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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 Judiciary and Hawaiian Affairs  
Tuesday, February 23, 2021  
2:00 p.m.  
Via Videoconference**

**On the following measure:  
H.B. 940, H.D. 1, RELATING TO SECURITIES**

Chair Nakashima 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' (DCCA or Department) Business Registration Division. The Department supports this administration bill and requests amendments.

The purpose of this bill is to protect elders and vulnerable adults from financial exploitation in relation to securities. Financial exploitation has been described as the fastest growing form of elder abuse, and the financial consequences for those who fall victim to financial exploitation are often devastating and irreparable.

Based upon a securities model act<sup>1</sup>, this bill expands the State's securities law, Hawaii Revised Statutes chapter 485A, to require a qualified person (defined as any

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<sup>1</sup> This bill is based upon the North American Securities Administrators Association's (NASAA) Model Act to Protect Vulnerable Adults from Financial Exploitation, which NASAA members adopted on January 22, 2016. As of February 1, 2021, 28 jurisdictions have enacted legislation based upon NASAA's Model Act, and one jurisdiction has adopted NASAA's Model Act by regulation.

agent, broker-dealer, investment adviser representative, investment adviser, or person who serves in a supervisory or compliance capacity for a broker-dealer or an investment adviser) to report any reasonable belief of financial exploitation of an elder or a vulnerable adult to the Commissioner of Securities. This bill also provides immunity from civil or administrative liability for good faith reporting and authorizes the delay of disbursements and transactions. Consequently, this bill addresses existing privacy rules and concerns about potential legal exposure to liability that may make it difficult for securities professionals to contact regulators and other government authorities to report suspected financial exploitation.

Since the introduction of this bill, the DCCA and the Department of Human Services have reached further agreements on its language. Enclosed is proposed H.D. 2, which reflects this consensus language and which the Department requests adoption.

This measure will allow the Department to better protect Hawaii's elders and vulnerable adults from financial exploitation, and it is especially critical during this time, as financial exploitation of the elderly and vulnerable adults has steadily increased during the COVID-19 pandemic.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill with the amendments in proposed H.D. 2.

PROPOSED  
H.B. NO. 940  
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**  
5 **FINANCIAL 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 vulnerable  
18 adult's money, assets, or property to deprive the

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1           elder or vulnerable adult of the ownership, use,  
2           benefit, or possession of the elder's or  
3           vulnerable adult's money, assets, or property; or  
4           (B) Convert money, assets, or property of the elder  
5           or vulnerable adult to deprive the elder or  
6           vulnerable adult of the ownership, use, benefit,  
7           or possession of the elder's or vulnerable  
8           adult's money, assets, or property.

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

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

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

- 19           (1) Communicate or make responsible decisions to manage  
20           the person's own care or resources;  
21           (2) Carry out or arrange for essential activities of daily  
22           living; or

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1 (3) Protect oneself from abuse, ~~as defined in section 346-~~  
2 ~~222.~~

3 **§485A-B Governmental disclosures.** If a qualified person  
4 reasonably believes that financial exploitation of an elder or a  
5 vulnerable adult may have occurred, may have been attempted, or  
6 is being attempted, the qualified person shall promptly notify  
7 the commissioner.

8 **§485A-C Immunity for governmental disclosures.** A  
9 qualified person who, in good faith and exercising reasonable  
10 care, makes a disclosure of information pursuant to section  
11 485A-B shall be immune from administrative or civil liability  
12 that might otherwise arise from the disclosure or for any  
13 failure to notify the customer of the disclosure.

14 **§485A-D Third-party disclosures.** If a qualified person  
15 reasonably believes that financial exploitation of an elder or a  
16 vulnerable adult may have occurred, may have been attempted, or  
17 is being attempted, a qualified person may notify a reasonably  
18 associated individual or any third party previously designated  
19 by the elder or vulnerable adult. Disclosure shall not be made  
20 to any reasonably associated individual or previously designated  
21 third party that is suspected of financial exploitation or other  
22 abuse of the elder or vulnerable adult.

