

SB 2314

Measure Title: RELATING TO THE ELDERLY.

Report Title: Financial Exploitation of Dependent Elder

Description: Creates the crime of financial exploitation of dependent elder and provides enhanced penalties. Requires financial institutions to report suspected financial abuse to the adult protective services and the county police. Requires two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

Companion:

Package: Kupuna

Current Referral: HMS, JDL

Introducer(s): CHUN OAKLAND, ESPERO, GALUTERIA, GREEN, IGE, IHARA, SHIMABUKURO, Nishihara



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Human Services

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

Tuesday, January 31, 2012, 1:15 p.m.

State Capitol, Conference Room 016

By

Moira T. Chin

Director, Office of the Public Guardian

Bill No. and Title: Senate Bill No. 2314, Relating to the Elderly.

Purpose: Creates the crime of financial exploitation of dependent elders and provides enhanced penalties. Requires financial institutions to report suspected financial abuse to the adult protective services and the county police. Requires the signature of two unrelated witnesses to the execution of a power of attorney for health care.

Judiciary's Position:

The Office of the Public Guardian (OPG) supports the intent of Senate Bill No. 2314 to create financial exploitation of dependent elders as a crime.

OPG serves as court-appointed guardian of the person for incapacitated adults as a last resort in the absence of relatives or friends willing and able to serve. We have seen an increasing number of cases involving financial exploitation of the elderly not only by caregivers but by acquaintances, friends and family members. Exploitation of vulnerable elders residing independently in their apartments, condominiums or private homes have also been victims of financial exploitation. In these situations, a petition for OPG guardianship is often made.

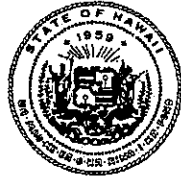
For the past few years, there has also been a growing number of financial exploitation cases being petitioned by Adult Protective Services of the Department of Human Services. By the time OPG is appointed, however, client assets may have already been liquidated or properties sold. The exploitation becomes evident when the elder's agent with Power of Attorney or Successor Trusteeship or the elder's acquaintances, friends, care givers, and even family



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Senate Committee on Human Services
January 31, 2012
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members fail to use the proceeds to pay for the incapacitated elders support and care. OPG's client is often left destitute except for any ongoing income sources which may be redirected by OPG for client's care. For the few cases with clear documentation that resources were liquidated and not used for client care, there has been little hope to retrieve resources despite reports to Adult Protective Services and to the Honolulu Police Department.

OPG supports this bill with the hope that more dependent elders can be helped to protect their resources and not left vulnerable to perpetrators of financial exploitation. Thank you very much for the opportunity to testify on Senate Bill No. 2314.



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

January 31, 2012

MEMORANDUM

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2314 - RELATING TO THE ELDERLY**

Hearing: Tuesday, January 31, 2012; 1:15 p.m.
Conference Room 016, State Capitol

PURPOSE: The purposes of S.B. 2314 are to create the crime of financial exploitation of dependent elders and provide for enhanced penalties; require financial institutions to report suspected financial abuse to the adult protective services and the county police; and require two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of this bill to add financial exploitation as a crime in Chapter 708, Hawaii Revised Statutes (HRS), and to provide for enhanced penalties for individuals convicted of financial and economic exploitation of a "dependent elder". We recommend that the definition for "dependent elder" be changed to mirror the definition of "vulnerable adult" as it appears in section 346-222, HRS. The term "dependent adult" in section 346-222, HRS, was amended in 2009 to "vulnerable adult" to more clearly define an individual who has impairments and who also 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. A “vulnerable elder” can still be defined as a person sixty-two years of age or older for the purposes of this bill.

DHS is opposed to the proposed amendments to section 412:3-114.5, HRS, requiring financial institutions to report suspected financial abuse to the local law enforcement agency and to DHS. The language contained in an Administration-sponsored bill, S.B. 2807, Relating to Financial Abuse of Elders, is preferred. S.B. 2807 requires financial institutions to report suspected financial abuse to the appropriate police department, and not to DHS.

DHS does not have the legal authority to directly seek judicial authorization to seize documents, freeze accounts or take other measures to immediately secure financial assets that may be at risk. Additionally, the DHS is without trained staff who have the expertise to review the complex financial records and transactions for the financial abuse cases identified by financial institutions.

Finally, the DHS does not conduct criminal investigations, nor does it prosecute crimes. The appropriate entity to receive reports of suspected financial abuse from financial institutions is the local police department which has investigators and legal remedies at its disposal to immediately stop access to a “vulnerable elder’s” financial accounts when warranted.

