

SENATE BILL 95

Chair, members of the committee:

My name is Victoria Blachly and I am a trust and estate litigator, with 20 years' experience, licensed in Washington and Oregon. I represent individual trustees, corporate trustees, beneficiaries, and personal representatives in often difficult and challenging cases including trust and estate litigation, will contests, trust disputes, undue influence, capacity cases, claims of fiduciary breach, financial elder abuse cases, and contested guardianship and conservatorship cases. I am an Oregon Super Lawyer for Trust and Estate Litigation, an award only available to 5% of Oregon attorneys who have attained a high-degree of peer recognition and professional achievement.

I am here today to testify in support of Senate Bill 95, which requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable Oregonians. It allows them options to freeze accounts and report concerns to the Department of Consumer and Business Services and the Department of Human Services.

In my law practice I regularly come across difficult stories, where horrible people take advantage of some of our most vulnerable citizens. And these stories often involve greedy family members hiding behind documents that may appear legal on their face.

Indeed, two of my clients are here today to share part of their story: David Gillis and his wife, Charlie White. Mr. Gillis and Mrs. White saw firsthand how quickly a family member can try to take control of an aging family member, for inappropriate goals. Specifically, their case involved their beloved Aunt and one of the nephews took extraordinary measures to take control of her life, over her objections, and sought to isolate her and control all of her finances. Fortunately, she had a long-time relationship with an investment advisor that was helpful in putting the brakes on his plan - long enough for lawyers to be retained and the entire project shut down cold. A subsequent hearing resulted in a detailed order that affirmed the Bad Actor had no good intentions and the Aunt - and her considerable resources - were protected.

But what I think they would also tell you is that it is an incredibly difficult thing for a family to keep their eyes peeled at all times for such behavior, and that the efforts of anyone to look out for their Aunt was greatly appreciated, be it a bank teller, investment advisor, or anyone else that came into contact with her.

In my practice, I will say that it truly does take a village to keep our vulnerable Oregonians safe, and I believe SB 95 is another tool to help accomplish that goal. Through my securities law colleagues at my firm, I understand this issue – keeping elders safe – has been on the forefront of NASAA (North American Securities Administrators Association) and FINRA (Financial Industry Regulatory Authority) and proposals for uniform legislation have been making their way around the United States.

Oregon has also been progressive in identifying mandatory reporters for elder abuse, adding new categories on a fairly regular basis. While neither investment advisers, nor bankers, are on that list (ORS 125.050(9)), SB 95 provides a good start. It addresses the problem when an investment adviser is given a document that appears to be legal, like a Power of Attorney or Trust, but if the investment adviser knows or should know that capacity or undue influence is involved, SB 95 gives them the ability to take action contrary to what the fiduciary is telling them, for the protection of the vulnerable person.

I will note that I have seen an amendment that fixes one unintended issue in SB 95. I do not believe it has been reduced by legislative counsel to an actual amendment, but I need to point it out today. Specifically, Section 1(3)(b) in defining “financial exploitation” includes the act of a conservator to convert assets or deprive ownership, yet it is the court-appointed conservator’s fiduciary and statutory duty to convert titles to all of the protected person’s assets into the name of the conservatorship, which is not a wrongful taking. The proposed amendment I’ve seen defines “financial exploitation” as it is used in ORS 124.050(4), which corrects that unintended result in having a conservator being defined as a financial abuser by simply doing their required job.

Accordingly, I support SB 95, as amended.

I am also a Commissioner for the Oregon Commission on Senior Services, and I can report to you that the Commission has voted and it supports SB 95.

Finally, because I am a strong advocate for the protection of vulnerable adults, I’ll leave you with this excellent resource. The toll free number for the Oregon Elder Abuse Hotline is 1 (855) 503-7233. I encourage you to put that number in your cell phone, post it on whatever materials you create for your constituents, and share it freely and often. Elder abuse thrives in secrecy, silence, and shame. The more of us that keep an eye out for abuse, the better, and SB 95 helps shed more light.