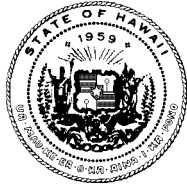


DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

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

March 8, 2020

TO: The Honorable Senator Russell E. Ruderman, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2220 HD2 - RELATING TO THE ELDERLY**

Hearing: March 9, 2020, 3:15 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this bill, suggests amendments, and offers comments.

PURPOSE: The purpose of this bill establishes the offense of financial exploitation of an elder and provides enhanced penalties. Amends mandatory reporting requirements for suspected financial abuse of an elder. Requires DHS to share records with the appropriate county police departments or offices of the prosecuting attorney. Effective 12/31/2059. (HD2)

House Committee on Judiciary removed the age of an elder to an unspecified age. DHS suggests the Legislature consider amendments to address inconsistencies of the intended age of the individual to be protected to prevent confusion which may hinder efforts to improve protection of the well-being of elders or seniors. DHS recommends amending the age of an elder victim to sixty years of age.

AN EQUAL OPPORTUNITY AGENCY

In Part II of this measure, DHS appreciates the proposed amendment to section 412:3-114.5, Hawaii Revised Statutes (HRS), that financial institutions “may report” suspected financial abuse to the department; the proposed amendment attempts to reduce the number of reports of suspected financial abuse to the department that do not include a "vulnerable adult" as defined by section 346-222, HRS. The issue is that not all elders are "vulnerable adults."

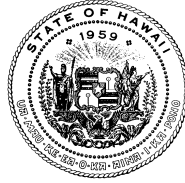
DHS Adult Protective & Community Services Branch responds to reports of abuse or neglect of a "vulnerable adult" defined in section 346-222, HRS, as follows:

"a person eighteen years of age or older who, because of mental, developmental, or physical impairment, 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, as defined in this part."

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

DAVID Y. IGE
GOVERNOR OF HAWAII



CAROLINE CADIRAO
DIRECTOR

BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
EXECUTIVE OFFICE ON AGING
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**Testimony COMMENTING on HB2220, HD2
Relating to the Elderly**

COMMITTEE ON HUMAN SERVICES
SENATOR RUSSELL E. RUDERMAN, CHAIR
SENATOR KARL RHOADS, VICE CHAIR

Testimony of Caroline Cadirao
Director, Executive Office on Aging
Attached Agency to the Department of Health

Hearing Date: March 9, 2020
3:15 pm

Room Number: 016

- 1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency to the Department
- 2 of Health, offers comments on HB2220, HD2.
- 3 **Fiscal Implications:** None.
- 4 **Purpose and Justification:** The purpose of this bill is to amend Chapter 708, Hawaii Revised
- 5 Statutes, to prevent and deter financial exploitation and abuse of elders by creating the offense of
- 6 financial exploitation of an elder, providing enhanced penalties for those convicted of the
- 7 offense, and requiring financial institutions to report instances of suspected financial abuse of an
- 8 elder directly to the police and to report suspected financial abuse to the department of human
- 9 services under certain circumstances. The Executive Office on Aging (EOA) appreciates
- 10 establishing more protection against elder abuse for our kupuna. As our population ages,
- 11 financial exploitation of an elder is on the rise, nationally and locally. The effects of financial
- 12 exploitation to an elder can be costly and devastating. Additionally, financial exploitation is

1 often unreported because the perpetrator is often someone entrusted by the victim, the victim is
2 ashamed or embarrassed, reliant on the perpetrator for care or support, fearful of retaliation or
3 unaware of the abuse. Imposing stricter penalties will hopefully be a deterrent for this type of
4 abuse of our elders.

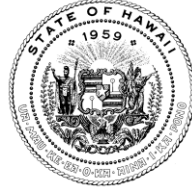
5 **Recommendation:** EOA would like to amend the definition of “elder” used in this bill to
6 consistently refer to any person sixty (60) years of age as follows:

7 1) Part 1: Section 2, page 3, line 8 and Section 3, page 4, line 1; and

8 2) Part II: Section 4, page 8, line 1.

9 Additionally, sixty (60) years old is the age that is used in the Older Americans Act which
10 allocates federal funding to EOA for community-based and in-home services and supports for
11 older adults. It would be beneficial to unify and be consistent in our statutes.

