

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 278 (Dodd)
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AWM

SUBJECT

Elder abuse

DIGEST

This bill clarifies when a person or entity may be liable for assisting in acts constituting financial abuse of an elder or dependent adult under the Elder Abuse and Dependent Adult Civil Protection Act.

EXECUTIVE SUMMARY

The Elder Abuse and Dependent Adult Civil Protection Act (the Act) creates criminal and civil causes of action against persons who engage in a range of abusive and neglectful acts against an elder or dependent adult, including financial abuse. Financial abuse of an elder or dependent adult occurs when someone takes the property of an elder or dependent adult for a wrongful use or with intent to defraud; a “wrongful use” is defined as an instance where the offender knew or should have known that the conduct was likely to be harmful to the elder or dependent adult.

The Act also provides that a person can be liable for assisting in taking the property of an elder for a wrongful use. The Act, however, does not define the mental state necessary for “assister” liability. There is currently disagreement between some federal courts and state courts about the proper mental state. According to the author and sponsors, this disagreement is permitting financial institutions to avoid liability in cases where they ignored their own institutional red flags and processed transactions that were clearly scams against the elder or dependent adult.

This bill clarifies the nature of “assister” liability in two ways. First, it clarifies that a person can be liable for knowingly aiding and abetting in taking property for a wrongful use or intent to defraud; this new prong makes clear that any person who is intentionally participating in the financial abuse can be liable for the harm. Second, the bill clarifies that “assister” liability is limited to persons and entities who are already

mandated reporters under the Act, and establishes a two-pronged set of factors – one for financial institutions, one for other caregivers – to establish whether the mandated reporter had so much information about the financial abuse scheme that they should be held liable for the losses, even though they were not a participant in the scheme. The author has agreed to amendments to clarify when a mandated reporter who is not connected to a financial institution will be deemed to have assisted in financial abuse. The author has committed to continue working with stakeholders on a safe harbor for financial institutions and on language to ensure that individual bank tellers and similar low-level employees will not be personally liable for assisting liability.

This bill is sponsored by the California Low-Income Consumer Coalition, Consumer Attorneys of California, and Elder Law & Advocacy San Diego, and is supported by over 30 organizations, including organizations dedicated to the rights of seniors and persons with disabilities, labor organizations, and legal aid groups. This bill is opposed by a coalition of 12 financial services organizations, including the California Bankers Association and the California Credit Union League. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 4-1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act. (Welf. & Inst. Code, div. 9, pt. 3., ch. 11, §§ 15600 et seq.)
- 2) Defines the following terms for purposes of the Act:
 - a) “Abuse of an elder or a dependent adult” means (1) physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; (2) the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering, or (3) financial abuse. (Welf. & Inst. Code, § 15610.07.)
 - b) “Dependent adult” means a person, regardless of whether the person lives independently, between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict their ability to carry out normal activities or to protect their rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age, including a person who is admitted as an inpatient to specified 24-hour health care facilities. (Welf. & Inst. Code, § 15610.23.)
 - c) “Elder” means any person residing in this state, 65 years of age or older. (Welf. & Inst. Code, § 15610.27.)
 - d) “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in

inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

- i. The vulnerability of the victim, evidence of which may include incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.
- ii. The influencer's apparent authority, evidence of which may include status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual advisor, expert, or other qualification.
- iii. The actions or tactics used by the influencer, which may include controlling the elder's necessities of life, interactions with others, access to information, or sleep; use of affection, intimidation, or coercion; or initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times or places, and claims of expertise in effecting changes.
- iv. The equity of the result, evidence of which may include the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship. Evidence of an inequitable result, without more, is not sufficient to prove undue influence. (Welf. & Inst. Code, § 15610.70.)

- 3) Provides that financial abuse of an elder or dependent adult, for purposes of 2)(a), occurs when a person or entity does any of the following:
 - a) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - b) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - c) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence. (Welf. & Inst. Code, § 15610.30(a).)
- 4) Provides that a person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use pursuant to 3) if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct was likely to be harmful or the elder adult. (Welf. & Inst. Code, § 15610.30(c).)

