold on a suspicious transaction could cause substantial damage to the senior account holder. A wrongdoer could, for example, exploit a senior into liquidating a long-held stockholding or terminating an annuity. Honoring those requests could result in significant cost, penalties, or tax consequences for the senior - even before a disbursement request is received. Other examples of potentially exploitative, non-disbursement transactions which

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<sup>1</sup> 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. For more information, visit [www.sifma.org](http://www.sifma.org).

would not be protected under the proposed legislation include changes in account ownership, changes in beneficiaries, and the purchasing of an investment product for the benefit of the suspected wrongdoer.

- Language change would involve adding “or transaction” after each reference to disbursement in the proposal.
  - This language is a relatively new development, and as such is more common in the more recently drafted laws. States that permit holds on transactions include: Arizona, California, Kentucky, Minnesota, Mississippi, New Jersey, New Mexico, North Dakota, Texas, Utah, Virginia and Washington State.
2. Protecting Investors Through a Flexible Extension by the Division. The bill does not permit a hold to be extended beyond 25 days without a court order. This limits the existing authority of the state securities regulator and is out of alignment with the new federal rule and many other state laws.
- Many situations will take longer than 25 days to resolve. While a court can extend the hold, some states maintain an investigating agency’s authority to extend the hold on a case-by-case basis in order to ensure the agency has sufficient time to complete their investigation. FINRA also recognizes state agency extensions beyond 25 days without the need for court order.
  - The most common adjustment would be to add “or further extended” after the word “terminated” on page 6 line 3, and then continue with the existing language.
  - This was a problem that was widely identified after many of the initial laws went into place and the agency-driven extension language is more common in the more recent laws. States that provide this discretion to one or more relevant agencies include: Arizona, California, Kentucky, Minnesota, Mississippi, New Mexico, New Jersey, North Dakota, Texas, Utah, Virginia and Washington State.
3. 7 Day Additional Reporting Requirement is Unnecessary and Raises Issues. In SB 2873, on page 5 lines 6-11, the broker-dealer/investment adviser is required to continue its internal review of the suspected exploitation and report the “results” within seven business days.
- Few states have included this language and the new federal (FINRA) requirements simply require documentation and status updates to be provided “upon request”
  - The 7-day results deadline creates potential problems as broker-dealers and investment advisers are reporting documented concerns but are not conducting – and are not qualified to conduct – formal legal investigations. In addition, in at least some instances, the BDs and IAs may have no new or other information to share.
  - We suggest either striking the language on page 5 lines 6-11 entirely or replacing “and reports the investigation’s results to the commissioner within seven business days after the requested disbursement” with “and provides status updates to the commissioner upon request.” States with one of these adjustments: include Alaska, Arizona, California, Delaware, Indiana, Kentucky, Maryland, Minnesota, Mississippi, Missouri, New Mexico, New Jersey, North Dakota, Oregon, Rhode Island, Texas, Utah, Virginia and Washington State.



4. The Time-Period Start Dates Should be Aligned Internally and with Federal Requirements

- SB 2873 starts the hold “clock” on the notification of a delay from the date the disbursement is requested (page 4, line 17, page 5, line 4 and page 5, line 10). Conversely, the “clock” for the length of a delay states from the date of the delay (page 5, lines 17-19).
- However, the new federal requirements – which will be followed by every FINRA-registered broker-dealer – start both time periods on the date the disbursement is delayed, not requested.
- SIFMA respectfully requests that SB 2873 uses the start date of the delay as the trigger for all relevant time periods included in this proposal.

We appreciate your willingness to consider our suggestions. Please do not hesitate to contact me at 202-962-7411 or at [kchamberlain@sifma.org](mailto:kchamberlain@sifma.org) with any questions.

Sincerely,



Kim Chamberlain  
Managing Director & Associate General  
Counsel  
SIFMA



Senate Committee on Consumer Protection & Health  
February 6, 2020 – 9:30 am -- Room 229

## Senate Bill 2873 – Relating to Securities

Chair Baker, Vice Chair Chang and Members of the Committee, my name is Cynthia Takenaka representing NAIFA Hawaii, an organization of life insurance agents and financial advisors throughout Hawaii who primarily market life, annuities, long term care and disability income insurance products.