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

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

KEALI'I S. LOPEZ
DIRECTOR



STATE OF HAWAII
DIVISION OF FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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TO THE
SENATE COMMITTEE ON

HUMAN SERVICES

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Tuesday, January 31, 2012
1:15 p.m.

TESTIMONY ON S.B. 2314
RELATING TO THE ELDERLY

TO THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"). I am testifying on behalf of the Department of Commerce and Consumer Affairs ("Department") in support of Senate Bill No. 2314 relating to the elderly.

This measure amends Chapter 708, Hawaii Revised Statutes, making it a crime for a caregiver to financially or economically exploit a dependent elder. It also amends Section 412:3-114.5, Hawaii Revised Statutes to require financial

institutions to report suspected financial abuse of an elder to the Department of Human Services and the appropriate local law enforcement agency.

While the Department supports the requirement that both the Department of Human Services and law enforcement agencies be informed of financial elder abuse, it believes that the reporting function proposed is burdensome for financial institutions.

We suggest the following amendments in Section 5, page 6, (b):

- One report filed electronically with both the Department of Human Services and county police departments. We are unsure what type of information the financial institutions would be required to provide in the initial report and in the written report. We would be available to work with the Department of Human Services and the county police departments to create a reporting form that meets the needs of all parties (including the financial institutions).
- We also note that the term “proper local law enforcement agency” may be vague and suggest that the term “appropriate county police departments” be used to provide clarity for the financial institutions.

We suggest the following amendments in Section 5, page 6, (c):

- We suggest one electronic contact by the Department of Human Services to the financial institution and the county police department instead of by telephone and then by electronic mail.

For these reasons, the Division supports with amendments, Senate Bill No.

2314.

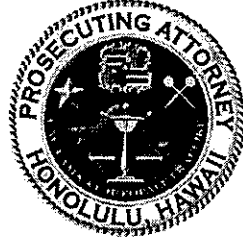
Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

January 31, 2012

RE: S.B. 2314; RELATING TO THE ELDERLY.

Chair Chun-Oakland, Vice Chair Ihara and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of Senate Bill 2314, with suggested amendments. Please review the Department's "Proposed SD1," which is attached for your reference.

The Department agrees with the intent of S.B. 2314, as financial crimes against the elderly can take many different forms, and can be just as devastating as physical injuries, leaving victims isolated, vulnerable and scared, at a time in their life when they are typically less capable and have less time to recover emotionally or rebuild their finances. Moreover, the number of financial crimes against the elderly has increased in recent years, and is only expected to increase further, as Hawaii's baby-boomers continue to age.

However, rather than limiting the new offense (detailed in S.B. 2314, Section 1) to financial exploitation of "dependent elders" by "caregivers," the Department suggests that the offense include financial exploitation of any elder by any person. Prior cases indicate that many offenders specifically target elders with whom they have no professional or personal relationship, based on the fact that elderly people tend to be more trusting, and less able or inclined to guard against various types of financial exploitation. Anyone who would knowingly target elderly people as victims should face stricter penalties for such heinous actions; this would also serve as greater deterrent against such actions.

In addition, the Department suggests incorporating terminology from existing theft statutes, as these terms are already well-established and familiar to the courts. Terms such as "wanton disregard for the well-being of" a person are yet unknown, and may present

unnecessary challenges in interpretation. Moreover, we suggest that the various types of financial exploitation be defined generally--either as breaches of fiduciary duty, or with intent to deprive the elder of property-- rather than listing specific examples of such. Again, please see our Proposed SD1 for further clarification.

For all of the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 2314, with the suggested amendments. Thank for you the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 5:49 PM
To: HMS Testimony
Cc: tnakamatsu@honolulu.gov
Subject: Testimony for SB2314 on 1/31/2012 1:15:00 PM
Attachments: SB 2314 120131- proposed SD1.doc

Testimony for HMS 1/31/2012 1:15:00 PM SB2314

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Tricia Nakamatsu
Organization: Dept of the Prosecuting Attorney, C&C of Honolulu
E-mail: tnakamatsu@honolulu.gov
Submitted on: 1/29/2012

Comments:

A BILL FOR AN ACT

RELATING TO THE ELDERLY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§708- Financial exploitation of an elder. (1) A person commits the offense of financial exploitation of an elder if the person intentionally obtains or exerts control over the property of an elder, and the person:

(a) Breaches the person's fiduciary duty, resulting in the unauthorized appropriation, sale, or transfer of property; or

(b) Does so without authorization and with intent to deprive the elder of the property.

