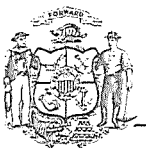
Wisconsin State Senate
24th Senate District



Serving Wood, Portage, Adams,
Waushara, Monroe, and Jackson

PATRICK TESTIN
STATE SENATOR

DATE: January 16, 2020

RE: **Testimony on Senate Bills 428, 429 and 430**

TO: The Senate Committee on Insurance, Financial Services, Government Oversight and Courts

FROM: Senator Patrick Testin

I would like to thank Chairman Craig and members of the committee for accepting my testimony on Senate Bills 428, 429 and 430.

According to the Bureau of Aging & Disability Resources, there has been a 160% increase in reported elder abuse in Wisconsin since 2001. This abuse can take multiple forms including physical, emotional, and financial. Research shows that for every reported case of elder abuse, 24 cases go unreported. These numbers are likely to grow as Wisconsin's senior population is set to increase by 72% in the coming decade.

Last session, I had the opportunity to serve as a member of the Attorney General's Task Force on Elder Abuse. The task force was made up of stakeholders from state agencies, law enforcement, the court system, long-term care agencies, financial service groups, and citizen advocacy organizations. We were tasked with studying the impact of elder abuse in the state and finding ways to improve outcomes for the elderly.

Senate Bill 428
Senate Bill 428 will allow broker-dealers and investment advisers to temporarily delay transactions when financial exploitation is suspected. This legislation requires certain notifications if a transaction is delayed and establishes time limits on a delay.

SB 428 also allows securities professionals to provide to the Department of Financial Institutions, adult protective service agencies, and other individuals notice of suspected financial exploitation of individuals ages 60 and older.

Lastly, current law includes a penalty enhancer for securities law violations committed against a person who is at least 65 years of age and older. Under this bill, these enhanced penalties also apply to vulnerable adults (age 60+).

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Senate Bill 429
Senate Bill 429 allows financial institutions, mortgage bankers and brokers, check cashing services, and other types of lenders to delay financial transactions when exploitation of an adult ages 60 and older is suspected.

A financial service provider may also refuse or delay a financial transaction if an elder-adult-at-risk agency, such as a county social services agency or law enforcement, provides information to the financial service provider that financial exploitation of a vulnerable adult may have occurred or has been attempted.

The bill requires notice if a financial service provider refuses or delays a financial transaction under these circumstances and establishes time limits related to the refusal or delay of a financial transaction.

Senate Bill 430
Senate Bill 430 will strengthen the process and minimize the amount of stress for elder victims and witnesses who are involved in a court proceeding by allowing for expedited hearings and the ability to preserve testimony through a video-taped court hearing.

This bill would allow a prosecuting attorney to file a motion with a court to preserve the testimony of an elder person involved in criminal and delinquency cases or juvenile dispositional hearings. If a motion is filed, the court must hold a hearing to record testimony within 60 days, the defendant must be present at the hearing, and the witness is subject to cross-examination. The witness can either testify in person, or, under certain circumstances, provide testimony through telephone or live audiovisual means.

The ability to recall certain details is critical to the outcome of court cases. As degenerative brain diseases increase in senior populations, the system must be able to respond to the unique needs of an elderly victim's ability to testify.

Thank you again for listening to my testimony and I hope that you will join me in supporting these bills.

JOHN J. MACCO
STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

Chairman Craig and Committee Members –

Thank you for hearing testimony on this elder abuse package. It is my hope that, by passing these bills, we will provide more certainty and security for our vulnerable adults and their families.

As you may know, older Americans hold 70% of the nation's wealth when compared to the general population. As these Americans reach retirement age, it often becomes more difficult for them to manage their financial and physical well-being. It is not uncommon for seniors to rely on friends, family, or hired help to assist them with their day-to-day life. However, with their reliance on others, comes the risk of financial exploitation and other forms of abuse and neglect.

Anyone can be a victim of fraud, identity theft, and embezzlement, but our elderly are especially vulnerable. To compound the issue, elderly financial exploitation is severely under-reported, with only one in 44 cases being reported each year. This paints a bleak picture for our seniors who are starting to consider retirement.

Understandably, those who are reaching retirement age are worried about their personal and financial security as they exit the workforce. Between 2001 and 2007, reported allegations of elder abuse, neglect, and exploitation nearly doubled in our state. As did requests for more information. That is why this bill package to combat elder abuse is so essential. The number of retirees will only increase as more "baby boomers" exit the workforce at a rate of 10,000 individuals per day. Our seniors deserve physical and financial security, and this bill package is an essential first step in achieving that.

