



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 Commerce and Consumer Protection
Wednesday, February 10, 2021
9:30 a.m.
Via Videoconference**

**On the following measure:
S.B. 1094, RELATING TO SECURITIES**

Chair Baker 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 act¹, this bill expands the State's securities law, Hawaii Revised Statutes chapter 485A, to require a qualified person (defined as any

¹ 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 S.D. 1, 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 S.D. 1.

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S.D. 1

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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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.

2

3

INTRODUCED BY: _____

4

BY REQUEST

PROPOSED
S.B. NO. 1094
S.D. 1

Report Title:

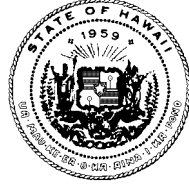
Uniform Securities Act; Elder; Vulnerable Adult; Financial
Exploitation; Chapter 485A

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.*

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 8, 2021

TO: The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Cathy Betts, Director

SUBJECT: **SB 1094 – RELATING TO SECURITIES**

Hearing: Wednesday, February 10, 2021, 9:30 a.m.
Conference Room 229, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this administration measure, provides comments, and requests amendments. DHS has discussed these proposed amendments with the Department of Commerce and Consumer Affairs (DCCA), and we understand a proposed SD1 is forthcoming that reflects our requests.¹ 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.

¹ DHS modified its requested amendments since the hearing of HB940.

DHS recommends deleting reference to section 346-222, Hawaii Revised Statutes, from the proposed definition of “vulnerable adult,” (page 3, lines 1-2), 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 1 to 5) 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 Department of Commerce and Consumer Affairs’ Securities Enforcement Branch, 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. Screening and investigation of such referrals would require more human resources to address the demands of increasing 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.

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: Senate Committee on Commerce and Consumer Protection

From: Cheryl Kakazu Park, Director

Date: February 10, 2021, 9:30 a.m.
Via Videoconference

Re: Testimony on S.B. No. 1094
Relating to Securities

Thank you for the opportunity to submit testimony on this bill, which would mandate reporting of suspected financial exploitation of elderly and vulnerable adults. The Office of Information Practices (OIP) takes no position on the substance of this bill, but has commented on confidentiality language in versions of this measure in previous years. OIP has no concerns regarding the confidentiality provision at page 7, lines 9-10, as OIP believes the records in question would fall under multiple exceptions to disclosure under chapter 92F, the Uniform Information Practices Act.

Thank you for the opportunity to testify.

SB-1094

Submitted on: 2/5/2021 1:46:08 PM

Testimony for CPN on 2/10/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Testifying for Maui Police Department	Support	No

Comments:

We support the passage of this bill because it provides improved protection for our kupuna and vunlnerable adults.



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The State Legislature
Senate Committee on Commerce and Consumer Protection
Wednesday, February 10, 2021
9:30 a.m.

TO: The Honorable Rosalyn Baker, Chair
RE: S.B. 1094 Relating to Securities

Aloha Chair Baker and Members of the Committees:

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 Hawai'i supports S.B. 1094 which mandates report of suspected financial exploitation of elders and vulnerable adults in relations to securities. It provides immunity for good faith reporting and authorize the delay of disbursements and transactions.

AARP Hawaii strongly supports S.B. 1094

- Financial exploitation represents a 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 allows financial brokers/professionals to freeze a transaction if they suspect financial exploitation. It is vital that our financial institutions and the State work together in preventing, identifying and addressing cases of financial abuse and combat this growing threat to our most vulnerable residents. Thank you very much for the opportunity to support S.B. 1094.

Sincerely,

A handwritten signature in black ink, appearing to read "Keali'i Lopez".

Keali'i Lopez, AARP Hawai'i



Senate Commerce & Consumer Protection Committee
February 10, 2021 9:30 am

Senate Bill 1094: Relating to Securities

Chair Baker, Vice Chair Chang, 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.

SB 1094, an admin bill adds a new section to Chapter 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 are in strong support of SB 1094.

We understand that the Department of Human Services has requested to delete the reference to HRS section 346-222 in the definition of “vulnerable adult” on page 3 of the bill. We fully support the proposed amendment to delete the reference.

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 urge your passage of this measure.

