

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2013

MEMORANDUM

TO: The Honorable Mele Carroll, Chair
House Committee on Human Services

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 3 - RELATING TO THE ELDERLY**

Hearing: Tuesday, February 12, 2013; 11:15 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 3 is to require financial institutions to report suspected financial abuse against an elder immediately to the appropriate county police department, rather than the Department of Human Services (DHS), followed by a written report via electronic mail immediately thereafter or as soon as practicable. This bill also requires financial institutions to develop and implement a training program for its employees relating to the mandatory reporting requirements.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of this bill to require immediate reporting of suspected financial abuse from the financial institutions to the appropriate county police departments.

Attached for your consideration is proposed amending language to Administration bill H.B. 867, that also proposes to facilitate mandatory financial abuse

of elders. H.B. 3 and H.B. 867 are similar. The amending language proposed was developed after further discussions with the financial institutions and are still on-going.

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

A BILL FOR AN ACT

RELATING TO THE MANDATORY REPORTING OF FINANCIAL ABUSE OF ELDERS
BY FINANCIAL INSTITUTIONS.

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

1 SECTION 1. Section 412:3-114.5, Hawaii Revised Statutes,
2 is amended to read as follows:

3 "~~§~~412:3-114.5~~§~~ **Mandatory reporting of suspected**
4 **financial abuse of an elder.** (a) A financial institution shall
5 report suspected financial abuse that is directed towards,
6 targets, or is committed against an elder to the department of
7 human services ~~if~~ and the appropriate county police
8 department if:

9 (1) In connection with providing financial services to the
10 elder, the officer or employee of a financial
11 institution:

12 (A) Has direct contact with the elder; or

13 (B) Reviews or approves the elder's financial
14 documents, records, or transactions; and

15 (2) The officer or employee, within the scope of
16 employment or professional practice:

H.B. NO. 867

PROPOSED HD1

1 (A) Observes or has knowledge of an incident the
2 officer or employee believes in good faith
3 appears to be financial abuse; or

4 (B) In the case of officers or employers who do not
5 have direct contact with the elder, has a good
6 faith suspicion that financial abuse has occurred
7 or may be occurring, based solely on the
8 information present at the time of reviewing or
9 approving the document, record, or transaction.

10 (b) Suspected financial abuse shall be reported
11 ~~[immediately to the department]~~ by telephone, or facsimile, or
12 electronic device immediately or as soon as practicably
13 possible, to the department and the appropriate county police
14 department. ~~[and by written report sent within five business~~
15 ~~days.]~~

16 (c) Upon notification by a financial institution of
17 suspected financial abuse, the department, in a timely manner,
18 shall determine whether the department has jurisdiction over the
19 elder involved~~;~~ ~~and if not, shall notify the financial~~
20 ~~institution, which shall then notify the proper local law~~
21 ~~enforcement agency immediately by telephone and forward the~~
22 ~~written report to the agency within three business days. A~~

H.B. NO. 867

PROPOSED HD1

1 ~~financial institution shall not be liable for failing to report~~
2 ~~suspected financial abuse to a local law enforcement agency in~~
3 ~~cases in which the department fails to notify the institution of~~
4 ~~the department's lack of jurisdiction.] and proceed in~~
5 accordance with chapter 346.

6 (d) Upon notification by a financial institution of
7 suspected financial abuse, the county police department, in a
8 timely manner, shall proceed with a criminal investigation.

9 ~~(d)~~ (e) Notwithstanding any other state law to the
10 contrary, including but not limited to laws concerning
11 confidentiality, any person, including ~~the~~ a financial
12 institution, who:

13 (1) Participates in the making of a report pursuant to
14 this section; and

15 (2) Believes, in good faith, that the action is warranted
16 by facts known to that person,

17 shall have immunity from any liability, civil or criminal, that
18 might be otherwise incurred or imposed by or as a result of the
19 making of the report. Any person making the report shall have
20 the same immunity with respect to participation in any judicial
21 proceeding resulting from the report.

22 ~~(e)~~ (f) For the purposes of this section:

H.B. NO. 867

PROPOSED HD1

1 "Department" means the department of human services.

2 "Elder" means a person who is sixty-two years of age or
3 older.