First, this package will empower financial institutions to act as an additional line of defense for our seniors. This includes banks, financial planners, credit unions, and other qualified entities that help the elderly plan for their "golden years". These financial professionals know their clients, interact with them on a regular basis, and have a deep working knowledge of their financial history. These frontline workers are more than capable of recognizing signs of financial exploitation and this package will allow them to delay suspicious activity in order to protect our seniors and even deny power of attorney if they suspect a vulnerable adult is being exploited. Additionally, these financial institutions will rest easy knowing that financial service

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providers are immune from criminal, civil and administrative liability for taking (or not taking) any actions under this bill

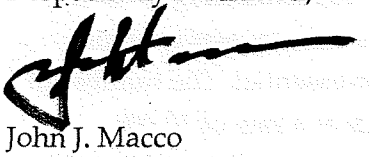
This package will also improve upon our reporting practices by allowing securities agents or other persons in a supervisory, compliance or legal capacity, who suspects financial exploitation of a vulnerable adult to notify DFI, a county adult protective services agency, law enforcement, a legal guardian, a family member or a person identified on a contact list provided by the vulnerable adult. Again, this package will protect these agents and other qualified individuals from legal liability related to the actions taken pursuant to this bill, further encouraging them to look for tell-tale signs of abuse.

Finally, this package will strengthen our existing criminal statutes for those that seek to abuse and exploit our elderly and disabled. This includes increased fines, sentences, and the freezing of funds, assets, or properties at the request of a prosecutor.

Colleagues, as many of you know, these issues hit close to home for me and my family. My mother-in-law was exploited by a relative and my wife and her siblings had little recourse once the damage had been done. It is my hope that this package of legislation will help prevent families across Wisconsin from going through what my family, and so many others, have gone through. While it will not prevent every case of abuse, fraud, and exploitation, this package will be an important step in the right direction.

I want to thank you once again, Mr. Chairman, for holding this hearing, and I urge you and the rest of the committee to vote for recommendation of passage.

Respectfully submitted,



John J. Macco
Representative 88th District

TO: **Senator David Craig, Chair**
Senate Committee on Insurance, Financial Services, Government Oversight and Courts

CC: **Senator Roger Roth**

FROM: **Attorney Elizabeth AH Stevens**

RE: **SB 428, 429, 430**

DATE: **January 14, 2020**

Please accept this written testimony in lieu of a personal appearance.

INTRODUCTION

This testimony is in my personal capacity as an attorney who has practiced elder law in Wisconsin for 6 years. I am in private practice. I am a member of the National Academy of Elder Law Attorneys, a member of the Elder and Special Needs Law Section and the Wisconsin Chapter of the National Academy of Elder Law Attorneys. I have represented individuals who were the victims of elder financial abuse.

I support SB 430, facilitating the preservation of testimony and expedited proceedings in elder abuse cases.

I oppose SB 428 and 429. I take this position with an amount of regret, because I hope for a strong support system for victims of elder abuse, and I hope that financial and securities industries can be partners in this effort. But these two bills go about that process in a way that has the potential to create severe, lasting and irreparable financial damage to the individuals they seek to protect, and for that reason, I have no choice but to ask that these bills be substantially changed from their current form before they would ever become law.

This opposition is because, in short, in the name of protecting people from abuse, the bills:

- are ageist, defining a "vulnerable adult' to include *any individual who is 60 or over*;
- allow financial service providers to delay financial transactions for what can be significant periods of time, causing irreparable financial harm;
- allow financial institutions to refuse to honor financial powers of attorney, even where attorneys have carefully drafted them for our clients;
- provide no relief from the penalties and fees that will be charged as a result of these delayed transactions;
- contain no protections where people are attempting to qualify for Medicaid;

- require no training and have vague standards;
- have no "opt out" provisions that would allow an individual to choose to forego the "protections" of these bills; and then
- cloak the financial institutions and investment advisors in immunity and lower the standard of care applied to those institutions.

THE GOOD PARTS

Both SB 428 and 429 contain provisions for the reporting of suspected financial abuse to the appropriate authorities. On balance, even though the reporting can be seen as an intrusion on an individual's privacy, particularly in the cases where no abuse is actually occurring, it is better to encourage the reporting process because it can result in action where there is a legitimate concern.

Reporting suspected financial abuse is already a protected activity under federal law. As recognized by the Federal Senior SAFE Act of 2018, (Section 303 of PL 115-174 (05/24/2018), financial institutions, securities advisors and the employees of those institutions who *receive appropriate training* and make a report of suspected financial abuse to the appropriate agencies are immune from civil and administrative liability. (Interestingly, the Senior SAFE act applies an age of 65 to its provisions.)

What concerns me about even the good part of these state bills, is the lack of any training requirement that would help appropriately identify elder financial exploitation and also provide training on properly and respectfully handling the situation during the process of reporting.

SOME SPECIFIC PROVISIONS OF CONCERN

If a customer is 60, they are "vulnerable." Both SB 428 and 429 contain troubling definitions of a "vulnerable adult." "Vulnerable adult" in both bills includes a definition that is strictly based on age, which is *60 or older.* This is five years younger than even the model bill from the Securities Industry itself, the North American Securities Administrators Association ("NASAA") (NASAA's proposal can be found at http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf). It is also five years younger than the Senior SAFE act.

Both bills also include a non-age-based definition that incorporates Wis. Stat. §55.01(1e), which is not based on age but instead includes the requirement of a physical or mental condition that substantially impairs the individual's ability to care for his or her needs. That is the sole definition that should be used.

Having a standard age, especially one as young as this, without objective evidence that the person is unable to care for their own financial matters, or is truly vulnerable to exploitation or influence, is an insult to the autonomy of most individuals. It is ageist. Ageism is the stereotyping, prejudice, and discrimination

against people on the basis of their age. Ageism is an insidious practice which has harmful effects on older adults. Even if the standard age were 90, it's time to recognize that age alone is not a sign of vulnerability. I have worked with 90+ year old clients who are "sharp as a tack" and certainly capable of managing their own financial decisions.