- 5) Provides that taking, secreting, appropriating, obtaining, or retaining real or personal property occurs pursuant to 3) when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless whether the property is held directly or by a representative of an elder or dependent adult. "Representative" means a person that is either (1) a conservator, trustee, or other representative of the estate of an elder or dependent adult, or (2) an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney. (Welf. & Inst. Code, § 15610.30(c), (d).)
- 6) Permits an elder or dependent adult, or their representative, who lacks capacity or is of unsound mind but not entirely without understanding, to request the return of property taken, secreted, appropriated, obtained, or retained; if the person or entity fails to return the property, the elder or dependent adult shall be entitled to the remedies set forth in 7). (Welf. & Inst. Code, § 15657.6.)
- 7) Provides that a person who commits financial abuse of an elder or dependent person under 3) is liable in a civil action for:
 - a) Compensatory damages and all other remedies otherwise provided by law; where it is proven by clear and convincing evidence that the defendant was guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, the damages are not subject to existing law capping damages on an action brought by a decedent's personal representative or successor in interest.
 - b) Reasonable attorney fees and costs, including reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under the Act.
 - c) Punitive damages, pursuant to the general statutes governing the award of punitive damages in a civil case, including the prerequisites for imposing punitive damages against an employer for the acts of an employee. (Welf. & Inst. Code, § 15657.5; *see* Civ. Code, § 3294.)
- 8) Permits, notwithstanding other law, an attachment to be issued in an action for damages under 7). (Welf. & Inst. Code, § 15657.01.)
- 9) Requires an action for damages under 7) to be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse. (Welf. & Inst. Code, § 15657.7.)
- 10) Provides that a person or entity is a mandatory reporter under the Act if they are any of the following:
 - a) A person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not they receive compensation, including administrators, supervisors, and any licensed staff

- of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services or a local law enforcement agency. (Welf. & Inst. Code, § 15630.)
- b) For purposes of suspected financial abuse of an elder or dependent adult, all officers and employees of financial institutions, as defined, a broker dealer, and an investment advisor. (Welf. & Inst. Code, §§ 15630.1, 15630.2.)

This bill:

- 1) Adds, to the list of conduct constituting financial abuse of an elder or dependent adult, knowingly aiding and abetting in the taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- 2) Defines “assists,” for purposes of determining liability for assisting financial abuse of an elder or dependent adult, to mean engaging in any of the following acts by a person who is a mandated reporter under 10), above:
 - a) Executing a transaction with or processing a transaction on behalf of an elder or dependent adult for which both of the following apply:
 - i. The elder or dependent adult interacts with the person who is a mandated reporter in the process of requesting, initiating, or completing the transaction.
 - ii. The mandated reporter fails to act as a reasonable person in a like position would, considering the surrounding facts and circumstances, including the transaction history of the elder or dependent adult, whether the transaction is aligned with prevailing business practices, and whether the elder dependent exhibits multiple red flags, in executing or processing the transaction on behalf of the elder or dependent adult. “Red flags” refers to the behavioral and financial red flags enumerated in FinCEN Advisory FIN-2022-A002.
 - b) The mandated reporter fails to act as a reasonable person in a like position would, considering the surrounding facts and circumstances, including their past interactions with the elder or dependent adult, the degree to which the elder or dependent adult’s behavior appeared different or suspicious, and any information the elder or dependent adult provided to the mandated reporter, as well as any trainings the mandated reporter has taken or should have taken on the subjects of elder or dependent adult abuse and financial abuse.
- 3) Provides that the changes in 1)-2) do not apply to criminal prosecutions under the mandated reporter statute.

- 4) Provides that nothing in 1)-3) is intended to, nor shall it be construed to, prevent or significantly interfere with any financial institution's exercise of its powers under federal law.

COMMENTS

1. Author's comment

According to the author:

Financial scams against elders are on the rise in California, and too often banks are turning a blind eye while scammers rob older Californians of their life savings. Often called the "crime of the 21st Century," financial scams against elders are an epidemic, with estimates of annual economic losses of \$3 billion dollars. Victims come from all socioeconomic backgrounds. This form of financial exploitation robs victims of their resources, dignity, and quality of life. Perpetrators can be family members, trusted financial professionals, or unknown scam artists. Once an aging adult falls prey to financial fraud, they may never recover.

