

SB 102

Measure Title: RELATING TO THE ELDERLY.

Report Title: Financial Abuse of an Elder; Mandatory Reporting; Training; Financial Institutions; Kupuna Caucus

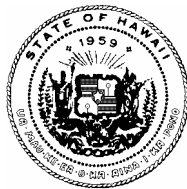
Description: Requires a financial institution to report suspected financial abuse against an elder to the appropriate county police department, rather than the department of human services, under certain conditions immediately by telephone and then followed by a written report sent via electronic mail. Repeals the department of human services as the contact agency responsible for determining whether the department has jurisdiction over the elder involved. 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.

Companion:

Package: Kupuna

Current Referral: HMS/PSM, CPN

Introducer(s): CHUN OAKLAND, BAKER, ESPERO, GALUTERIA, GREEN, IHARA, Nishihara, Shimabukuro, L. Thielen



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

February 7, 2013

MEMORANDUM

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

The Honorable Will Espero, Chair
Senate Committee on Public Safety, Intergovernmental and
Military Affairs

FROM: Patricia McManaman, Director

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

Hearing: Thursday, February 7, 2013; 1:00 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of S.B. 102 is to require financial institutions to report suspected financial abuse against an elder directly to the appropriate county police department instead of the Department of Human Services (DHS). The bill repeals language requiring DHS to be the contact agency responsible for determining whether DHS has jurisdiction over the elder involved, and requires all financial institutions to develop and implement a training program for their employees regarding the reporting requirements of this bill.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of this bill requiring financial institutions to report directly to the county police departments instead of the DHS when financial abuse is suspected. The DHS prefers the provisions specified in the Administration bill, S.B. 1098, which include the following:

1. Direct reporting by financial institutions suspecting financial abuse of an elder to the appropriate county police department instead of DHS;
2. The report shall be made immediately by telephone or as soon as practically possible, and by written report sent within two business days, to the appropriate county police department;
3. Deletes references to the Department of Human Services; and
4. Amends the definition of “financial abuse” to read as follows:

**““Financial abuse” means [~~financial abuse or economic exploitation.]~~
to take, appropriate, obtain, or 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.”**

The 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.

The DHS respectfully requests that the Legislature consider S.B. 1098 to effectuate the purpose of this bill.

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WESLEY LUM, PhD, MPH
DIRECTOR

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Committee on Human Services

Committee on Public Safety, Intergovernmental and Military Affairs

SB102, RELATING TO THE ELDERLY

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

Thursday, February 7, 2013; Conference Room 016

1:00 p.m.

- 1 **EOA's Position:** The Executive Office on Aging (EOA) supports the intent of this measure but
- 2 prefers SB1098 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

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CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
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OUR REFERENCE

LH-NTK

February 7, 2013

The Honorable Suzanne Chun Oakland, Chair
and Members
Committee on Human Services
The Honorable Will Espero, Chair
and Members
Committee on Public Safety, Intergovernmental
and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Chun Oakland and Espero and Members:

Subject: Senate Bill No. 102, 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** Senate Bill No. 102, 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.

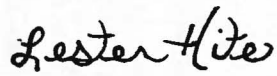
We recognize that financial abuse incidents against the elderly are a growing concern. We have increased our education and enforcement efforts in this area and will continue to seek ways to address these crimes.

The Honorable Suzanne Chun Oakland, Chair
and Members
The Honorable Will Espero, Chair
and Members
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The Honolulu Police Department urges you to oppose Senate Bill No. 102, Relating to the Elderly.

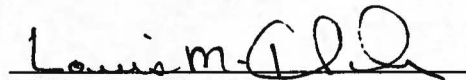
Thank you for the opportunity to testify.

Sincerely,



LESTER HITE, Captain
Criminal Investigation Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police



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Testimony to the Senate Committees on Human Services and
Public Safety, Intergovernmental Affairs, and Military
February 7, 2013

Testimony in support with amendments of SB 102 – Relating to the Elderly

To: The Honorable Suzanne Chun Oakland, Chair
The Honorable Josh Green, Vice-Chair
The Honorable Will Espero, Chair
The Honorable Rosalyn Baker, 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 SB 102, 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 help to expedite the process. 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.

Presentation to
Committee on Human Services (HMS)
Committee on Public Safety, Intergovernmental and Military Affairs (PGM)
February 7, 2013 at 1:00pm
State Capitol Conference Room 016

Testimony in Support of S. B. 102

TO: The Honorable Suzanne Chun Oakland, Chair, HMS
The Honorable Josh Green, Vice Chair, HMS
Members of the HMS Committee

The Honorable Will Espero, Chair, PGM
The Honorable Rosalyn H. Baker, Vice Chair, PGM
Members of the PGM 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