Cynthia Takenaka
Legislative Director

February 8, 2021

Chairwoman Rosalyn H. Baker
Committee on Commerce and Consumer Protection
Hawaii State Senate
415 South Beretania St.
Honolulu, HI 96813

Re: Senate Bill 1094

Dear Chairwoman Baker,

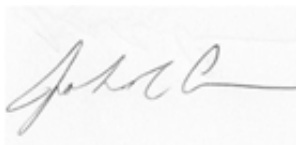
On behalf of LPL Financial (LPL), I am writing to express support for Senate Bill 1094. Protecting senior investors and vulnerable adults from financial fraud is a major priority for LPL and our affiliated financial advisors. We commend the Hawaii state legislature for considering this critical bill.

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment advisor (RIA) custodian. We serve more than 17,000 independent financial professionals and over 700 financial institutions by providing them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow thriving practices. LPL enables them to provide objective guidance to millions of American families seeking wealth management, financial planning, and asset management solutions. In Hawaii, 113 financial advisors are affiliated with LPL, all of whom are independent contractors and small business owners and an additional 4 banks and credit unions partner with LPL for financial planning. Collectively, they have more than \$3.5 billion in assets under management in 29,000 funded accounts.

Financial advisors are uniquely qualified to identify suspected financial fraud. With an estimated one in five Americans over the age of 65 suspected to be a victim of financial fraud and a rapidly aging population, LPL believes that the financial services sector should have robust policies and procedures to protect this vulnerable population. SB 1094, which is modeled after the North American Securities Administrators Association (NASAA) Model Act to Protect Vulnerable Adults from Financial Exploitation, is an important bill that will strengthen the financial security of many Hawaiians.

We respectfully urge the Committee to recommend passage of SB 1094. Please do not hesitate to contact me at John.Cronin@lpl.com with any questions.

Best,



John R. Cronin
Head of State Government Relations
LPL Financial



February 8, 2021

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

RE: Support of S.B. 1094, Relating to Securities

Dear Chair Baker, Vice Chair Chang and Members of the Commerce and Consumer Protection Committee:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ 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.²

We are writing today in strong support of S.B. 1094. Americans lose approximately \$2.9 billion annually in media-reported cases of financial exploitation.³ Sadly, these numbers are quite low as it is estimated that only 1 out of every 44 instances of financial abuse is reported to the authorities, much less in the media.⁴ Moreover, the devastating impact of abuse is not just

¹ 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>.

² Financial Industry Regulatory Authority Rule [2165](#).

³ MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America’s Elders (2011).

⁴ National Adult Protective Services Association, “Elder Financial Exploitation,” available at: <https://www.napsa-now.org/get-informed/exploitation-resources/>.

economic. Financial exploitation can result in a loss of independence, a reduced quality of life and even death.⁵

S.B. 1094 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 the financial exploitation. 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, S.B. 1094 would give firms the ability to place a temporary hold on suspicious transactions and/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

⁵ Burnett, Jason, "Elder Financial Exploitation: More than Just Financial [Loss](#)," SIFMA, February 2019.



February 9, 2021

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Capitol
415 Beretania St.
Honolulu, HI 96813

RE: S.B. 1094, An Act Protecting Vulnerable Adults from Financial Exploitation.
STRONGLY SUPPORT

Dear Chair Baker, Vice Chair Chang, and Members of the Committee on Commerce, Consumer Protection, and Health.

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

The SIAH strongly supports efforts to protect our Kupuna, and thanks the securities division and state legislators for introducing this bill. S.B. 1094 is based upon a five year-old securities model act that has since been enacted by more than two-dozen states. The SIAH requests that this committee pass S.B. 1094, which will certainly 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. 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". The signature is fluid and cursive, written over a white background.

Tony Goodrum
President



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Email: info@hcul.org



Senate Committee on Consumer Protection and Commerce
February 10, 2021, 9:30 am
Hawaii State Capitol
Via Videoconference

LATE

In Support of SB 1094, Relating to Securities

To: The Honorable Rosalyn Baker, Chair
The Honorable Stanley Chang, 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 SB 1094, Relating to Securities.

This bill would mandate reporting of suspected financial elder abuse in relation to securities. Unfortunately, financial elder abuse is a crime that occurs often, and is often difficult to uncover. 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.