Bear in mind that having a clear age *is* appropriate for the provisions related to penalties for committing elder abuse, since it can then provide clear notice to an alleged defendant. But in the context of these bills, we are also talking about when a financial institution can take action that affects an *innocent* individual's finances, and the action may actually be an error that could have a significant negative effect on that innocent individual. In *that* context, applying a strict age, without evidence of impairment, is inappropriate and ageist.

I would ask any of you on the committee who are 60 or over to strongly consider how you would feel knowing that your financial decisions – and your hard earned investments and other funds - could be interfered with at any time if a financial institution or securities advisor thought something looked like it could be financial abuse. Let's not forget that the financial institution has not been required to undergo training that would help prevent mistakes, and you won't hear about it until after it happens.

In considering this testimony, I would ask you to consider the *possibility* that the bank or investment advisor may act in error. If you think that financial institutions never make mistakes, ask yourselves why there are entire books of regulation on the issue. I can tell you it has happened to my clients.

In years as a practicing elder law attorney, I have experienced horror stories with respect to banks and brokerage houses misinterpreting clear provisions of law, for example with respect to their duty to honor financial powers of attorney, or with respect to the authority of a financial agent, insisting that a family make a legally unnecessary trip to court for guardianship of an individual when the individual had a duly executed financial power of attorney. Now, it is proposed to broaden the ability of banks to interfere with individuals' funds, *and* to give them immunity when they do so "in good faith." This is a kind of paternalism that will cost your constituents dearly, while leaving banks and investment services essentially free of liability for the havoc they will wreak.

Account transactions can be frozen for long periods of time: Both bills allow the financial institution or securities advisor to freeze ("delay") a transaction or series of transactions based on "reasonable cause" to believe that financial exploitation is occurring, has occurred or may occur.

In SB 428, the "initial" period of the freeze is 15 days and can extend to 25 days. In SB 429, regarding financial institutions, it is 5 days, but can be extended indefinitely. While these freezes are in place, the customer is potentially

incurring bounced check fees, late fees or other penalties, none of which either bill requires to be waived or paid by the institution.

Also, the delays could have an irreparable effect in situations where a person is in the process of applying for Medicaid. Medicaid eligibility is a complicated process that depends on timing with respect to the consideration of a person's financial eligibility. If a transaction that is part of a person's spend down process for Medicaid is delayed for any length of time, it may make the difference between qualifying or not qualifying for Medicaid in that month. This could cost a nursing home resident over $10,000. There is nothing in either bill that protects the consumer from this consequence.

A Durable Power of Attorney Can be Disregarded: SB 429 eliminates well-established consumer protections that were put into Wisconsin's financial power of attorney law in 2009. The bill allows a financial provider to disregard a customer's durable power of attorney (DPOA) if they believe the agent is perpetrating financial abuse. The ability of banks to refuse DPOAs is exactly what Wis. Stat. § 244.20 -- the statutory prohibition on refusing a power of attorney -- was intended to remedy after a long history of financial institutions refusing to accept powers of attorney for inappropriate reasons, such as the fact that the documents was not on the bank's preferred form or was more than 6 months old. § 244.20 was the product of hard work by elder law attorneys in Wisconsin and protects individuals against arbitrary refusal of a properly drafted power of attorney. Proposed § 224.46(4) does an end run around the protections of this section.

The Consumer Financial Protection Bureau (CPFB), in its 2016 report entitled, "Advisory for financial institutions on preventing and responding to elder financial exploitation"[1] recommended that to prevent exploitation, financial institutions need to:

> **Honor powers of attorney.** A financial institution's refusal to honor a valid power of attorney can create hardships for account holders who need designated surrogates to act on their behalf. Financial institutions should establish procedures to ensure that the institution makes prompt decisions on whether to accept the power of attorney, that qualified staff make decisions based only on state law and other appropriate considerations and that frontline staff recognize red flags for power of attorney abuse.

I work with many families where an individual, often a person with Alzheimer's, is in a nursing home and a financial agent such as a child is doing the work. In

[1] CPFB, *Advisory for financial institutions on preventing and responding to elder financial exploitation*, 2016, located online here: https://files.consumerfinance.gov/f/201603_cfpb_advisory-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf

this scenario, the proposed law would allow the financial institution to disregard the power of attorney, and potentially delay transactions, without advising the agent if the institution suspected the agent was involved in abuse. While at first glance, this might seem completely appropriate, it is critical to think through what will happen if the bank teller is mistaken. Consider this example:

Daughter is agent under durable power of attorney, drafted by an elder law attorney while mom was not incapacitated. Mom is now in the later stages of Alzheimer's and cannot comprehend financial matters. Daughter is following the plan put in place by mom and the attorney prior to mom's incapacity. Daughter loaned mom a considerable amount of money over the years to help her stay in her home. The agreement was that this would be repaid if mom had to be in a nursing home. Mom is now in a nursing home, and daughter writes a check to herself, for less than the amount she is owed because mom's funds are limited. Bank teller finds this check to daughter suspicious and determines the power of attorney should be disregarded and the transaction delayed. However, the bank sends a notice to mom, who is incapacitated, and not to the daughter because she is – incorrectly – suspected to be the abuser. It is weeks before daughter can figure out what is going on, because bank refuses to speak with daughter. Meanwhile, because the funds were not spent, mom was ineligible for Medicaid for a month, costing $10,000 in nursing home fees. This creates significant damage in the plan that was established while mom was competent.