4 "Financial abuse" means financial [~~abuse or economic~~
5 ~~exploitation.~~] to take, appropriate, obtain, or retain, or
6 assist in taking, appropriating, obtaining, or retaining, real
7 or personal property of an elder adult by any means, including
8 undue influence, for a wrongful purpose or with intent to
9 defraud the elder adult."

10 SECTION 2. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect upon its approval.

13

14

INTRODUCED BY: _____

15

BY REQUEST

16

H.B. NO. 867

PROPOSED HD1

Report Title:

Financial Abuse; Elder; Notification

Description:

Amend section 412:3-114.5, Hawaii Revised Statutes, to require financial institutions to report instances of suspected financial abuse of an elder directly to the appropriate police department instead of the Department of Human Services.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LORETTA FUDDY, ACSW, MPH
DIRECTOR OF HEALTH



STATE OF HAWAII
EXECUTIVE OFFICE ON AGING
NO. 1 CAPITOL DISTRICT
250 SOUTH HOTEL STREET, SUITE 406
HONOLULU, HAWAII 96813-2831

WESLEY LUM, PhD, MPH
DIRECTOR

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Committee on Human Services

Committee on Consumer Protection and Commerce

HB3, RELATING TO THE ELDERLY

**Testimony of Wes Lum
Director, Executive Office on Aging
Attached Agency to the Department of Health**

Tuesday, February 12, 2013; Conference Room 329

11:15 a.m.

1 **EOA's Position:** The Executive Office on Aging (EOA) supports the intent of this measure but
2 prefers HB867 which is part of the Governor's Administrative Bill Package.

3 **Purpose and Justification:** Elder financial exploitation is a growing problem in Hawaii.
4 Financial abuse of elders is frequently accompanied by physical and emotional abuse. It is a
5 complex problem with both criminal and social components that speaks to the need of a
6 multidisciplinary solution. The reporting of financial exploitation via the most appropriate channel
7 and the resulting timeliness of the investigation is crucial to the conservation of assets as well as
8 the health and safety of the victim.

9 EOA supports the position of the Department of Human Services and defers to their
10 recommendations. This bill will make for a more efficient and effective mechanism to report
11 suspected financial abuse committed against Hawaii's older adults. Thank you for the opportunity
12 to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org

KIRK W. CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE LH-NTK

February 12, 2013

The Honorable Mele Carroll, Chair
and Members
Committee on Human Services
The Honorable Angus L. K. McKelvey, Chair
and Members
Committee on Consumer Protection
and Commerce
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Carroll and McKelvey and Members:

Subject: House Bill No. 3, Relating to the Elderly

I am Lester Hite, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 3, Relating to the Elderly.

This bill proposes that the financial institutions report suspected financial abuse incidents against an elderly person to the appropriate county police department. We recommend that the Department of Human Services continue to protect and assist the elderly in instances of both civil and criminal fraud. The initial screening of the complaint is critical in obtaining the proper assistance for the elderly person in the most efficient way possible.

The primary role for law enforcement is to apprehend the perpetrator in criminal cases. Support services and assistance to the elderly victim in financial fraud cases may be unduly delayed due to the proposed amendments.

The Honorable Mele Carroll, Chair
and Members
The Honorable Angus L. K. McKelvey, Chair
and Members
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February 12, 2013

We recognize that financial abuse incidents against the elderly are a growing concern. We have increased our education and enforcement efforts in this area and will continue to seek ways to address these crimes.

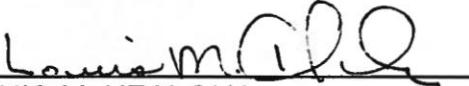
The Honolulu Police Department urges you to oppose House Bill No. 3, Relating to the Elderly.

Thank you for the opportunity to testify.

Sincerely,


LESTER HITE, Captain
Criminal Investigation Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

TESTIMONY OF THE HAWAII POLICE DEPARTMENT

HOUSE BILL 3

RELATING TO THE ELDERLY

BEFORE THE COMMITTEES ON HUMAN SERVICES AND CONSUMER PROTECTION
& COMMERCE

DATE : Tuesday, February 12, 2013

TIME : 11:15 A.M.