(2) Financial exploitation of an elder is punishable as a:

(a) Misdemeanor if the value of the assets, money, or property is not greater than \$500;

- (b) Class C felony if the value of the assets, money, or property is \$500 or more but less than \$5,000;
- (c) Class B felony if the value of the assets, money, or property is \$5,000 or more but less than \$10,000; and
- (d) Class A felony if the value of the assets, money, or property is \$10,000 or more.

(3) As used in this section:

"Elder" means any person sixty-two years of age or older."

SECTION 2. Section 706-660.2, Hawaii Revised Statutes, is amended to read as follows:

"§706-660.2 Sentence of imprisonment for offenses against children, elder persons, or handicapped persons.

Notwithstanding section 706-669, a person who, in the course of committing or attempting to commit a felony, causes the death or inflicts serious or substantial bodily injury upon a person, or is convicted of financial exploitation of an elder under section 708- , who is:

- (1) Sixty years of age or older;
- (2) Blind, a paraplegic, or a quadriplegic; or
- (3) Eight years of age or younger;

and such disability is known or reasonably should be known to the defendant, shall, if not subjected to an extended term of imprisonment pursuant to section 706-662, be sentenced to a

mandatory minimum term of imprisonment without possibility of parole as follows:

- (1) For murder in the second degree--fifteen years;
- (2) For a class A felony--six years, eight months;
- (3) For a class B felony--three years, four months; or
- (4) For a class C felony--one year, eight months."

SECTION 3. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

PART II

SECTION 4. Section 327E-3, Hawaii Revised Statutes, is amended by amending subsections (b) to read as follows:

"(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, civil union, or adoption, an agent may not be an owner, operator, or employee of the health-care institution at which the principal is receiving care. The power shall be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

- (1) Signed by at least two individuals~~[7]~~ unrelated by blood, marriage, civil union, or adoption, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or
- (2) Acknowledged before a notary public at any place within this State."

SECTION 5. Section 412:3-114.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Suspected financial abuse shall be reported immediately to the adult protective services of the department and the proper local law enforcement agency initially by telephone and by electronic mail and then by written report sent by electronic mail within five business days~~[7]~~ after the initial report, to the department and the local law enforcement agency.

(c) Upon notification by a financial institution of suspected financial abuse, the department, in a timely manner, shall determine whether the department has jurisdiction over the elder involved; and if not, shall notify the financial institution~~[, which shall then notify the proper local law enforcement agency]~~ and the local law enforcement agency immediately by telephone ~~[and forward the written report to the~~

~~agency within three business days. A financial institution shall not be liable for failing to report suspected financial abuse to a local law enforcement agency in cases in which the department fails to notify the institution of the department's lack of jurisdiction.] and by electronic mail."~~

PART III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY: _____



SENATE COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair

Conference Room 016
January 31, 2012 at 1:15 p.m.

Supporting SB 2314: Relating to the Elderly

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of SB 2314, which creates the crime of financial exploitation of dependent elders.

This bill is one of many that are designed to strengthen the infrastructure that cares for the elderly or reduce elder abuse.

Hawaii's elderly population is growing faster than even the national average. Since statehood, the proportion of elderly to Hawaii's total population has increased three-fold, from roughly 5% in 1960 to 15% in 2009. By comparison, the nation's population stands at 13%. Between 1990 and 2009, the number of elderly aged 75 and older increased 115% in Hawaii compared to 44% nationally. By 2030, the elderly population will represent 20% of the population, both in Hawaii and nationally.

There is a clear relationship between age and the prevalence of chronic conditions and level of disability. The elderly are the heaviest users of health care resources. Hawaii's existing resources are not sufficient to satisfy the current high demand for care for the elderly, which is increasing further as the population ages.

A related issue is elder abuse. As elders become more physically frail, they are less able to stand up to bullying and/or to fight back if attacked. They may not see or hear as well or think as clearly as they used to, leaving openings for unscrupulous people to take advantage of them.

Elder abuse can take the form of physical abuse, emotional abuse, sexual abuse, neglect, abandonment, and financial exploitation. An infrastructure has been created to prevent elder abuse and to address it when it happens. Some of its components include the following: (1) Respite care to provide relief for caregivers; (2) Public awareness campaigns; (3) Chore services to support the frail elderly; (4) Special provisions to encourage the reporting of abuse by certain professionals and institutions, including banks; (5) Adult Protective Services; and (6) Making fiduciaries, persons with power of attorney, and guardians more accountable for their actions. This infrastructure should be strengthened.

HAH supports a broad range of legislative measures designed to expand care for the elderly and address elder abuse.

Thank you for the opportunity to testify in support of SB 2314.