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1           **§485A-E Immunity for third-party disclosures.** A qualified  
2 person who, in good faith and exercising reasonable care,  
3 complies with section 485A-D shall be immune from any  
4 administrative or civil liability that might otherwise arise  
5 from the disclosure.

6           **§485A-F Delaying disbursements or transactions.** (a) A  
7 broker-dealer or an investment adviser may delay a disbursement  
8 from, or a transaction in connection with, an account of an  
9 elder or a vulnerable adult or an account on which an elder or a  
10 vulnerable adult is a beneficiary if:

11           (1) The qualified person reasonably believes, after  
12           initiating an internal review of the requested  
13           disbursement or transaction and the suspected  
14           financial exploitation, that the requested  
15           disbursement or transaction may result in financial  
16           exploitation of the elder or vulnerable adult; and

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

18           (A) Immediately, but in no event more than two  
19           business days after the requested disbursement or  
20           transaction is delayed, provides written  
21           notification of the delay and the reason for the  
22           delay to all parties authorized to transact

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1 business on the account, unless any such party is  
2 reasonably believed to have engaged in suspected  
3 or attempted financial exploitation of the elder  
4 or vulnerable adult;

5 (B) Immediately, but in no event more than two  
6 business days after the requested disbursement or  
7 transaction is delayed, notifies the  
8 commissioner; and

9 (C) Continues its internal review of the suspected or  
10 attempted financial exploitation of the elder or  
11 vulnerable adult, as necessary, and provides  
12 status updates to the commissioner upon request.

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

15 (1) A determination by the broker-dealer or investment  
16 adviser that the requested disbursement or transaction  
17 will not result in financial exploitation of the elder  
18 or vulnerable adult; or

19 (2) Fifteen business days after the date on which the  
20 broker-dealer or investment adviser first delayed the  
21 requested disbursement or transaction, unless the  
22 commissioner requests that the broker-dealer or

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H.D. 2

1 investment adviser extend the delay, in which case the  
2 delay shall expire no more than twenty-five business  
3 days after the date on which the broker-dealer or  
4 investment adviser first delayed the requested  
5 disbursement or transaction, unless sooner terminated  
6 or further extended by the commissioner or by an order  
7 of a court of competent jurisdiction.

8 (c) A court of competent jurisdiction may enter an order  
9 extending the delay of the requested disbursement or  
10 transaction, or may order other protective relief based on the  
11 petition of the commissioner, the broker-dealer or investment  
12 adviser that initiated the delay under this section, or other  
13 interested party.

14 **§485A-G Immunity for delaying disbursements or**  
15 **transactions.** A qualified person who, in good faith and  
16 exercising reasonable care, complies with section 485A-F shall  
17 be immune from any administrative or civil liability that might  
18 otherwise arise from a delay of a requested disbursement or  
19 transaction in accordance with this section.

20 **§485A-H Records.** A broker-dealer or an investment adviser  
21 shall provide access to or copies of records that are relevant  
22 to the suspected or attempted financial exploitation of an elder



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1 or a vulnerable adult to the commissioner, ~~department of human~~  
2 ~~services,~~ or law enforcement, either as part of a referral to  
3 the commissioner, ~~department of human services,~~ or law  
4 enforcement, or upon request of the commissioner, ~~department of~~  
5 ~~human services,~~ or law enforcement pursuant to an investigation.  
6 The records may include historical records as well as records  
7 relating to the most recent transaction or transactions that may  
8 comprise financial exploitation of an elder or a vulnerable  
9 adult. All records made available under this section shall be  
10 exempt from disclosure under chapter 92F.

11 Nothing in this provision shall limit or otherwise impede the  
12 authority of the commissioner to access or examine the books and  
13 records of broker-dealers and investment advisers as otherwise  
14 provided by law.

15 **§485A-I Multiple duties to report.** Compliance with this  
16 section shall not discharge the duty to report suspected abuse  
17 under any other section."