PLACE : Conference Room 329
State Capitol
415 South Beretania Street

PERSON TESTIFYING:

Acting Police Chief Paul K. Ferreira
Hawaii Police Department
County of Hawaii

(Written Testimony Only)

February 6, 2013

The Honorable Mele Carroll,
Chair and Committee Members
Committee on Human Services
The Honorable Angus L. K. McKelvey,
Chair and Committee Members
Committee on Consumer Protection & Commerce
State House of Representatives
415 South Beretania Street, Room 329
Honolulu, Hawai`i 96813

Re: House Bill 3 Relating to the Elderly

Dear Representatives Carroll and McKelvey:

The Hawai`i Police Department opposes House Bill 3 with its purpose being to require a financial institution to report suspected financial abuse against an elder to the appropriate county police department, rather than the department of human services.

Our opposition is out of concern that the potential elderly abuse victim should continue to be screened by the Department of Human Services (DHS). We firmly believe DHS is the agency best suited to ensure the best interests of the elderly are paramount, as civil financial abuse rather than criminal fraud may be involved. The county police departments have no jurisdiction in matters involving the civil process.

We further believe that the occurrence of civil financial abuse may be an indicator that the elderly victim may be in need of social services assistance which again would be best proffered by DHS. In the event the matter requires police involvement, DHS could then make the appropriate referrals.

It is for these reasons, we urge your committees to disapprove this legislation.

Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 3.

Sincerely,

PAUL K. FERREIRA
ACTING POLICE CHIEF



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411
February 6, 2013



GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

The Honorable Mele Carroll, Chair
And Members of the Committee on Human Services
House of Representatives
State Capitol
Honolulu, Hawaii 96813

The Honorable Angus L. K. McKelvey, Chair
And Members of the Committee on Consumer Protection & Commerce
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Re: H.B. No. 3, RELATING TO THE ELDERLY

Dear Chairs Carroll and McKelvey, and members of the Committees:

This proposed bill requires a financial institution to report suspected financial abuse against an elder to the appropriate county police department, rather than the Department of Human Services, under certain conditions, immediately by telephone and then followed by a written report sent via electronic mail. This proposed bill repeals the Department of Human Services as the contact agency responsible for determining whether the department has jurisdiction over the elder involved. This proposed bill requires all financial institutions to develop and implement a training program for their employees regarding the reporting requirements for suspected financial abuse of an elderly person.

The Maui Police Department makes every effort to protect our most vulnerable citizens from the effects of financial abuse. We ask the committees to carefully review this bill. Although it may quicken the reporting time to the police for a criminal investigation, it will in turn delay the specialized services provided by the Department of Human Services, and the police department is not trained nor have the resources to provide this immediate service. We must understand that the elderly are adults and, under the law, have rights that are afforded them.

Our department also has an issue with the approving this bill, as it will leave the decision making to bank or financial business employees to determine that an elderly adult is unable to make sound decisions that affect their independence. Based on a bank or financial business employee's suspicion, they will then call the police to verify this same difficult determination regarding an elderly adult's ability to make sound decisions that affect their independence. Though our police officers are highly trained, they are not trained to diagnose symptoms that

The Honorable Mele Carroll, Chair
And Members of the Committee on Human Services

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And Members of the Committee on Consumer Protection & Commerce
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would confirm that an elderly adult should be considered so vulnerable that they need to have their financial assets protected. This is still a function of the Department of Human Services and should stay in their arena of expertise.

It is understood that the police department would be the agency to help to investigate "criminal" cases and would continue to assist the Department Human Services with helping elderly victims. But this approach would need to be a multi-disciplinary approach based on the complexity of issues that could arise out of branding an elderly adult possibly incompetent to be able to make decisions for themselves.

The Maui Police Department asks your committees to consider our comments regarding this H.B. No. 3.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA *PN:*
Chief of Police

Presentation to
Committee on Human Services (HUS)
Committee on Consumer Protection and Commerce (CPC)
February 12, 2013 at 11:15 am
State Capitol Conference Room 329

Testimony in Support of H. B. 3

TO: The Honorable Mele Carroll, Chair, HUS
The Honorable Bertrand Kobayashi, Vice Chair, HUS
Members of the HUS Committee

The Honorable Angus L. K. McKelvey, Chair, CPC
The Honorable Derek S. K. Kawakami, Vice Chair, CPC
Members of the CPC Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions operating in the State of Hawaii.