As mandated reporters, banks, credit unions, and other financial institutions are uniquely positioned to detect when a customer might be the victim of a scam or other financial abuse – and take action to protect elders from the devastating loss of their life savings. Unfortunately, the language of California's current financial elder abuse statute (Welfare & Institutions Code § 15610.30) is unclear. As a result, recent court rulings are in conflict with the law and some federal courts have set an impossible standard of proof required to hold banks accountable for assisting scammers.

This bill would clarify that the definition of the term "wrongful use" as it currently appears in Welfare & Institutions Code § 15610.30(b) applies not only to direct taking claims under Welfare & Institutions Code § 15610.30(a)(1) but also applies to assisting claims under Welfare & Institutions Code § 15610.30(a)(2). This will help elderly victims of financial elder abuse in meeting their burden of proof against financial institutions when they assist in financial elder abuse, as intended by the law. By adding a simple clarification to existing law – SB 278 will assure justice for the countless elderly victims of financial scams whose banks should have protected them.

2. Financial scams and the harm to elder and dependent adults

According to the Financial Crimes Enforcement Network (FinCEN), millions of older adults lose billions to financial fraud annually in the United States.¹ Yet despite the

¹ FinCEN, Advisory on Elder Financial Exploitation, FIN-2022-A002 (Jun. 15, 2022). P. 1.

prevalence of financial abuse, victims often do not come forward out of fear, embarrassment, or lack of resources.² Financial scams, in which a scammer (often a stranger outside the United States) defrauds victims into sending payments and/or disclosing personal identifying information under false pretenses or for promised benefits the victim will never receive, are common.³ Common typologies of scams include government imposter scams, “romance” scams, lottery scams, and tech/customer support scams.⁴

According to the United States Census Bureau, 15.2 percent of California’s population is aged 65 years and older.⁵ As the state continues to age, the threat posed by elder abuse scams will continue to grow.

3. Current law does not clearly establish when a person “assists” in the financial abuse of an elder or dependent person for purposes of liability under the Act

The Elder Abuse and Dependent Adult Civil Protection Act was first enacted in 1994.⁶ The financial abuse provisions have gone through multiple amendments, including amendments that have refined the provisions establishing civil liability for the financial abuse of an elder or dependent adult; the most recent iteration was put in place through SB 1140 in 2008.⁷

Under current law, financial abuse of an elder or dependent adult occurs when a person or entity takes, secretes, appropriates, obtains, or retains (shortened here to “takes”) the real or personal property of the elder or dependent adult for a wrongful use or with intent to defraud; assists in taking the real or personal property of an elder or dependent adult for wrongful use or with intent to defraud; or takes the real or personal property of an elder or dependent adult by undue influence.⁸ A person or entity takes property for “a wrongful purpose” when the person or entity that took the property knew or should have known that the conduct was likely to be harmful to the elder or dependent adult.⁹ This “knew or should have known of likely harm” standard was put in place in 2008; before that, liability for financial abuse required a finding that a person or entity taking property did so in “bad faith.”¹⁰

² *Id.* at p. 2.

³ *Id.* at p. 5.

⁴ *Id.* at pp. 6-7.

⁵ United States Census Bureau, Quick Facts California, <https://www.census.gov/quickfacts/fact/table/CA/RHI125221>. All links in this analysis are current as of April 28, 2023.

⁶ SB 1681 (Mello, Ch. 594, Stats. 1994).

⁷ SB 1140 (Steinberg, Ch. 475, Stats. 2008). The relevant statute was amended in 2013 to reflect a new definition of “undue influence,” but the elements of the definition remained the same. (*See* AB 140 (Dickinson, Ch. 668, Stats. 2013).)

⁸ Welf. & Inst. Code, § 15610.30(a).

⁹ *Id.*, § 15610.30(b).

¹⁰ SB 1140 (Steinberg, Ch. 475, Stats. 2008).

In redefining the mental state for liability for financial abuse of an elder or a dependent adult, SB 1140 did not expressly define the necessary mental state for the liability of a person who “assists” in a wrongful taking.¹¹ As such, there is some ambiguity as to whether a person can be liable for “assisting” in financial abuse if they, themselves, are not part of the scam but play a part essential to the scam’s success – such a bank teller who facilitates a wire transfer from an elder’s bank account to an account held by the scammer, when there were red flags that meant the teller “knew or should have known” that the elder was the victim of a scam.