This is a scenario that is highly likely to happen if the law is enacted as written.

In the case where a bank refuses to honor a Power of Attorney, a family member may be required to seek guardianship in order to access the owner's funds for the owner's benefit. Guardianship is a very serious step to take; an order for Guardianship removes rights from the ward. Many people execute Powers of Attorney to avoid those rights being stripped away from them unnecessarily, and additionally to avoid the cost, stress and time required for Guardianship proceedings. It is no trivial matter for a financial institution with no required training in this area to require that the account owner's family seek Guardianship in a case where the account owner had taken steps to avoid Guardianship by executing a Power of Attorney.

Reasonable cause is not defined: Both SB 428 and 429 allow a transaction to be frozen if the provider has "reasonable cause" to believe that financial exploitation has occurred, is occurring or is about to occur. However, there is no definition for "reasonable cause." There is no requirement that the basis for the decision be documented in writing and provided to the customer.

No Training: What is even worse, is that neither bill requires the financial services provider to receive *any* training regarding identifying financial abuse or elder abuse. If these bills pass as currently written, untrained individuals will

be making judgment calls on an undefined standard, and exercising control over an individual's money in a way that could have severe and lasting damage.

The CPFB in its 2016 report also recommended that banks and financial institutions:

> **Train management and staff to prevent, detect, and respond to elder financial exploitation.** Financial institutions should train employees regularly and frequently, and should tailor training to specific staff roles. Key topics for training include:
>
> - Clear and nuanced definition of elder financial exploitation
> - Warning signs that may signal financial exploitation, including behavioral and transactional indicators of risk, and
> - Action steps to prevent exploitation and respond to suspicious events, including actionable tips for interacting with account holders, steps for reporting to authorities, and communication with trusted third parties.

The lack of a robust training requirement in these bills is without any valid explanation, and even directly against the provisions of the Senior SAFE Act which requires training as a condition of the immunity provided to institutions for reporting abuse.

No opt-out provision: There is no provision in either bill for a customer to knowingly "opt out" of this "protection" or better yet, to knowingly "opt-in." Customers should be able to decline the "protections" that involve interference with the person's finances.

Immunity: Both bills relieve the financial institutions of any liability if they are acting "in good faith and exercising reasonable care" under these provisions. The immunity related to financial institutions extends to a *failure to act* as well. This author believes that this lowers standards of care, such as negligence or breach of fiduciary duty, that would otherwise apply to a financial institution or securities advisor. It is no surprise that the financial industry played a large role in the development of this legislation.

CONCLUSION

Stopping financial exploitation of elders is an important protection to provide. These two bills show that the issue is being considered, and that is good. But the technical aspects of the bills are flawed in ways that will leave the consumer with irreparable financial damage, while at the same time largely granting immunity to the financial institutions for their actions that may cause this harm.

I am aware that bills like the two before you have in various forms been passed in some other states. There are also states that have done better than this. In Wisconsin, we can do better. Wisconsin has a history of taking the lead to protect

the rights of elders. Consider our guardianship bills, and the original elder abuse law that was enacted in Chapter 46. These both are deliberately structured to protect autonomy and ensure that the people tasked with applying the law are properly trained. We can do this better too.

Laws could be passed that provide an appropriate balance between individual autonomy, and protection. These laws should also ensure that the consumer is given as much protection, and more, than the financial institutions. I recommend significant amendments to these bills. I have submitted a list of proposed amendments with this testimony. The amendments should include:

- Removing age alone as a basis for the law;
- Requiring training;
- Adding protections for the consumers to relieve them of the tremendous charges that could pile up when a transaction is delayed;
- Adding protections that ensure an individual will not lose Medicaid eligibility if a transaction is delayed;
- Requiring immediate notice to the consumer;
- Providing an opt-in so consumers can choose whether the law should apply;
- Defining "reasonable cause;"
- Deleting the immunity provisions or making them contingent on adequate training.

Thank you.

Elizabeth AH Stevens

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ELDER LAW AND SPECIAL NEEDS SECTION

To: Senate Committee on Insurance, Financial Services, Gov. Oversight and Courts
Date: January 16, 2020
Subject: Financial exploitation proposals SB 428 and SB 429 –regarding concerns of the Elder Law Section of the State Bar of Wisconsin

The Elder Law Section of the State Bar of Wisconsin has registered a position in opposition to SB 429/AB 481 regarding financial institutions and SB 428 / AB 482 regarding financial advisors. We are willing to discuss our concerns, and proposed modifications, in detail if requested. Below are the primary recommendations for modifications to each bill.

SB 429 / AB 481 REGARDING FINANCIAL INSTITUTIONS

Authority for financial institutions to delay transactions and refuse to honor DPOAs.

