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**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Finance  
Monday, February 24, 2020  
1:00 p.m.  
State Capitol, Conference Room 308**

**On the following measure:  
H.B. 2317, H.D. 1, RELATING TO SECURITIES**

Chair Luke, and Members of the Committee:

My name is Ty Nohara, and I am the Commissioner of Securities of the Department of Commerce and Consumer Affairs' (Department) Business Registration Division. The Department supports this administration bill and respectfully urges the Committee's favorable consideration of the consensus draft attached to this testimony.

The purpose of this bill is to protect elders and vulnerable adults from financial exploitation in relation to securities. This bill aims to more closely align the interests and responsibilities of securities professionals, regulators, and law enforcement with regard to the reporting and prevention of financial exploitation of the elderly and other vulnerable adults.

The Department has been working with the Securities Industry Association of Hawaii, the Securities Industry and Financial Markets Association, the Executive Office on Aging, the Department of Human Services' Adult Protective and Community

Services Branch, and the National Association of Insurance Agents and Financial Advisors of Hawaii to reach consensus language, which:

- (1) Changes the title of the new part to “PROTECTION OF ELDERS AND VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION”;
- (2) Adds the term “elder,” which is defined as a person 62 years of age or older, to the Definitions section;
- (3) Revises the bill language to include the newly defined term “elder”;
- (4) Revises the definition of “reasonably associated individual” to include any third party reasonably associated with the elder or the vulnerable adult;
- (5) Removes subsection (1) from the definition of “vulnerable adult”;
- (6) Removes redundant language from proposed Hawaii Revised Statutes section 485A-C;
- (7) Authorizes a qualified person to notify a reasonably associated individual or any third party previously designated by the elder or the vulnerable adult;
- (8) Authorizes a delay in transactions as well as disbursements;
- (9) Revises the bill language to include a “transaction,” in addition to a “disbursement”;
- (10) Uses the date on which the requested disbursement or transaction is delayed as the trigger for all relevant time periods;
- (11) Changes the seven-day reporting requirement to status updates to the Commissioner of Securities upon request;
- (12) Authorizes the Commissioner of Securities to extend the delay of a disbursement or a transaction beyond 25 business days;
- (13) Gives immunity to a qualified person for delaying a disbursement or a transaction; and
- (14) Revises the last sentence in HRS section 485A-H by reinserting language from H.B. 2317, as introduced, and correcting the typographical error in the section referenced therein.

The Department respectfully asks the Committee to pass this administration bill with the amendments in proposed H.D. 2.

Thank you for the opportunity to testify, and I would be happy to answer any questions the Committee may have.

**PROPOSED**  
**H.B. NO.** 2317  
H.D. 2

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## A BILL FOR AN ACT

RELATING TO SECURITIES.

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

1           SECTION 1. Chapter 485A, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4   **"PART PROTECTION OF ELDERS AND VULNERABLE ADULTS FROM FINANCIAL**  
5   **EXPLOITATION**

6       **§485A-A Definitions.** As used in this part, unless the  
7 context otherwise requires:

8       "Elder" means a person sixty-two years of age or older.

9       "Financial exploitation" means:

- 10       (1) The wrongful or unauthorized taking, withholding,  
11           appropriation, or use of money, assets, or property of  
12           an elder or a vulnerable adult; or
- 13       (2) Any act or omission by a person, including through the  
14           use of a power of attorney, guardianship, or  
15           conservatorship of an elder or a vulnerable adult, to:
- 16           (A) Obtain control through deception, intimidation,  
17                or undue influence over the elder's or the

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1           vulnerable adult's money, assets, or property to  
2           deprive the elder or the vulnerable adult of the  
3           ownership, use, benefit, or possession of the  
4           elder or the vulnerable adult's money, assets, or  
5           property; or

6           (B) Convert money, assets, or property of the elder  
7           or the vulnerable adult to deprive the elder or  
8           the vulnerable adult of the ownership, use,  
9           benefit, or possession of the elder or the  
10          vulnerable adult's money, assets, or property.

11          "Qualified person" means any agent, broker-dealer,  
12          investment adviser representative, investment adviser, or person  
13          who serves in a supervisory or compliance capacity for a broker-  
14          dealer or an investment adviser.

15          "Reasonably associated individual" means any person known  
16          to the qualified person to be reasonably associated with the  
17          elder, the vulnerable adult, or the account.

18          "Vulnerable adult" means a person eighteen years of age or  
19          older who, because of mental, developmental, or physical  
20          impairment, is unable to:

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- 1           (1) Communicate or make responsible decisions to manage  
2                   the person's own care or resources;
- 3           (2) Carry out or arrange for essential activities of daily  
4                   living; or
- 5           (3) Protect oneself from abuse, as defined in section 346-  
6                   22.

7           **§485A-B Governmental disclosures.** If a qualified person  
8 reasonably believes that financial exploitation of an elder or a  
9 vulnerable adult may have occurred, may have been attempted, or  
10 is being attempted, the qualified person shall promptly notify  
11 the commissioner.

