

SB3042

Measure Title: RELATING TO SECURITIES.

Report Title: Securities; Broker-dealers; Security Transactions; Records

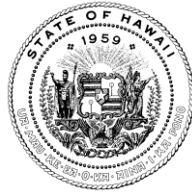
Description: Requires a broker-dealer's records that relate to security transactions involving a purchaser, customer, or client be maintained in the broker-dealer's office in this State.

Companion:

Package: None

Current Referral: CPH

Introducer(s): GALUTERIA



DAVID Y. IGE
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TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Thursday, February 15, 2018
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 3042, RELATING TO SECURITIES.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 3042, Relating to Securities. My name is Ty Nohara, and I am the Commissioner of Securities for the Department’s Business Registration Division. The Department takes no position on this bill and offers comments.

S.B. 3042 seeks to amend Hawaii Revised Statutes (“HRS”) chapter 485A-411(c)(2) by adding additional requirements to the current books and records rules for broker-dealers. Currently, HRS 485A-411(c)(2) provides that broker-dealer records shall be maintained according to section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”). See 15 United States Code (“U.S.C.”) 78q(a). 17 Code of Federal Regulations (“CFR”) 240.17a-3 lists all the records that broker-dealers shall make and keep relating to their business, and 17 CFR 240.17a-4 establishes how and where the records shall be maintained.

All states are explicitly preempted by federal law from establishing and/or adding requirements to the broker-dealers’ books and records rules, pursuant to section 15(h) of the Exchange Act. See 15 U.S.C. 78o(i).

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Thank you for the opportunity to testify on S.B. 3042. I would be happy to answer any questions the Committee may have.



February 12, 2017

The Honorable Rosalyn H. Baker, Chair
The Honorable Jill N. Tokuda, Vice Chair
Senate Committee on Commerce, Consumer Protection & Health
Hawaii State Capitol
415 S. Beretania Street
Honolulu, Oahu, Hawaii 96813-2425

RE: S.B. 3042, Relating to Securities – Oppose as Currently Drafted

Dear Chair Baker, Vice Chair Tokuda and Members of the Committee:

The Securities Industry and Financial Markets Association (SIFMA)¹ is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers, many of whom have a presence in Hawaii. We are writing to respectfully request that you oppose S.B. 3042, as currently drafted, which would require that broker-dealer records be maintained in the broker-dealer’s office in the State.

Broker-dealers that operate in more than one state typically have a centralized location where those records are stored and maintained. This is done for many reasons, including cost, administrative efficiencies, and regulatory compliance concerns. These records are, of course, readily accessible in today’s highly digital world. Requiring broker-dealers to maintain records on-site would be unduly burdensome and inefficient and could impact compliance oversight.

We would also like to respectfully state that S.B. 3042 is expressly pre-empted by the National Securities Markets Improvement Act of 1996 (NSMIA). NSMIA prohibits states from enacting any law, rule or regulation which would impose record making and keeping requirements that “differ from, or are in addition to” federal requirements.² Rule 17a-4³ then spells out in significant detail what records are to be preserved, for how long, and in what manner. The Rule consistently states that records must be preserved “in an easily accessible place.” There is no requirement that the records be maintained on-site.

For the above reasons, we urge you to oppose S.B. 3042. If you have any questions, or if there is any further information we can provide, please contact me at 202-962-7411.

Sincerely,

Kim Chamberlain
Managing Director & Associate General Counsel
State Government Affairs

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org/>.

² 15 U.S.C. §78o(i)(1).

³ 17 CFR §§ 240.17a-4.

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Submitted on: 2/13/2018 7:12:09 PM

Testimony for CPH on 2/15/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ramirez	Individual	Comments	No

Comments:

In Hawaii, which agency will oversee the records, books, memoranda, signatures, and other papers produced by the Broker-Dealers and the Investment Advisors? If fraud is ever suspected with regard to any of these documents Hawaii must be allowed to sanction these parties as well as the SEC. Consumers must be notified by the State of any impropriety immediately.

Thank you.