- **Concern over age alone as a basis for action:** As an alternative to the blanket age of 60 used in the bill to define a "vulnerable adult" the definition in § 55.01(1e) should be used exclusively. The financial institution should be required to document the basis for its determination that the individual meets these criteria. ***Recommendation: The language "or an individual who is at least 60 years of age" should be deleted from proposed § 224.46(1)(j). Add language requiring documentation of basis for decision.***

- **Refusal of power of attorney:** Due to the serious concerns we have expressed previously in detail, **proposed §224.46(4) should be deleted.**

- **Concern over lack of autonomy:** Instead of the bill applying on a blanket basis, there should be an opt-in provision, so this entire protective setup is voluntary, or an opt-out provision. ***Recommendation: Suggested "opt-in" language would be added to proposed §224.46(2)(a) to start at the beginning of the paragraph with "If a customer has elected to have this section apply with respect to the customer's account, then...." An additional section §224.46(2)(i) would be added to set forth the "opt-in" (or alternatively, opt out) process.***

  An opt-in could allow a broader range of safety precautions to be elected by the customer, such as:
  - Limits on cash withdrawals and EFT transfers
  - Geographical limits on transactions
  - "Read only" account access to designated third parties
  - Alerts to designated third parties

- **"Reasonable cause" needs clear standards:** "Reasonable Cause," used throughout the bill, should be specifically defined to include:
  - The transaction is a payment to a known scam.
  - The customer is accompanied by an unknown individual or group of individuals who appear to be exerting undue influence based on observations documented by the financial institution
  - There has been a series of transactions by the customer that are inconsistent with the individual's pattern of spending and have not been explained by the individual after inquiry by the financial institution, and the factual background for this conclusion is supported by the records of the financial institution.

STATE BAR OF WISCONSIN

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- The individual appears to be in distress at the time of the transaction, which is documented in written notes, and after inquiry by the institution, provides an explanation that leads the institution to conclude that the individual is being subjected to financial abuse or undue influence.
- If the suspected abuser is an agent under a power of attorney, a request has been made of the agent for information and the agent has failed to respond.

The conclusion that "reasonable cause" exists must be documented in notations in the individual's account record, with dates, times observations and the names of all individuals involved in the transaction or determination. This should be provided upon request to the individual or the individual's attorney at no charge immediately upon request.

- **Notice: Change 224.46 (2) to require:**
  - Mandatory and *immediate* notice to the customer in writing. The notice should also include the information on how the individual demands a release.
  - Where the account is a guardianship account, mandatory notice to the court overseeing the guardianship.
  - Where the account is a trust account, mandatory notice to the trustee.
  - Where the account is a business account, mandatory notice to the registered agent for the business.
  - There also needs to be notice to the individual's agent or designated third party, even if the agent or third party is suspected of abuse. While this might seem counterproductive, it is important to remember that the vast majority of power of attorney agents are acting consistent with their fiduciary duty and within the scope of their authority. Thus, **proposed §224.46(3)(d) should be deleted.**

- **Indeterminate "extension" should not be allowed: Proposed §224.46(2)(f) should be deleted.**

- **Required release of hold: Proposed §224.46(2)(c) should amended** to add a requirement that transaction be immediately released upon receipt of correspondence from the customer's attorney explaining that the transaction is the basis of the informed decision of the client or the client's duly appointed agent, or is done upon direction of or in consultation by the client or their duly appointed agent with the attorney. It should also clarify that the requirement for release upon demand of the account owner should not be subject to any extension of the delay.

- **Lack of Training and waiver of liability:** Recommendation: **Waiver of liability provisions at §224.46(2)(h)(3)(f) and (4)(b) should be deleted.** If retained at all, should be modified to apply to a provider who "has completed a course of approved training on identifying financial abuse under §224.26(5)." §224.26(5) or a similar statute should be added to include a training program on identifying financial abuse, to be approved by the Department and provided to financial institutions and financial advisors on a voluntary basis. The training is voluntary, but only financial institutions who have completed the training may avail themselves of the waiver of liability provisions.

- **Additional protections needed:** There is potential for significant financial harm to the client as a result of the imposition of the delay.
  - A customer could be charged with late fees or service charges. These should be 100% waived in cases where the bank has imposed a delay. Customer should be relieved of liability from bank charges or any outside charges resulting from the delay.

- A client attempting to spend down for Medicaid could be found ineligible if funds are still in their account due to the delay. Therefore, if a transaction is suspended in any way, the statute needs to provide that those funds are immediately considered unavailable as long as the freeze is in place. Further, any transaction shall be deemed effective as of the original date, when it is later released.
- It should be clarified that a customer may recover all costs and damages resulting from an inappropriate delay, including attorney fees.
- Where the institution can be held liable, for example by unreasonably delaying a transaction, the liability of the institution for an inappropriate determination should be excluded from any mandatory arbitration provisions that are otherwise part of the financial institution's account agreement.

SB 428 / AB 482 REGARDING FINANCIAL ADVISORS

1. **Concern over age alone as a basis for action: Recommendation: § 551.102 (33) "Vulnerable adult" should be changed by removing the language "or an individual who is at least 60 years of age."**

2. **Release on demand of owner:** There is no provision for release upon request of the account owner. **Recommendation: a provision should be added as § 551.413 (3)(d)3** requiring immediate release upon demand of customer, customer's power of attorney agent, or attorney for customer.