12           **§485A-C Immunity for governmental disclosures.** A  
13 qualified person who, in good faith and exercising reasonable  
14 care, makes a disclosure of information pursuant to section  
15 485A-B shall be immune from administrative or civil liability  
16 that might otherwise arise from the disclosure or for any  
17 failure to notify the customer of the disclosure.

18           **§485A-D Third-party disclosures.** If a qualified person  
19 reasonably believes that financial exploitation of an elder or a  
20 vulnerable adult may have occurred, may have been attempted, or  
21 is being attempted, a qualified person may notify a reasonably

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1 associated individual or any third party previously designated  
2 by the elder or the vulnerable adult. Disclosure shall not be  
3 made to any reasonably associated individual or previously  
4 designated third party that is suspected of financial  
5 exploitation or other abuse of the elder or the vulnerable  
6 adult.

7       **§485A-E Immunity for third-party disclosures.** A qualified  
8 person who, in good faith and exercising reasonable care,  
9 complies with section 485A-D shall be immune from any  
10 administrative or civil liability that might otherwise arise  
11 from the disclosure.

12       **§485A-F Delaying disbursements or transactions.** (a) A  
13 broker-dealer or investment adviser may delay a disbursement  
14 from, or a transaction in connection with, an account of an  
15 elder or a vulnerable adult or an account on which an elder or a  
16 vulnerable adult is a beneficiary if:

17           (1) The qualified person reasonably believes, after  
18           initiating an internal review of the requested  
19           disbursement or transaction and the suspected  
20           financial exploitation, that the requested

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1           disbursement or transaction may result in financial  
2           exploitation of the elder or the vulnerable adult; and

3       (2) The broker-dealer or investment adviser:

4           (A) Immediately, but in no event more than two  
5           business days after the requested disbursement or  
6           transaction is delayed, provides written  
7           notification of the delay and the reason for the  
8           delay to all parties authorized to transact  
9           business on the account, unless any such party is  
10          reasonably believed to have engaged in suspected  
11          or attempted financial exploitation of the elder  
12          or the vulnerable adult;

13          (B) Immediately, but in no event more than two  
14          business days after the requested disbursement or  
15          transaction is delayed, notifies the  
16          commissioner; and

17          (C) Continues its internal review of the suspected or  
18          attempted financial exploitation of the elder or  
19          the vulnerable adult, as necessary, and provides  
20          status updates to the commissioner upon request.



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1           (b) Any delay of a disbursement or transaction as  
2 authorized by this section shall expire upon the sooner of:

3           (1) A determination by the broker-dealer or investment  
4           adviser that the requested disbursement or transaction  
5           will not result in financial exploitation of the elder  
6           or the vulnerable adult; or

7           (2) Fifteen business days after the date on which the  
8           broker-dealer or investment adviser first delayed the  
9           requested disbursement or transaction, unless the  
10          commissioner requests that the broker-dealer or  
11          investment adviser extend the delay, in which case the  
12          delay shall expire no more than twenty-five business  
13          days after the date on which the broker-dealer or  
14          investment adviser first delayed the requested  
15          disbursement or transaction, unless sooner terminated  
16          or further extended by the commissioner or by an order  
17          of a court of competent jurisdiction.

18          (c) A court of competent jurisdiction may enter an order  
19          extending the delay of the requested disbursement or  
20          transaction, or may order other protective relief based on the  
21          petition of the commissioner, the broker-dealer or investment

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1 adviser that initiated the delay under this section, or other  
2 interested party.

3       **§485A-G Immunity for delaying disbursements or**  
4 **transactions.** A qualified person who, in good faith and  
5 exercising reasonable care, complies with section 485A-F shall  
6 be immune from any administrative or civil liability that might  
7 otherwise arise from a delay of the requested disbursement or  
8 transaction in accordance with this section.

9       **§485A-H Records.** A broker-dealer or investment adviser  
10 shall provide access to or copies of records that are relevant  
11 to the suspected or attempted financial exploitation of an elder  
12 or a vulnerable adult to the commissioner, department of human  
13 services, or law enforcement, either as part of a referral to  
14 the commissioner, department of human services, or law  
15 enforcement, or upon request of the commissioner, department of  
16 human services, or law enforcement pursuant to an investigation.  
17 The records may include historical records as well as records  
18 relating to the most recent transaction or transactions that may  
19 comprise financial exploitation of an elder or a vulnerable  
20 adult. All records made available under this section shall not  
21 be considered a government record as defined in section 92F-3.

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1           Nothing in this provision shall limit or otherwise impede the  
2 authority of the commissioner to access or examine the books and  
3 records of broker-dealers and investment advisers as otherwise  
4 provided by law.

5           **§485A-I Multiple duties to report.** Compliance with this  
6 section shall not discharge the duty to report suspected abuse  
7 under any other section."

8           SECTION 2. In codifying the new sections added by section  
9 1 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 and referring to the new sections in this Act.