12 Thank you for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Human Services
Monday, March 9, 2020
3:15 p.m.
State Capitol, Conference Room 016**

**On the following measure:
H.B. 2220, H.D. 2, RELATING TO THE ELDERLY**

Chair Ruderman and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of Financial Institutions of the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department appreciates the intent of this bill and offers comments only with respect to part II, section 4 of this bill.

The purposes of this bill are to: (1) establish the offense of financial exploitation of an elder and provide enhanced penalties; (2) amend the mandatory reporting requirements for suspected financial abuse of an elder; and (3) require the Department of Human Services to share records with the appropriate county police departments or offices of the prosecuting attorney.

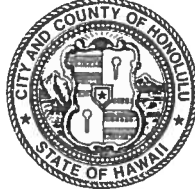
The Department appreciates the intent of the bill to protect kupuna from financial abuse. Banks and financial institutions provide training to bank staff who interact with customers to be alert for signs of financial abuse. Banks may disclose information about financial abuse of kupuna to law enforcement agencies under an exception to the

Gramm Leach Bliley Act (GLBA) for a regulatory investigation with law enforcement. See 15 U.S.C. §6802(e). The reporting of financial abuse to the appropriate county police department appears to be a more efficient and a more effective way to curb financial abuse and reduce the number of reports to the Department of Human Services for persons who do not fall within the purview of that department.

Thank you for the opportunity to testify on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE GB-KK

March 9, 2020

The Honorable Russell E. Ruderman, Chair
and Members
Committee on Human Services
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Ruderman and Members:

SUBJECT: House Bill No. 2220, H.D. 2, Relating to the Elderly

I am Gail Beckley, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2220, H.D. 2, Relating to the Elderly.

This bill appropriately provides additional mechanisms to protect the elderly against financial exploitation. It will establish the offense of financial exploitation of an elder and provide enhanced penalties. In addition, it will require the Department of Human Services to share records with the appropriate county police departments or offices of the prosecuting attorney. We believe that this legislation will assist in providing better protection to the elderly.

The HPD urges you to support House Bill No. 2220, H.D. 2, Relating to the Elderly.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

For 

Susan Ballard
Chief of Police


Gail Beckley, Captain
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY



LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE RUSSELL E. RUDERMAN, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i

March 9, 2020

RE: H.B. 2220, H.D. 2; RELATING TO THE ELDERLY.

Chair Ruderman, Vice Chair Rhoads, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following comments, supporting the intent of H.B. 2220, H.D. 2.

The Department understands and strongly agrees that financial crimes can be just as devastating as physical injuries—leaving victims ashamed, isolated, vulnerable and scared—particularly older victims, who may be less able to defend against these offenses, and have less time to recover emotionally or rebuild their finances afterwards. Moreover, the number of financial crimes committed against the elderly has increased over the years, and is only expected to increase further as Hawaii’s baby-boomers continue to age. In 2012, the Department previously supported similar measures (H.B. 2192 & S.B. 2314), and appreciates that those legislative committees adopted the Department’s suggestions.

Notwithstanding our support, we would actually recommend that this committee or subsequent committees **reconsider the approach** used to address “financial exploitation of an elder.” Rather than creating a standalone offense, we believe it would be more prudent to **add a new subsection to Section 708-830, Hawaii Revised Statutes (“HRS”), which defines the eight ways that a person can commit theft.** To ensure that financial exploitation at all levels of severity are appropriately identified and charged, we would suggest adding a new subsection (9) that addresses theft from elder persons.

Such an approach needs to reconcile the conflict between the “reckless” state of mind as to the attendant circumstance of the victim’s age, and the higher state of mind in the sentencing enhancement statute (HRS §706-660.2), which requires that “such disability be known or reasonably should be known to the defendant.” Any final bill should avoid the discrepancy between the state of mind needed to prove subsections (1)(b) [“intent”] and subsection (1)(a) [silent].

We also note that subsection (1)(a) includes a number of terms that are undefined, such as “fiduciary duty”; “breach” and “appropriation.” In particular, it is unclear from H.B. 2220, H.D. 2, if “fiduciary duty” requires the presence of a formal legal duty, such as a power of attorney, guardianship or conservator, or whether a quasi-legal duty such as an attorney-client, CPA-client or caregiver is sufficient. Also, the term “money” is unnecessary—and thus, potentially confusing—when the definition of “property” under HRS Chapter 708 already includes “money.”