3. **Opt-in/out: "Opt-in" language should be added to proposed as § 551.413(3)** to start at the beginning of the paragraph with "If a customer has elected to have this section apply with respect to the customer's account, then...." An additional section §551.413(3)(f) would be added to set forth the "opt-in" (or alternatively, opt out) process.

4. **Lack of Training and waiver of liability:** Recommendation: **Waiver of liability provisions at §551.413(5) should be deleted.** If retained, should be modified to apply to a provider who "has completed a course of approved training on identifying financial abuse under §551.413(7)." §551.413(7) or a similar statute should be added to include a training program on identifying financial abuse, to be approved by the Department and provided to financial institutions and financial advisors on a voluntary basis. Also, liability of the qualified individual for an inappropriate determination should be excluded from any mandatory arbitration provisions that are otherwise part of the financial institution's account agreement.

5. **"Reasonable suspicion" needs clear standards:** Specific standards not be added to define "reasonable suspicion." These include:

    a. The transaction is a payment to a KNOWN scam.

    b. The customer is accompanied by an unknown individual or group of individuals who appear to be exerting undue influence based on observations documented by the qualified individual.

    c. There has been a series of transactions by the customer that are inconsistent with the individual's pattern of spending and have not been explained by the individual after inquiry by the qualified individual, and the factual background for this conclusion is supported by the records of the qualified individual.

    d. The individual appears to be in distress at the time of the transaction, which is documented in written notes, and after inquiry by the qualified individual, provides an explanation that

leads the advisor to conclude that the individual is being subjected to financial abuse or undue influence.

e. If the suspected abuser is an agent under a power of attorney, a request has been made of the agent for information and the agent has failed to respond.

The conclusion that "reasonable suspicion" exists must be documented in notations in the individual's account record, with dates, times observations and the names of all individuals involved in the transaction or determination. This should be provided upon request to the individual or the individual's attorney at no charge immediately upon request.

6. **Notice: Changes to Notice provisions**
   - There should be mandatory and **immediate** notice (not up to a 2 business day delay) to the customer in writing. The notice should also include the information on how the individual demands a release.
   - For a guardianship account, mandatory notice to the court overseeing the guardianship.
   - For a trust account, mandatory notice to the trustee.
   - For a business account, mandatory notice to the registered agent.
   - There also needs to be notice to the individual's agent or designated third party, even if the agent or third party is suspected of abuse. Without notice, the irreparable financial harm created due to an inappropriate act by the financial institution outweighs the effect of "surprise" that could be gained by omission of notice. **The language of proposed § 551.413(3)(a)2.a., stating "except to any party reasonably suspected to have engaged in or attempted financial exploitation of the vulnerable adult" should be deleted.**

7. **Additional protections needed:** There is potential for significant financial harm to the client as a result of the imposition of the delay.

   - A customer could be charged with late fees or service charges. These should be 100% waived in cases where the advisor has imposed a delay. Customer should be relieved of liability from charges or any outside charges resulting from the delay.

Elderly individuals planning for long term care often need to spend money in various ways and rely on those transactions processing quickly. A client attempting to spend down for Medicaid could be found ineligible if funds are still in their account due to the delay. Therefore, if a transaction is suspended in any way, the statute needs to provide that those funds are immediately considered unavailable as long as the freeze is in place. Further, any transaction shall be deemed effective as of the original date, when it is later released.

If you have any additional questions please contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or cbattles@wisbar.org.

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Senate Committee on Insurance, Financial Services, Government Oversight and Courts

January 16, 2020

Madison, WI

Helen Marks Dicks

Good Morning. I am Helen Marks Dicks, State Issues Advocacy Director for AARP Wisconsin, which has over 840,000 members here in Wisconsin. We advocate on behalf of Wisconsin's 50 and older population. The issue of elder abuse and neglect is of grave concern to us and we greatly appreciate the attention being paid to this critical issue. We support the full package of Elder Abuse and Financial Exploitation bills. Today I will speak specifically on bills before you addressing all three bills together.

AARP supports all three bills, SB428, SB 429 and SB 430 as needed steps to help curb abuse, neglect, and financial exploitation of Wisconsin's elders. There has been a 160% increase in reported elder abuse from 2001 to 2017. Even with this startling statistic we know most elder abuse goes unreported. It is estimated that 47% of adults with dementia suffer from some form of abuse. Elder abuse and neglect triple the likelihood of a victim being hospitalized or dying prematurely.

Financial exploitation is one of the most common forms of elder abuse and has a life-altering effect on Wisconsin residents' livelihoods with untold millions of dollars exploited, extorted, or stolen from older adults each year in Wisconsin. While nearly $3 billion was reported lost to financial elder abuse in the USA, a study in New York State found that only 2% of elder financial exploitation cases were reported to law enforcement, suggesting that the actual number impact on older adult's financial wellbeing is far higher than official counts. Often victims of elder abuse have little or no chance of financial recovery and the rest of their lives might be spent in a compromised financial position or even in poverty.