18 SECTION 2. In codifying the new sections added to chapter  
19 485A, Hawaii Revised Statutes, by section 1 of this Act, the  
20 revisor of statutes shall substitute appropriate section numbers  
21 for the letters used in designating and referring to the new  
22 sections in this Act.

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1 SECTION 3. This Act shall take effect upon its approval.

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

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BY REQUEST

PROPOSED  
H.B. NO. 940  
H.D. 2

**Report Title:**

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

**Description:**

Mandates reporting of suspected financial exploitation of elders  
and vulnerable adults in relation to securities. Provides  
immunity for good faith reporting and authorizes the delay of  
disbursements and transactions.

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



February 22, 2020

The Honorable Mark M. Nakashima, Chair  
The Honorable Scot Z Matayoshi, Vice Chair  
House Committee on Judiciary and Hawaiian Affairs  
Hawaii State Capitol  
415 Beretania St.  
Honolulu, HI 96813

RE: HB 940, HD1 An Act Protecting Vulnerable Adults from Financial Exploitation.

Dear Chair Nakashima, and Vice Chair Matayoshi and Members of the Committee on the Judiciary and Hawaiian Affairs:

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 and thanks the securities division and state legislators for introducing this bill. The bill is based on a five-year-old model rule that has, over time, been enacted by more than two-dozen states with various changes that ease administration and enhance the capability to protect our investors.

This bill will both enhance investor protection and make it easier for firms and regulators to administer and implement the law.

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", written in a cursive style.

Tony Goodrum  
President.

**HB-940-HD-1**

Submitted on: 2/22/2021 11:18:18 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Maui Police Department	Support	No

Comments:

This measure will allow for better protection for our elderly and vulernable adults.



*Invested in America*

February 22, 2021

The Honorable Mark M. Nakashima, Chair  
The Honorable Scot Z. Matayoshi, Vice Chair  
House Committee on Judiciary & Hawaiian Affairs  
Hawaii State Capitol  
415 South Beretania St.  
Honolulu, HI 96813

**RE: Support of H.B. 940 HD1, Relating to Securities**

Dear Chair Nakashima, Vice Chair Matayoshi and Members of the Judiciary & Hawaiian Affairs Committee:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is a national trade association representing over 350 large, medium and small broker-dealers, investment banks and asset managers, many of whom have a strong presence in Hawaii. In fact, more than 16,000 people in the state work in the finance and insurance industries, 1,000 of them work at securities firms, and 5 broker-dealer main offices call Hawaii home.

SIFMA is proud to be a vocal advocate in the fight against senior financial exploitation. Among other things, SIFMA has worked to educate policymakers and the general public on the need for increased senior protections and founded a large working group for member firms to share ideas and best practices. SIFMA has also worked with federal and state legislatures and regulators on various “Report and Hold” proposals that would allow reporting firms to place temporary holds on suspicious transactions and/or disbursements. Such laws are now in place in 31 states, and the Financial Industry Regulatory Authority (the industry’s national regulator) has had similar rules in effect for three years.<sup>2</sup>

We are writing today in strong support of H.B. 940 HD1. Financial exploitation of older adults by family members, scammers, caregivers and others has grown exponentially in the last decade. Estimates of annual losses vary significantly, ranging from \$2.9 billion to \$36.5 billion, depending on terminology and methodology.<sup>3</sup> The numbers are staggering regardless of which ones are used and result in devastating economic consequences for many victims. The impact, however, is not just economic. Financial exploitation can result in fear, a loss of independence, a reduced quality of life and even death.<sup>4</sup>

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. 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>.

<sup>2</sup> Financial Industry Regulatory Authority Rule [2165](#).

<sup>3</sup> Office of Financial Protection for Older Americans. Suspicious Activity [Report](#) on Elder Exploitation: Issues and Trends, (2019, February).

<sup>4</sup> Burnett, Jason, “Elder Financial Exploitation: More than Just Financial [Loss](#),” SIFMA, February 2019.