12           SECTION 3. This Act shall take effect on December 31,  
13 2059.

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**Report Title:**

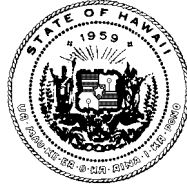
Uniform Securities Act; Elder; Vulnerable Adult; Financial  
Exploitation; Chapter 485A

**Description:**

Protects elders and vulnerable adults from financial  
exploitation in relation to securities. Effective on 12/31/2059  
(HD1)

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

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

February 23, 2020

TO: The Honorable Representative Sylvia Luke, Chair  
House Committee on Finance

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2317 HD1 - RELATING TO SECURITIES**

Hearing: February 24, 2020, 1:00 p.m.  
Conference Room 308, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of this administration bill, suggests amendments, and offers comments. DHS agrees with the proposed HD2 circulated by the Department of Commerce & Consumer Affairs; the proposed HD2 addresses DHS concerns with the current bill draft as identified below.

**PURPOSE:** Protects vulnerable adults from financial exploitation in relation to securities. Effective on 12/31/2059. (HD1)

DHS recommends amending the definition of "vulnerable adult" by removing "(1) a person sixty-two years of age or older" (Page 2, line 17). A clear distinction is required between "elder" and "vulnerable adult" because not all elders meet the department's statutory criteria of "vulnerable adult" per section 346-222, Hawaii Revised Statutes (HRS).

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

"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."

DHS recommends adding a new definition of "elder" to the proposed section 485A-A to clarify that two distinct groups of people are protected throughout this measure.

DHS appreciates that this measure strengthens efforts to address financial exploitation of elders and vulnerable adults in relation to securities by utilizing the Department of Commerce and Consumer Affairs' Securities Enforcement Branch, which investigates and prosecutes violations of Hawaii's securities laws. Although these actions are currently beyond the scope and capacity of DHS, this measure will reinforce multidisciplinary efforts by supporting referrals to DHS for possible investigation of other forms of financial exploitation or other types of abuse or neglect that may be present.

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

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: February 24, 2020, 1:00 p.m.  
State Capitol, Conference Room 308

Re: Testimony on S.B. No. 2317, H.D. 1  
Relating to Securities

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Thank you for the opportunity to submit testimony on this bill, which would allow financial service providers to report suspected financial exploitation of vulnerable adults. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers a technical comment regarding a provision on page 7 of the H.D. 1 version of this bill that would make specified records confidential under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA).

OIP does not object to providing confidentiality for financial records shared by a financial service provider in connection with an investigation of alleged financial exploitation. However, OIP notes that the confidentiality provision does not make those records exempt from disclosure under the UIPA as a whole, but instead references an exception to disclosure applicable specifically to requests for government records under part II of the UIPA. Thus, the provision would apparently not apply to a personal record request, i.e. an individual's request for information "about" that individual, made under part III of the UIPA. In other words, the provision's reference to the UIPA may be more specific than intended. **If**

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**this Committee wishes to make the records clearly exempt from disclosure in response to any type of UIPA request, OIP would recommend that the sentence at bill page 7, lines 19-21 instead read:**

**All records made available under this section shall be exempt from disclosure under chapter 92F.**

Thank you for the opportunity to testify.





February 22, 2020

The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair  
House Committee on Finance  
Hawaii State Capitol  
415 Beretania St.  
Honolulu, HI 96813

RE: HB 2317, An Act Protecting Vulnerable Adults from Financial Exploitation.

Dear Chair, Luke and Vice Chair Cullen:

The Securities Industry Association of Hawaii (SIAH) was formed over 20 years ago to foster communications among securities firms, regulators, and the legislature.

SIAH strongly supports efforts to protect our Kupuna. The bill is based on a five-year old model rule that has, over time, been enacted by more than two dozen states. SIAH strongly supports the Securities Industry and Financial Markets Association (SIFMA) suggested additions that include: (1) including holds on transactions as well as disbursements, (2) allowing the securities division to extend the hold period, (3) changing the seven day reporting requirement to "upon request", and (4) aligning the start dates with existing federal requirements. In addition, we support changing the definition of a "reasonably associated individual" to include any person reasonably associated with the vulnerable adult.

**Thus, we support, and are in agreement with, the revised language in H.B. 2317 H.D. 2, as proposed by the Commissioner of Securities of the Department of Commerce and Consumer Affairs.**

The SIAH appreciates the opportunity to provide support and suggestions. Please do not hesitate to contact me at 808-625-2596 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Goodrum".

Tony Goodrum  
President.



House Committee on Finance  
February 24, 2020 – 1:00pm – Agenda 3

**House Bill 2317, HD1: Relating to Securities**

Chair Luke and Vice Chair Cullen, NAIFA Hawaii is an organization of life insurance agents and financial advisors throughout Hawaii who primarily market life, annuity, long term care and disability income insurance products.

HB 2317, HD1 adds a new section to Chapter 485A, HRS – “Protection of Vulnerable Adults From Financial Exploitation”.

**We support HB 2317, HD1.**

To ensure that seniors are protected a number of states have enacted or are considering model legislation from the National Association of State Securities Administrators (NASSA) that requires financial advisors and their firms to report suspected financial exploitation of a senior client to authorities. It also provides advisers and firms with immunity from liability for taking steps to protect their clients’ financial assets. We support the efforts to protect seniors and/or vulnerable persons from financial exploitation.

Mahalo for allowing us to testify and offer our support.

Cynthia Takenaka, Legislative Director