SB 428 and SB 429 would allow and encourage banks, credit unions, and other financial service providers to proactively protect the finances of elderly clients by refusing or delaying suspicious transactions for a limited time and increasing communication and cooperation with law enforcement, social service providers, and trusted advisors.

SB 430 which expedites court proceedings when a victim or a witness is an elder person and allows for the preserving of testimony of a victim or witness who is elderly. The stress of going through the procedures is difficult on older victims and witness and often a strategy of the bad actors is to delay - hoping the stress of the proceeding will cause the older victims to lose interest, capacity or desire to pursue the matter.

Giving the banks and financial institutions additional tools to aid potential victims is very helpful since they are on the front line and can take steps to prevent the exploitation. The Courts can also use these additional tools to make sure victims are not delayed out of justice.

I personally have one concern about all three of these bills. That is the assumption of vulnerability and decreased judgement at age 60. No one should be the victim of financial exploitation regardless of age and I object to the ageist assumption of cognitive decline and judgement at the age of 60. Mere age should never be used as a measure of capacity.

However I am attributing good intentions and an attempt to conform to other statutes which deal with elder abuse to the authors and drafters of these bills so my concerns will in no way diminish AARP's support of these bills. I believe this ageist assumption can be dealt with a case-to-case review.

AARP Wisconsin strongly encourages the committee to vote in favor of SB 428, SB 429 and SB 430 to protect Wisconsin's victims of financial exploitation. Thank you for your time and attention. As always I would be glad to answer any questions.

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Waukesha County

Office of the District Attorney

January 16, 2020

Wisconsin State Legislature
Wisconsin State Capitol
2 East Main Street
Madison, Wisconsin 53702

Re: Senate Bill 428
Senate Bill 429
Senate Bill 430

Good afternoon everyone. My name is April DeValkenaere. I am a White Collar Crime Paralegal with the Waukesha County District Attorney's Office and I am the Wisconsin chapter President of the International Association of Financial Crimes Investigators (IAFCI). The IAFCI is a global non-profit organization comprised of over 6000 members. We provide services and an environment where information regarding financial fraud, financial investigations and fraud prevention methods can be collected, exchanged, and taught for the common good of the financial payment industry and our global society. Our membership brings together law enforcement, financial institutions, and the retail industry in an effort to safeguard the world's economy through collaborative teamwork. IAFCI has been fighting financial transaction crimes for more than 50 years.

I also had the privilege of serving on the Elder Abuse Task Force that developed the bills we are discussing today. I believe that these bills, if enacted, will provide an effective tool to halt and/or prevent financial exploitation in our State.

I constantly teach people what type of scams are being perpetrated by unknown suspects and then I have to educate them that studies have shown that approximately 90% of the elder financial exploitation is being perpetrated, is by someone that they know and trust.

I work with several organizations that investigate and collaborate to combat financial crimes and I have firsthand knowledge that these bills will assist in the collaboration between financial institutions, law enforcement and Adult Protective Services (Aging and Disability Resource Centers, Department of Aging, etc.).

We need Senate Bills 428/429/430 here in Wisconsin. As they provide a number of benefits in the fight against criminals who engage in fraudulent schemes making victims of our Wisconsin residents. This includes; allowing for a consistent age throughout the statutes, whether it is a regular account or a security account and provides the financial institutions to

delay a transaction if they reasonably believe that the owner of the account is being financially exploited.

In my role with the District Attorney's Office I work on many cases involving elder financial exploitation. I have assisted in the prosecution of cases where Power of Attorney (POA) documents were utilized by a trusted individual, whether that be a family member, friend or caregiver, who took advantage of their fiduciary duty. I have also assisted in the prosecution of cases where caregivers who were hired to assist older adults with personal hygiene and/or daily routine duties have gained access to financial accounts and stolen identities as well as finances. I have also had cases where family and/or caregivers have taken advantage of the frail nature of older adults and used it against them. Some cases we have handled have multiple POA documents as they were changed several times and/or by different individuals. POA documents can vary greatly from someone who prints off the state form and fills it out themselves to someone who hires an attorney to draft such a document either of their own free will or because of a crisis. The provisions to allow a financial institution to accept or not accept a POA document are necessary to these bills. Especially because the financial institutions can see the patterns of financial behavior before any investigative agency. They can see when an elderly couple typically spends $150 a month on groceries and after the POA is enacted they grocery bills have now gone up to between $600-$1,000 per month. They can also see the demeanor of the older adult and the POA dropping off the document, most times it is a normal transaction, other times, they see fear, concern and/or hesitation on behalf of their account holder, it is imperative to allow the financial institutions to make a decision based on their reasonable belief.

Financial institutions train their frontline tellers at least annually to recognize financial scams and to talk with their customers about them as required by federal regulations. They also have policies in place regarding how to respond to a possible financial exploitation. Typically at least two or more people are reviewing these transactions before a decision to delay a transaction would occur. The ability to collaborate and allow our financial institutions to delay a transaction that they reasonably believe is fraudulent and get law enforcement and/or Adult Protective Services involved is imperative if we want to have a significant impact on protecting our Wisconsin's most vulnerable citizens, our seniors.

