

**TESTIMONY OF
KENNETH SHERMAN, JR.
OREGON BANKERS ASSOCIATION
re: HB 2622
February 15, 2017**

I am Kenneth Sherman, Jr., counsel for the Oregon Bankers Association. The Association requested the introduction of House Bill 2622 to give banks, credit unions and trust companies another tool to use in combating financial exploitation of elder persons and other vulnerable persons. Following the lead of a law enacted in Washington state several years ago, HB 2622 would give banks, credit unions and trust companies statutory authority to “freeze” the account of a vulnerable person when financial exploitation is suspected.

The institution would be empowered to act on either its own reasonable belief, or upon information coming from DHS or a law enforcement agency or district attorney. The institution could refuse a transaction, refuse a withdrawal or disbursement from the vulnerable person’s account, prevent a change in ownership of the account or the transfer of funds from the account to someone else’s account, or refuse to follow the directions of a person holding a power of attorney supposedly given by the vulnerable person.

The bill would not require the bank, credit union or trust company to institute a freeze, because that would generate too many false positives. Rather, the bill gives the institution authority to act and would protect it against liability when it does act.

When an institution does institute a freeze, the bill would require it to make reasonable efforts to notify all persons on the account, except where it believes that would compromise the investigation.

Once instituted, a freeze would continue for 15 business days, unless that period is extended, or the institution sooner becomes satisfied that there is no abuse or a court terminates the freeze.

We believe that the bill as printed needs some amendments, and we have prepared proposed amendments and a hand-engrossed version of the bill, which are attached to my testimony.

First, these amendments narrow the scope of the bill to cover only banks, credit unions and trust companies, and not to include broker-dealers or investment advisor representatives. The Department of Consumer and Business Services has its own bill (Senate Bill 95) pertaining to abuse situations detected by securities dealers, and it would be inappropriate to impose two sets of competing rules on them.

The second substantive amendment clarifies that an account freeze may be extended where the institution believes that exploitation may have occurred or may have been attempted.

The last amendment is the addition of a new section 5. Many banks, credit unions and trust companies already have provisions in their customer account agreements allowing the institution to freeze the account and take other appropriate action when the institution suspects abuse or exploitation. New section 5 would make it clear that the authority granted by HB 2622 is in addition to the authority an institution may have under its account contract.

We believe HB 2622 will provide our institutions with an important new weapon in the ongoing war against financial abuse and exploitation of vulnerable individuals. We urge your support.

PROPOSED AMENDMENTS
HOUSE BILL 2622
offered by:
OREGON BANKERS ASSOCIATION
February 15, 2017

1 On page 1 of the printed bill, in line 8, after "706.008", delete the comma, insert a
2 semicolon and delete the rest of line 8 and line 9.

3 Delete line 11.

4 In line 12, delete "(5)" and insert "(4)".

5 In line 13, delete "(6)" and insert "(5)".

6 On page 2, , line 23, after "(a)", delete the rest of the line and lines 24 and 25.

7 In line 26, delete "(b) If the transaction did not involve the sale or offer of a sale of a
8 security,"

9 In line 29, delete "(c)" and insert "(b)".

10 In line 31, delete "(d)" and insert "(c)".

11 In line 32, delete "(6)" and insert "(5)".

12 In line 34, after "may", insert "have occurred, may have been attempted, or may".

13 In line 36, delete "(7)" and insert "(6)".

14 In line 37, after "(1)" insert: "or (5)"

15 On page 3, after line 5, insert:

16 "**Section 5.** The authority granted to financial institutions under section 3 of this 2017
17 Act is in addition to and not in lieu of any right a financial institution may have under its deposit
18 or other contract with its customer. Nothing contained in this 2017 Act:

19 "(1) Restricts the rights of a financial institution to take or refuse to take any action
20 pursuant to the financial institution's deposit or other contract with its customer; or

21 "(2) Requires a financial institution to comply with any provision of this 2017 Act when
22 acting pursuant to the provisions of the financial institution's deposit or other contract with its
23 customer."

24 In line 6, delete "5" and insert "6".

25 In line 8, delete "6" and insert "7".

House Bill 2622

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Authorizes financial institution to refuse certain financial transactions when financial institution reasonably believes financial exploitation of vulnerable person may have occurred, may have been attempted or is being attempted.

Requires financial institution to provide notice of action or refusal to act to parties authorized to transact business on account of vulnerable person.

Becomes operative October 1, 2017.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abuse prevention; creating new provisions; amending ORS 124.115; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** As used in this section and section 3 of this 2017 Act:

6 (1) "Financial exploitation" has the meaning given that term in ORS 124.050.

7 (2) "Financial institution" means a financial institution or a trust company as those
8 terms are defined in ORS 706.008, ~~or a broker-dealer or an investment advisor representative~~
9 ~~as those terms are defined in ORS 59.015.~~

10 (3) "Law enforcement agency" has the meaning given that term in ORS 124.050.

11 (4) ~~"Security" has the meaning given that term in ORS 59.015.~~

12 (4) (5) "Vulnerable person" has the meaning given that term in ORS 124.100.