As a final note, we would strongly recommend that the Committee remove limitations on providing the witness’s name to police (page 6, lines 15-18; and page 7, lines 3-6)—to the extent that that is the same person who “reported the case of financial abuse”—as any delay in obtaining this information could have a detrimental effect on police investigations, and in any case, such information would always be necessary for purposes of prosecution.

Anyone who would knowingly victimize elderly people for these crimes should face stricter penalties for such heinous actions; this would also serve as greater deterrent against such actions.

For all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, supports the intent of H.B. 2220, H.D. 2, and suggests amendments. Thank you allowing us to testify on this matter.



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THE SENATE
Committee on Human Services
Monday, March 9, 2020
3:15 p.m.
Conference Room 016

To: Senator Russell Ruderman, Chair
Re: H.B. 2220 HD2 Relating to the Elderly

Dear Chair Ruderman, Vice-Chair Rhoads, and Members of the Committee,

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a membership organization of people age fifty and over, with nearly 145,000 members in Hawai'i. AARP advocates for issues that matter to Hawai'i families, including the high cost of long-term care; access to affordable, quality health care for all generations; and serving as a reliable information source on issues critical to people over the age of fifty.

H.B. 2220 HD2 establishes the offense of financial exploitation of an elder and provides enhanced penalties. It amends the mandatory reporting requirement for suspected financial abuse of an elder and requires Department of Human Services to share records with the appropriate police departments or office of the prosecuting attorney.

AARP strongly supports H.B. 2220 HD2.

Financial exploitation presents a significant threat to older Americans, their families and financial institutions.

- Financial exploitation is the fastest growing form of older adult abuse
- Older Americans lose a reported \$3 billion per year due to financial exploitation. The actual amount lost is likely much higher because of underreporting.
- The average victim of exploitation loses \$120,000
- Older adults are susceptible to fraud and financial exploitation in part because they own 67 percent of U.S. bank deposits. But they are also more vulnerable because of health status, cognitive ability, and social isolation.

This bill strengthens the protection of elders from being defrauded or financially exploited by imposing serious penalties for those convicted of the offense. It is vital that our financial institutions and legal authorities work together to combat this growing threat to our most vulnerable residents. If financial exploitation continues unchecked, more of Hawaii's kūpuna can lose their retirement savings and jeopardize their financial security.

Thank you for the opportunity to testify in support of H.B. 2220 HD2.

AARP
Real Possibilities



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Presentation to The
Committee on Human Services
March 9, 2020 3:15 P.M.
State Capitol Conference Room 016

Testimony in Support of HB 2220 HD 2

TO: The Honorable Russell E. Ruderman, Chair
The Honorable Karl Rhodes, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and two banks from the continent with branches in Hawaii.

The Hawaii Bankers Association is quite proud of its efforts to combat financial abuse of elderly. After planning for many months, in 2016, the HBA in cohort with other organizations, including the Honolulu Police Department, embarked on a television, radio, media campaign, including the digital media, on a six month campaign to educate the elderly, on fraud and scams to defraud the elderly, although those lessons were equally applicable to all.

We did object to the requirement that the written report shall be delivered within two business days. The House recognized that such a requirement would not only be impractical but counterproductive as it might result in a report not useful to either law enforcement or the department of human services (generally Adult Protective Service). Accordingly, the House deleted the requirement that a written report be submitted within two business days.

Thank you for the opportunity to submit this testimony in support of HB 2220, HD 2. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161



Senate Committee on Human Services
March 9, 2020, 3:15 pm
Hawaii State Capitol, Room 016

In Support of HB 2220 HD2, Relating to Financial Exploitation

To: The Honorable Russell Ruderman, Chair
The Honorable Karl Rhoads, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following testimony in support of HB 2220 HD2, Relating to Financial Exploitation

This bill creates the offense of financial exploitation of an elder and provides enhanced penalties for those convicted of the offense. This bill also requires financial institutions to report instances of suspected financial abuse of an elder directly to the police and report suspected financial abuse to the Department of Human Services under certain circumstances. Unfortunately, financial elder abuse is a crime that occurs often, and is often difficult to uncover. Providing enhanced penalties for this sort of crime is a step in the right direction. Hawaii's credit unions have long worked with law enforcement to investigate and prosecute these types of crimes. With our elder population growing, this bill will further help protect our elderly members and their assets.