SB 2873 adds a new section to Chapter 485A, HRS – “Protection of Vulnerable Adults From Financial Exploitation”.

To ensure that seniors are protected a number of states have enacted or are considering model legislation from the National Association of State Securities Administrators (NASSA) that requires financial advisors and their firms to report suspected financial exploitation of a senior client to authorities. It also provides advisers and firms with immunity from liability for taking steps to protect their clients financial assets.

We support the efforts to protect seniors and/or vulnerable persons from financial exploitation but we have differences with the approaches in the model bills. We do have concerns with this measure and offer our comments.

1. On page 3, Section 485A-B: The phrase “shall promptly notify” should be changed to “may notify the commissioner in a timely manner”. If reporting is mandatory then broker dealers and investment advisers, in an overabundance of caution may over-report situations with the regulator being swamped with notifications. The complex nature of these situations requires broker dealers and investment advisers to be able to use their discretion in deciding what to report. A “qualified person” – agent, registered rep, investment adviser (excluding the broker dealer and supervisory person) should not be directly reporting the suspected exploitation situations to the commissioner. A better approach would be to have the “qualified person” report their suspicions to the supervisory person, the broker dealer or investment adviser; after doing their own investigation, then to notify the commissioner.
2. In Section 485A-C “Immunity for governmental disclosures”: To conform to Section 485A-B, the language should be amended to read -- “A qualified person who, in good faith and exercising reasonable care, makes a disclosure of information pursuant to section 485A-B or

**who otherwise discloses information concerning the financial exploitation of a vulnerable adult to a broker-dealer, investment adviser or a person who serves in a supervisory or compliance capacity for a broker-dealer or an investment adviser** shall be immune...” This will ensure that an agent/registered rep/investment adviser who reports suspicious activity to the broker dealer/investment adviser also has the immunity provided by this section.

3. We are not clear on the definition of “reasonably associated individual” and in Section 485A-D, for third party disclosures where “a qualified person may notify a **reasonably associated individual** or any third party previously designated by the vulnerable adult”. Again we think that only the broker dealer, investment adviser or a person who serves in a supervisory or compliance capacity for a broker-dealer or an investment adviser should make the decision about third party disclosures. It would be fine if the individual agent/adviser does the actual notification of the third party, but this should be done only if directed to do so by the broker dealer/investment adviser/supervisor.
4. Section 485A-F should have a definition for “disbursement”.
5. Section 485A-F(a)(1): Similar to item (1) above, only the broker dealer/investment adviser should be initiate an internal review. The qualified person should be limited to reporting their suspicions to their supervisory person/broker dealer or investment adviser, who then, after doing their own investigation, would be the entity to initiate the internal review.
6. Section 485A-G: Should add “qualified individual” (not only the broker dealer or investment adviser as in this section) to this immunity for delaying disbursements since this person may be involved in or likely initiate the process that results in the delay.

We request this measure be amended to ensure that advisers report suspected financial exploitation to their firms rather than the regulator/commissioner which will then allow for an additional “set of eyes” to review a suspicious transaction and that would ensure that reports to regulator/commissioner are more likely to involve actual financial exploitation.

Mahalo for allowing us to share our views.



February 4, 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 Beretania St.  
Honolulu, HI 96813

RE: SB 2873, An Act Protecting Vulnerable Adults from Financial Exploitation.

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

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

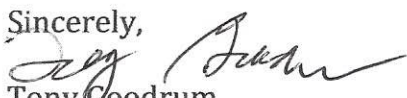
SIAH strongly supports efforts to protect our Kapuna and thanks the securities division and state legislators for introducing this bill. The bill is based on a five year old model rule that has, over time, been enacted by more than two dozen states with various changes that ease administration and enhance the capability to protect our investors.

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 the lowering of the age to 60.

These changes will both enhance investor protection and make it easier for firms and regulators to administer and implement the law.

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,

  
Tony Goodrum  
President.