Some of these older adult victims have multiple medical and/or physical issues that make it extremely difficult to appear in court and to allow them to appear via phone and/or video is essential to moving the case forward without having it dismissed because of non-appearances of our victim.

I am here to wholeheartedly support these Bills as a representative of the IAFCI along with the Waukesha County District Attorney's Office.

Respectfully Submitted,

April DeValkenaere, SBWCP, CFCI

Wisconsin Bankers ASSOCIATION

Testimony of the Wisconsin Bankers Association

Senate Committee on Insurance, Financial Services, Government Oversight and Courts
January 16, 2020

Chair Craig and members of the committee, thank you for the opportunity to testify at this hearing. My name is Mike Semmann and I'm the Executive Vice President and Chief Operating Officer at the Wisconsin Bankers Association. WBA represents approximately 225 commercial banks and savings institutions, their nearly 2,300 branch offices and more than 30,000 employees. With me today I have Ken Thompson, President & CEO of Capitol Bank in Madison.

WBA is asking for your support on SB 428 & 429 that will help financial institutions tackle the increasing problem of elder abuse.

Over the next two decades, Wisconsin's 65 and older population will increase by 72%. Additionally, one in nine seniors reported being abused, neglected, or exploited in 2017. According to the Wisconsin Department of Justice, elder financial abuse increased 17.5% from 2016-2017 in Wisconsin.

A recent CFPB report shows the rise of suspicious activities involving financial abuse targeting older adults. Reports are up 19% from a year ago and nearly three times the level reported in 2014. The financial damage related to suspected activities in 2017 totaled $1.7 billion. When a monetary loss occurred, seniors lost $34,200 on average. In 7% of the cases, the losses exceeded $100,000.

This is a growing issue for Wisconsin and the nation. Former Attorney General Brad Schimel created a task force in September 2017 to find ways to protect Wisconsin's senior citizens and our association had several members serve in that group. WBA continues assisting with this effort under Attorney General Josh Kaul. There is no doubt that elder financial abuse is on the rise. Bankers are in a unique position to be able to identify this abuse. Any tool or effort that helps our staff save abuse victims is something we support.

One of the projects from this group was an awareness video designed to engage front line staff and other financial institution employees on the issue of elder financial abuse. WBA coordinated input from a variety of Wisconsin bankers for the video script and the video draft. The DOJ working group and task force also provided input and guidance throughout the creation of this video.

The free Elder Financial Abuse and Exploitation video is now available for use by Wisconsin's financial institutions as well as the public.

To clear up inconsistencies between the two bills, we are asking that language from Section 4 of SB 428 that deals with powers of attorney be included in SB 429. WBA members have branches in states across the country, and keeping language consistent helps in combating elder abuse.

I want to again thank Chair Craig and members for taking the time to hear our testimony today. We would be happy to answer any questions you may have.

The Wisconsin Credit Union League

One League, One Focus - Your Success!

January 16, 2020

To: Honorable Members - Senate Committee on Insurance, Financial Services, Government Oversight and Courts
From: Sarah Wainscott, Senior Vice President - Advocacy
Re: **Support for AB 481/SB 429 - Introduced by Sen. Testin & Rep. Macco**

The Wisconsin Credit Union League, the trade association for Wisconsin's credit unions and their 3.3 million members, **supports Senate Bill 429.**

As member-owned not-for-profit financial cooperatives, credit unions' core mission is to serve their members. This task is made more difficult by the growing prevalence of financial abuse of vulnerable adults.

For your consideration, we offer the testimony of Rex Fair, President of Sentry Credit Union in Stevens Point:

> *We have a multiple times victim of fraud. I have discussed the situation with our member (who denies being a victim). The credit union has reported to authorities the various frauds against this person. I talked to a statewide fraud task force officer about our reports – who then called and talked to our member. The officer reported back to me that the member is a victim – and that the officer even knew who the person was who was receiving the member's money. This same officer suggested there was not much they could do without the cooperation of our member. I talked to the Portage County Elder Abuse coordinator who then called our member. That person reported back to me that the member is a victim, but could not do more as the member declined to be assisted. I was told that Portage County would be able to do more once this person becomes destitute. I talked to an assistant district attorney about this situation who indicated there was nothing they could do.*
>
> *I have known this member for years – her kids grew up with my kids. The problem started after her husband died. While it would be easy enough for me to contact one or both of the children (as our member has no one as joint owner on their account), current laws prevent me from doing so – and may create legal problems for me and my credit union. If/when all of this comes to light, I will have a hard time explaining to this member's children why I did not let them know. They might also want to know why all of these other organizations did not/or could not do more.*
>
> *In these situations, we need to be able to take action to assist our member.*

By statute, a Wisconsin credit union is to "provide opportunity for its members to improve their economic and social conditions"- *Wis. Stats. § 180.01(2)*. SB 429 enhances credit unions' ability to do so, by empowering them to better protect members' wealth and financial stability – and be effective partners in helping to prevent financial abuse.

On behalf of Wisconsin's credit unions, we thank you for your consideration and ask that you support Senate Bill 429.

If you would like additional information on credit unions or have questions regarding the bill, please contact me at swainscott@theleague.coop or (608) 640-4030.

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Member Credit Union National Association