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

HB-2220-HD-2

Submitted on: 3/9/2020 7:30:03 AM

Testimony for HMS on 3/9/2020 3:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Sarah Yuan | Testifying for Policy Advisory Board for Elder Affairs | Support | No |

Comments:

The Policy Advisory Board for Elder Affairs has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging, we do not speak on its behalf.

PABEA supports the bill HB2220 HD2 in preventing and deterring financial exploitation and abuse of elders. We want to comment that there are at least three age definitions of older adults (sixty, sixty-two, and sixty-five) in existing laws and public programs that aim at protecting and serving kupuna. In the spirit of expanding, rather than limiting, the number of older adults to be protected against financial exploitation and abuse, we support the definition of older adults to be people aged 60 and above.

Thank you for your consideration of this testimony.

HB-2220-HD-2

Submitted on: 3/6/2020 4:43:57 PM

Testimony for HMS on 3/9/2020 3:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dara Carlin, M.A. | Individual | Support | No |

Comments:

HB-2220-HD-2

Submitted on: 3/6/2020 7:22:17 PM

Testimony for HMS on 3/9/2020 3:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Leimomi Khan | Individual | Support | No |

Comments:

Mahalo to the legislators who introduced this bill. I am a senior citizen and appreciate the authors of this bill who recognize that senior citizens are often financially exploited. This measure shows that legislators "malama" their seniors.

HB-2220-HD-2

Submitted on: 3/7/2020 3:34:20 PM

Testimony for HMS on 3/9/2020 3:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Elizabeth Gately | Individual | Support | Yes |

Comments:

Representative Joy A. San Buenaventura, Chair

Representative Nadine K. Nakamura, Vice Chair

Committee on Human Services and Homelessness

Elizabeth A. Gately

Private citizen and

Master in Social Work Student

at Myron B. Thompson School of Social Work, University of Hawaii

P.O. 240280

Honolulu, Hawaii 96824

March 7, 2020

Support for H.B. No. 2220 HD2 Relating to the Elderly

As a social work student and private citizen with over 18 years of experience working with the elderly in social service positions, financial guardianship, and the healthcare field, I have encountered countless instances of elder financial exploitation. I've personally witnessed situations where the "friendly and caring younger couple next door" accessed an elderly women's bank accounts and obtained personal credit cards under her excellent credit to buy a boat, motor home, and pay for home renovations. As a consequence, she lost her home and became dependent on the state to provide for nursing home care for the rest of her life. In way too many instances, in the case manager role, it was apparent to me that family members and caregivers had likely

stolen credit cards, furniture, and jewelry of the older adults who trusted them. Recently, a 90-year-old woman without family confided in her friends that her much younger unemployed "boyfriend" was pressuring her to purchase him a new car because the last one she had bought him was not good enough anymore. She felt she couldn't say "no." He had access to her bank accounts, too.

As a vulnerable population, the elderly are often lonely and dependent on others for home health services, companionship, and assistance to take care of their activities of daily living. These dependencies make them prime targets for unscrupulous strangers who befriend them under pretenses, neighbors, hired caregivers, "trusted" advisors, and sadly even family for whom they rely heavily upon. Whether it is their charm, under the auspices of appearing "helpful," intimidation, fear, or physical abuse, many elders find their savings, checking accounts, pensions, social security checks, veteran disability checks, and personal property plundered by those they often trust. With the growing proportion of our aging population, this exploitation will only get worse without significant deterrents put in place.

I strongly support H.B. No. 2220, Relating to the Elderly. This bill would require financial institutions to report "in good faith" possible financial abuse of an elder. Require the Department of Health Services to share records with appropriate county police departments or offices of the prosecuting attorney, and impose mandatory minimum terms of imprisonment according to the level of a misdemeanor or felony for financial exploitation perpetrated.

A significant deterrent to the financial exploitation of elders by mandatory imprisonment is necessary and provide prosecuting attorneys the ability to seek justice within the court of law for these vulnerable elderly victims.

I strongly urge you to pass HB2220 HD2. Thank you for the opportunity to testify.