Hawaii Credit Union League

Your Partner For Success

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Honolulu, Hawaii 96826-2097

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Email: info@hcul.org



Testimony to the Senate Committee on Human Services
Tuesday, January 31, 2012, at 1:15 p.m.

Testimony in support (with amendments) of SB 2314, Relating to the Elderly

To: The Honorable Suzanne Chun-Oakland, Chair
The Honorable Les Ihara, Jr., Vice-Chair
Members of the Committee on Human Services

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 82 Hawaii credit unions, representing approximately 811,000 credit union members across the state.

We are in support of SB 2314, which would create the crime of financial and economic exploitation of a dependent elder, but suggest amendments be made for clarity. While our credit unions support the provision to notify "local law enforcement" of the suspected crime, we suggest that it be made clear which law enforcement agency this may be – in cases of financial crime, this could be either the county police department, or the Federal Bureau of Investigation (FBI). Further, we suggest that electronic mail (e-mail) be specified as the primary method of communication. This would help to expedite the process.

Thank you for the opportunity to testify.

Presentation to the Committee on Human Services
Tuesday, January 31, 2012 at 1:15 p.m.
Testimony on SB 2314 Relating to the Elderly

Offering Comments

TO: Senator Suzanne Chun Oakland, Chair
Senator Les Ihara Jr., Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), offering comments on SB 2314. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill creates the crime of financial exploitation of dependent elder and provides enhanced penalties. It requires financial institutions to report suspected financial abuse to the adult protective services and the county police. It makes a requirement for two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

HBA's comments are limited to only SECTION 5. Section 412:3-114.5 and we express no opinion on any other SECTION of this bill.

The following comments are intended to streamline the notification and reporting process:

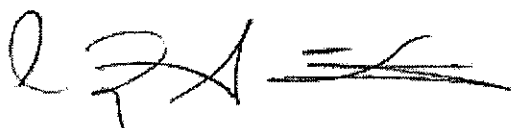
1. The term "proper local law enforcement agency" should be made clear that it includes federal law enforcement agencies. Sometimes, if the incident involves a large crime, a federal agency (FBI, U.S. Secret Service, or the U.S. Postal Inspectors) will get involved.
2. The bill should be amended to allow the financial institution (FI) the option to **notify and report** using electronic mail **or** notify by phone with an email filing of the report, as determined by the FI.
3. A **standardized reporting form** should be developed, adopted and accepted by DHS/APS and the various police departments in Hawaii.

4. If possible, an email and telephone reporting contact list should be compiled and maintained.

Currently, it is not unusual for an FI employee to be kept waiting on the telephone line and if the police department is involved, then waiting for an officer to arrive to take a report. The current process is not efficient and takes away valuable time from overly burdened county police departments, a state department and financial institutions.

These recommended changes will help ensure a streamlined and uniform reporting process instead of the current practice of using different reporting forms and methods (telephone call, fax, email, etc.), which wastes valuable time for all parties involved.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the end of the signature.

Gary Y. Fujitani
Executive Director

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 1:24 PM
To: HMS Testimony
Cc: rachel@hawaiishoppingcenter.com
Subject: Testimony for SB2314 on 1/31/2012 1:15:00 PM

Testimony for HMS 1/31/2012 1:15:00 PM SB2314

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Rachelle Nobriga
Organization: Individual
E-mail: rachel@hawaiishoppingcenter.com Submitted on: 1/30/2012

Comments:

RELATING TO THE ELDERLY.

Creates the crime of financial exploitation of dependent elder and provides enhanced penalties. Requires financial institutions to report suspected financial abuse to the adult protective services and the county police. Requires two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

Stealing from anyone, especially the Elder, by ANYONE (even the Elder's Own Children) through manipulation+isolation+threats+bullying++++

Should be a CRIME, and IS A CRIME, and the Abuser should be treated, arrested and prosecuted as a CRIMINAL.

I do NOT believe DHS needs to be involved.

THIS IS A CRIME to be handled by the POLICE & PROSECUTING ATTORNEY'S OFFICE.

Criminals usually isolate Elder Victim and prevent others from helping.

Financial Institutions should work directly with Police & Prosecuting Attorney's Office in their efforts to resolve the matter.

Once the CRIMINALS (Caretaker/Dishonest Children) are Removed then other family members can step in to help the Elder Victim.

SB 2450

Measure Title: RELATING TO SENTENCING.
Report Title: Crimes Against Elders; Sentencing
Description: Establishes mandatory minimum prison terms for certain offenses committed against persons 60 years of age or older.
Companion:
Package: None
Current Referral: HMS, JDL
Introducer(s): CHUN OAKLAND (BR)