

# SB 102, SD1

Measure Title: RELATING TO THE ELDERLY.  
 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. (SD1)  
 Companion: [HB3](#)  
 Package: Kupuna  
 Current Referral: HMS/PSM, CPN  
 Introducer(s): CHUN OAKLAND, BAKER, ESPERO, GALUTERIA, GREEN, IHARA, Nishihara, Shimabukuro, L. Thielen

<u>Sort by Date</u>		<b>Status Text</b>
1/17/2013	S	Introduced.
1/17/2013	S	Passed First Reading.
1/17/2013	S	Referred to HMS/PSM, CPN.
2/1/2013	S	The committee(s) on HMS/PSM has scheduled a public hearing on 02-07-13 1:00PM in conference room 016.
2/7/2013	S	The committee(s) on HMS recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in HMS were as follows: 3 Aye(s): Senator(s) Chun Oakland, Green, Kidani; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Taniguchi, Slom.
2/7/2013	S	The committee(s) on PSM recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in PSM were as follows: 4 Aye(s): Senator(s) Espero, Galuteria, Green, Slom; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Baker.
2/13/2013	S	Reported from HMS/PSM (Stand. Com. Rep. No. 256) with recommendation of passage on Second Reading, as amended (SD 1) and referral to CPN.
2/13/2013	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to CPN.
2/15/2013	S	The committee(s) on CPN will hold a public decision making on 02-20-13 9:30AM in conference room 229.



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

February 20, 2013

**MEMORANDUM**

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

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 102, S.D.1 - RELATING TO THE ELDERLY**

Hearing: Wednesday, February 20, 2013; 9:30 a.m.  
Conference Room 229, State Capitol

**PURPOSE:** The purpose of S.B. 102, S.D.1 is to require financial institutions to report instances of suspected financial abuse of an elder to the appropriate police department instead of the Department of Human Services (DHS.)

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of this bill which contains the language of Administration bill S.B. 1098. The purpose of S.B. 102, S.D. 1 is to prevent the financial abuse of elders by requiring financial institutions to immediately report suspected financial abuse of elders to the appropriate county police departments.

Attached for your consideration is proposed amending language to Administration Bill S.B. 1098 that was developed after on-going discussions with the financial institutions. The language of the proposed S.B. 1098, S.D. 1, would require the mandatory reporting of suspected financial abuse of elders by the financial institutions to both the appropriate county police department and to the DHS.

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

# S.B. NO. 1098

PROPOSED SD1

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## 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:

S.B. NO. 1098  
PROPOSED SD1

- 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~~

# S.B. NO. 1098

PROPOSED SD1

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:

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PROPOSED SD1

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.

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INTRODUCED BY: \_\_\_\_\_

# S.B. NO. 1098

PROPOSED SD1

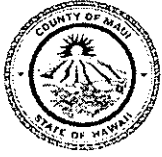
**Report Title:**

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 and to 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.*



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



GARY A. YABUTA  
CHIEF OF POLICE

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

February 19, 2013

The Honorable Rosalyn H. Baker, Chair  
And Members of the Committee on  
Commerce and Consumer Protection  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Re: S.B. No. 102, SD1, RELATING TO THE ELDERLY

Dear Chair Baker and Members of the Committee:

The Maui Police Department opposes bill S.B. No. 102, SD1, Relating to the Elderly.

This proposed bill to amend section 412:3-114.5, Hawaii Revised Statutes, will 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 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. It may hasten the reporting time to the police for a criminal investigation; however, it will in turn delay the specialized services already being provided by the Department of Human Services. Our police department is not trained nor do we have the resources to provide this additional specialized service. We must understand that the elderly are adults and, under the law, have rights that are afforded to them. The dignity and collective experiences of our kupuna are to be valued and built into the community that we now enjoy.

Our department also has an issue with this bill as it will leave bank or financial business employees to determine that elderly adults are unable to make sound decisions that affect their independence, based on a bank or financial business employee's suspicion. The police will be summoned to verify this same difficult determination regarding the 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 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.



The Honorable Rosalyn H. Baker, Chair  
And Members of the Committee on  
Commerce and Consumer Protection  
February 19, 2013  
Page 2

It is understood that the police department would be the agency to help to investigate "criminal" cases and would continue to assist the Department of Human Services and elderly victims. But this approach would need to be a multi-disciplinary approach based on the complex issues that could arise out of arbitrarily branding elderly adults incompetent and not able to make their own decisions.

The Maui Police Department asks your committee to consider our comments regarding this S.B. No. 102, SD1.

Thank you for the opportunity to testify.

Sincerely,

  
GARY A. YABUTA  
Chief of Police



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Written Testimony  
Submitted to  
The Senate Committee on Commerce  
and Consumer Protection  
Wednesday, February 20, 2013  
by  
Jerris. R. Hedges  
Dean and Professor  
John A. Burns School of Medicine

SB 102 SD1 – RELATING TO THE ELDERLY

Chair Baker, Vice Chair Galuteria and Members of the Committee:

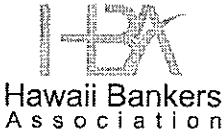
Faculty of the Department of Geriatric Medicine at the John A. Burns School of Medicine published an article in the *Hawai'i Medical Journal* in 2006, reporting on the cases of 11 patients in Honolulu who were defrauded by so-called "sweepstakes" scams.

The seniors each lost money, in amounts ranging from \$6,600 to \$400,000. Ten of these patients had dementia; most had been diagnosed with Alzheimer's disease. The year of the study, the Hawai'i chapter of the AARP reported that in a survey of 2,000 of its members, 25% described themselves as having been victimized by financial predators.

The graying of Hawai'i's population only increases the likelihood that more of our State's citizens will be victims of financial fraud.

Hawai'i law requires physical abuse of the elderly to be reported to law enforcement. We believe the safety of our kūpuna also demands that financial institutions also report suspected financial abuse and exploitation of our senior citizens.

Mahalo for the opportunity to comment on this important issue.



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1000 Bishop Street, Suite 301B  
Honolulu, HI 96813-4203

Presentation to  
Committee on Commerce and Consumer Protection  
February 20, 2013 at 9:30 am  
State Capitol Conference Room 229

**Testimony in Support of S. B. 102, SD1**

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the 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 all others involved.

Reporting by telephone is often a hit and miss proposition. We want to report these cases as quickly as possible and would suggest that 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.

There has been some discussion that reporting should go to both DHS and law enforcement. 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 have suggested an efficient reporting process to DHS and they seem agreeable to our suggestion.

In summary, we will defer to the authorities to resolve their jurisdictional issues but we propose that the bill be amended to provide for initial reporting via the use of email or some other electronic means, rather than the telephone call. The language for this amendment can mirror that recently included in HB3, HD1.

Edward Y. W. Pei  
(808) 524-5161

Written Testimony in support of SB 102  
Wednesday, February 20, 2013  
Senate Committee on Commerce & Consumer Protection

SB 102 Relating to the Elderly

Aloha. I am writing to thank you for hearing this bill, and to ask you to consider adopting SB 102 or a similar measure to protect our kupuna.

A member of my extended family was exploited multiple times by a person or persons unknown who drove her to First Hawaiian Bank in Kalihi and had her withdraw several thousand dollars at a time.

The bank repeatedly told us there was "nothing they could do".

I believe a measure such as this one might provide financial institutions with at least one thing they could do, and that is report the incidents such as these to the police department or other law enforcement agency.

Mahalo, Tina Shelton  
Resident of Moanalua