H.B. 940 HD1 helps protect investors in a variety of ways. It provides firms that suspect exploitation with a reporting pathway to the Securities Division which can then investigate. It also permits firms to notify third parties reasonably associated with the vulnerable adult of the suspected exploitation so that they can be aware of and assist in stopping the suspected abuse. Perhaps most importantly, H.B. 940 HD1 would give firms the ability to place a temporary hold on suspicious transactions or disbursements while the suspected exploitation is being investigated – so that the investor is not irreparably harmed before the investigation is completed.

We thank the Hawaii Securities Division and state legislators for introducing this bill and encourage this Committee to favorably report it.

Please do not hesitate to contact me at 202-962-7411 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Kim Chamberlain". The signature is written in a cursive, flowing style.

Kim Chamberlain  
Managing Director and Associate General Counsel  
State Government Affairs



HAWAII

House Consumer Protection & Commerce Committee  
February 23, 2021 2:00 pm

**House Bill 940, HD1: Relating to Securities**

Chair Nakashima, Vice Chair Matayoshi, and members of the Committee, 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 940, HD1, an admin bill adds a new section to §485A, HRS – “Protection of Elders and Vulnerable Adults From Financial Exploitation”. We support the efforts to protect seniors and/or vulnerable persons from financial exploitation.

We fully support HB 940, HD1, with one exception in the measure. We would like to note that we agree with DCCA and the Department of Human Services in deleting the references to Department of Human Services under §485A-H Records on page 7, as will be noted in their respective testimonies.

To ensure that seniors are protected 28 jurisdictions have enacted and more 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 state authorities.

It also provides advisers and firms with immunity from liability for taking steps to protect their clients’ financial assets. The measure allows for advisors and firms to delay suspicious disbursements/transactions to provide authorities time to investigate possible fraudulent activity with specific time frames.

Mahalo for allowing us to testify and share our viewpoint.

Cynthia Takenaka  
Legislative Director



DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 22, 2021

TO: The Honorable Representative Mark M. Nakashima, Chair  
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **HB 940 HD1 – RELATING TO SECURITIES.**

Hearing: Tuesday, February 23, 2021, 2:00 p.m.  
Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of this administration measure, provides comments, and requests amendments to this current draft. DHS has discussed these proposed amendments with the Department of Commerce and Consumer Affairs (DCCA). We appreciate the collaborative efforts to address the exploitation of elders and vulnerable adults.

**PURPOSE:** The purpose of the bill is to mandate reporting of suspected financial exploitation of elders and vulnerable adults in relation to securities and provide immunity for good faith reporting and authorize the delay of disbursements and transactions.

DHS recommends the following amendments to ensure that instances of financial exploitation regarding securities are referred to the appropriate party that is equipped to respond to such referrals.

DHS recommends deleting reference to section 346-222, Hawaii Revised Statutes, from the proposed definition of "vulnerable adult," (page 3, lines 3-4), as follows,

- (3) Protect oneself from abuse. ~~as defined in section 346-222.~~

DHS also requests deleting reference to the department of human services (page 7, lines 8 - 12) as a recipient of referrals from “qualified persons” as defined in this measure, as follows.

**§485A-H Records.** A broker-dealer or an investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an elder or a vulnerable adult to the commissioner, ~~department of human services,~~ or law enforcement, either as part of a referral to the commissioner, ~~department of human services,~~ or law enforcement, or upon request of the commissioner, ~~department of human services,~~ or law enforcement pursuant to an investigation.

DHS appreciates that the intent of this measure strengthens efforts to address financial exploitation of elders and vulnerable adults in relation to securities by utilizing the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, which investigates and prosecutes violations of Hawaii’s securities laws. Investigation of financial exploitation regarding securities is currently beyond the capacity and expertise of DHS Adult Protective and Community Services. Screening and investigation of such referrals would require more resources to address the demands of increasing anticipated numbers of referrals and investigations as well as qualified staff with the required skill set to do so.

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