13 (5) (6) "Vulnerable person's account" means a contract of deposit of funds between a
14 depositor and a financial institution where:

15 (a) The account is owned by a vulnerable person, whether individually or with one or
16 more other persons; or

17 (b) A vulnerable person is a beneficiary of the account, including of a formal or informal
18 trust account, a payable on death account, a conservatorship account or a guardianship ac-
19 count.

20 **SECTION 3.** (1) When a financial institution reasonably believes, or has received infor-
21 mation from the Department of Human Services, a law enforcement agency, or a district
22 attorney's office demonstrating that it is reasonable to believe, that financial exploitation
23 of a vulnerable person may have occurred, may have been attempted or is being attempted,
24 and pending an investigation by the financial institution, the department, the law enforce-
25 ment agency or the district attorney's office, the financial institution may but is not required
26 to:

27 (a) Refuse a transaction with or involving the vulnerable person;

28 (b) Refuse to permit the withdrawal or disbursement of funds contained in a vulnerable

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in boldfaced type.

1 person's account;

2 (c) Prevent a change in ownership of a vulnerable person's account;

3 (d) Prevent a transfer of funds from a vulnerable person's account to an account owned
4 wholly or partially by another person; or

5 (e) Refuse to comply with instructions given to the financial institution by an agent or
6 attorney-in-fact under a power of attorney signed or purported to have been signed by the
7 vulnerable person.

8 (2) A financial institution is not required to act under subsection (1) of this section when
9 provided with information alleging that financial exploitation may have occurred, may have
10 been attempted or is being attempted, but may use the financial institution's discretion to
11 determine whether or not to act under subsection (1) of this section based on the informa-
12 tion available to the financial institution at the time.

13 (3)(a) Except as provided in paragraph (b) of this subsection, a financial institution that
14 acts under subsection (1) of this section shall make a reasonable effort to notify, orally or
15 in writing, all parties currently authorized to transact business on the account concerning
16 the financial institution's action.

17 (b) A financial institution is not required to provide the notice described in paragraph (a)
18 of this subsection when the financial institution, in the financial institution's discretion, de-
19 termines that providing notice could compromise an investigation of or response to the sus-
20 pected financial exploitation.

21 (4) The authority granted to a financial institution under subsection (1) of this section
22 will expire upon the sooner of:

23 (a) ~~If the transaction involved the sale or offer of sale of a security, 10 business days~~
24 ~~after the date on which the financial institution first acted under subsection (1) of this sec-~~
25 ~~tion;~~

26 ~~(b) If the transaction did not involve the sale or offer of sale of a security, 15 business~~
27 ~~days after the date on which the financial institution first acted under subsection (1) of this~~
28 ~~section;~~

29 (b) ~~(c)~~ When the financial institution is satisfied that the transaction or act will not result
30 in financial exploitation of a vulnerable person; or

31 (c) ~~(d)~~ Upon termination by an order of a court of competent jurisdiction.

32 (5) ~~(6)~~ Unless otherwise directed by order of a court of competent jurisdiction, a financial
33 institution may extend the duration under subsection (5) of this section based on a reason-
34 able belief that the financial exploitation of a vulnerable person may continue to occur or
35 be attempted.

36 (b) ~~(7)~~ A financial institution and all employees of a financial institution are immune from
37 criminal, civil and administrative liability for actions taken under subsection (1) of this sec-
38 tion if the actions were taken in good faith. *have occurred, may have been attempted, or may be*
or subsection (5)

39 **SECTION 4.** ORS 124.115 is amended to read:

40 124.115. (1) Except as provided by subsection (2) of this section, an action under ORS 124.100
41 may not be brought against:

42 (a) Financial institutions or trust companies, as defined by ORS 706.008;

43 (b) A health care facility, as defined in ORS 442.015;

44 (c) Any facility licensed or registered under ORS chapter 443; or

45 (d) Broker-dealers licensed under ORS 59.005 to 59.451.

1 (2) An action may be brought under ORS 124.100 against a person listed in subsection (1) of this
2 section if:

3 (a) The person is convicted of one of the crimes specified in ORS 124.105 (1); or

4 (b) The person engages in conduct constituting financial abuse as described in ORS 124.110, and
5 the person is convicted of a crime by reason of the conduct.

6 ~~SECTION 5.~~ Sections 2 and 3 of this 2017 Act and the amendments to ORS 124.115 by
7 section 4 of this 2017 Act become operative on October 1, 2017.

8 ~~SECTION 6.~~ This 2017 Act being necessary for the immediate preservation of the public
9 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
10 on its passage.
11

SECTION 5. The authority granted to financial institutions under section 3 of this 2017 Act is in addition to and not in lieu of any right a financial institution may have under its deposit or other contract with its customer. Nothing contained in this 2017 Act:

- (1) Restricts the rights of a financial institution to take or refuse to take any action pursuant to the financial institution's deposit or other contract with its customer; or
- (2) Requires a financial institution to comply with any provision of this 2017 Act when acting pursuant to the provisions of the financial institution's deposit or other contract with its customer. [3]