

**Testimony of Gary M. Berne Regarding House Bill 2622**  
**February 15, 2017 Hearing**  
**Before the House Judiciary Committee**

Chair and Members of the Committee, thank you for the opportunity to testify before you today. My name is Gary Berne and I am a lawyer with the law firm of Stoll Berne in Portland. I am here today to testify regarding concerns that I have with House Bill 2622.

I have been in the private practice of law for almost forty years. Much of my practice has included representing investors who have been the victims of various forms of wrongdoing, including securities fraud, breach of fiduciary duty, and elder abuse. In my view, there has not been any decline in the amount of wrongdoing where elderly people have been victims, and, in fact, the sophistication of the scammers and the opportunity for abuse has only increased with the internet and the ease with which money has been moved.

On the other hand, there has been a greater awareness of the problems, especially with respect to vulnerable people, and, in some respects, the financial services industry has increased its efforts to prevent abuses. There also has been legislation in this regard like the Oregon elder abuse law. Legislation that has been proposed this year, SB 95, will increase protection of elderly and other vulnerable people in two respects: first, by requiring securities salespersons and investment adviser representatives to notify the Department of Consumer and Business Services and the Department of Human Services of financial exploitation and, second, by permitting a delay of the transaction.

HB 2622 and SB 95 are not consistent with each other. HB 2622 and SB 95 both apply to securities firms and investment advisers. HB 2622 also applies to banks, in addition to securities firms and investment adviser representatives. Both Bills have provisions that permit a transaction to be refused or delayed when there is a concern about harm to a vulnerable person.

But HB 2622, unlike SB 95, does not require notice to any governmental authority or to anyone other than parties currently authorized to transact business on the account—which may be only the vulnerable person. And even notice to the vulnerable person is not required if the financial institution believes it will compromise an investigation, although it fails to say what kind of investigation.

HB 2622 also attempts to give the financial institution immunities from liability when it may not have immunities at present. Thus, the effect of HB 2622 is to protect the financial institution and not require notice to people or agencies who could prevent the wrongdoing.

Finally, as a more minor point, HB 2622 is confusing because it refers to investment adviser representatives but omits registered investment advisers, so it covers the individual but not the firm. HB 2622 also is confusing because it uses the term “financial institution” to include broker-dealers and investment adviser representatives, which is inconsistent with existing Oregon statutes.

Furthermore, HB 2622 contains a provision that exempts trust companies from the civil liability provisions of the Oregon elder abuse prevention laws. This last provision is not related to the other sections of HB 2622 and, so far as I know, lawyers who are involved in elder abuse cases are not aware of the attempt to provide an exemption for trust companies.

In summary, I would urge the Committee to reject HB 2622, at least in its present form, because it does not go far enough in terms of notice requirements, is inconsistent with SB 95, and contains the liability exemption for trust companies.

Thank you.