Financial institutions have been tasked with the responsibility of reporting suspected financial abuse of an elder and we will always make our best effort to detect such abuse and report it to the proper authorities for further investigation and action. This bill directs the reporting from the Department of Human Services (DHS) to the appropriate county law enforcement entities and we have no objections to this change. However, we want to make this process as efficient and effective as possible, for both our financial institutions and law enforcement.

Reporting by telephone is often a hit and miss proposition. We want to report these cases as quickly as possible and would suggest that perhaps we dispense with the phone call and instead have the financial institution email the report to an address box at the appropriate law enforcement office. Of course, we would be available via telephone to provide further details, if the written report is not sufficient.

We have heard law enforcement argue that these reports should continue to go to DHS. In fact, we have no objections to reporting to both entities, as long as we can do so efficiently. So, if the email option is acceptable, financial institutions could email their reports to both entities, at their designated mailbox.

We do have one very important concern with this bill as it pertains to our responsibilities. While our financial institutions will always strive to detect all suspected cases of fraud, some cases are very difficult to identify. We do not believe we should be held liable for any cases we fail to detect, despite our best efforts. Just as the current statutes provide immunity from any liability for the cases we report, we would also want immunity for any cases we fail to detect. In this regard, we believe Section 2 of this bill should be stricken, as the requirement of a training program implies that we will be able to detect all suspected abuse, creating potential liability for any omissions. Please be assured that all banks do provide employee training to detect suspicious activity so we are not abdicating this responsibility.

We also suggest that the definition of "Financial abuse" should be expanded. We suggest the following language, which is used in HB 867:

"Financial abuse" means to take, appropriate, obtain, retain, or assist in taking, appropriating, obtaining, or retaining, real or personal property of an elder adult by any means, including undue influence, for a wrongful purpose or with intent to defraud the elder adult.

In summary, we will defer to the authorities to resolve their jurisdictional issues but we hope that regardless of where the reports are destined, financial institutions will be able to do so efficiently via the use of email or some other electronic means. We support Section 1 of this bill and propose that Section 2 be deleted.

Please let us know if we can provide further information regarding this matter.

Edward Y. W. Pei
Executive Director
Hawaii Bankers Association
(808) 524-5161



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Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
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Email: info@hcul.org



Testimony to the House Committees on Human Services and
Commerce and Consumer Protection
February 12, 2013

Testimony in support with amendments of HB 3 – Relating to the Elderly

To: The Honorable Mele Carroll, Chair
The Honorable Bertrand Kobayashi, Vice-Chair
The Honorable Angus McKelvey, Chair
The Honorable Derek Kawakami, Vice-Chair
Members of the Committees

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

We are in support (with amendments) of HB 3, which would require that financial institutions report instances of suspected financial abuse of an elder to the “appropriate county police department”, instead of the Department of Human Services. While we support reporting to the police departments, we do not support removing DHS; we would support dual reporting. By being able to report such crimes directly to both DHS and the police department, valuable time could be saved. In many situations where an elderly person’s financial information and/or accounts are being threatened, credit unions have been able to circumvent the loss of funds simply by raising concerns to law enforcement. By placing local law enforcement in the “front lines”, an important layer of security is added, which could make the difference between losing money to fraud and being able to prevent it.

However, we suggest that electronic mail (e-mail) be specified as the primary method of communication. This would greatly expedite the process. We would also request that a standardized reporting form be provided for use by financial institutions.

Additionally, we oppose the section of the bill that requires training. Financial institutions are already required to undergo training to detect and report suspicious activity.

Thank you for the opportunity to testify.

kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 07, 2013 5:24 PM
To: HUS testimony
Cc: tabraham08@gmail.com
Subject: *Submitted testimony for HB3 on Feb 12, 2013 11:15AM*

Categories: Green Category

HB3

Submitted on: 2/7/2013

Testimony for HUS/CPC on Feb 12, 2013 11:15AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Troy Abraham | Individual | Support | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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