According to the sponsors of the bill, the ambiguity has led to contradictory results in financial abuse cases in state and federal courts. State courts appear to consistently interpret “assister” liability to require only that the assister knew or should have known that the scammer was acting with a wrongful purpose, even if the assister was not actively aiding and abetting the scammer. Federal courts, however, have required a more culpable mental state and have, accordingly, granted motions to dismiss in financial abuse cases when the plaintiff did not plead that the assister was involved in the scam.

4. This bill clarifies the scope of assister liability under the Act

This bill is intended to resolve the courts’ inconsistent application of the “assisting” cause of action under the Act by providing clear guidance on the mental state necessary for liability.

First, the bill adds a new provision to clarify that persons who knowingly aid and abet financial abuse, i.e., are in on the scam, are liable under the Act. This change is to ensure that the new provisions for “assisting” liability do not inadvertently prevent liability from attaching to someone who knowingly participates in the financial abuse.

Second, the bill implements a new framework for when a person can be liable for assisting in financial abuse despite not being a knowing participant in the scheme. The bill restricts “assisting” liability to persons who are mandatory reporters under the Act and knew or should have known that another person was wrongfully taking the elder or dependent adult’s money, and divides liability into two categories: liability for a financial institution that assists by processing the transactions that constitute financial abuse, and liability for persons in an elder or dependent adult’s life who are not connected to a financial institution and assist in the financial abuse some other way.

For entities whose employees are mandated reporters at a specified financial institutions – who have an existing duty to report suspected financial abuse – an entity can be liable for executing or processing a transaction under the “knew or should have known” standard provided that the person (1) interacted with the elder or dependent

¹¹ See *Welf. & Inst. Code*, § 15610.30.

adult in the course of the transaction, and (2) failed to act as a reasonable person in like circumstances would have in executed or processing the transaction. The determination of whether the entity acted as a reasonable entity would have is based on all of the surrounding facts and circumstances of the transaction, including the transaction history of the elder or dependent adult, whether the transaction is aligned with prevailing business practices, and whether the elder or dependent adult exhibits multiple red flags as identified by FinCEN in its 2022 guidance on financial exploitation of elders. This prong falls primarily within the jurisdiction of the Senate Banking and Financial Institutions Committee, whose analysis is incorporated herein by reference. The author is continuing to work with stakeholders on amendments to provide better guidance for financial institutions on how to avoid liability, potentially in the form of a safe harbor or affirmative defense. The author is also continuing to work on language to ensure that individual tellers and other non-supervisory employees will not be personally liable for assisting under this bill.

For persons who are mandatory reporters by virtue of a caretaking relationship with the elder or dependent adult, a person can be liable if they knew or should have known that another person was wrongfully taking the elder or dependent adult's funds and they failed to act as a reasonable person under the circumstances. Whether a person acted as a reasonable person is, as with financial institutions, determined based on all the surrounding facts and circumstances. The author has agreed to amendments to strengthen the specific factors of the surrounding facts and circumstances listed in the bill, which, as amended, will include:

- The vulnerability of the elder or dependent adult.
- The extent to which the elder or dependent adult relied on the mandated reporter to handle their finances or for financial advice or financial decisions.
- Any information the elder or dependent adult provided to the mandated reporter about the situation.
- The mandated reporter's past interactions with the elder or dependent adult and whether the elder or dependent adult's behavior was markedly different than in their prior interactions with the mandated reporter.
- Whether the mandated reporter has a fiduciary duty to the elder or dependent adult.
- Any instructions or information the mandated reporter has been given about the elder or dependent adult's capacity or ability to make decisions.
- Any trainings the mandated reporter has taken or should have taken, or information the mandated reporter has received or should have received, on the subjects of elder or dependent adult abuse and financial abuse.

For both categories of liability, the enumerated factors are intended to make clear that, for "assister" liability to attach, the mandated reporter had to have ignored warning signs that, based on their degree of financial knowledge and sophistication, would have sent a clear message that the elder or dependent adult was being scammed. Persons should not be liable for serving as an assister simply because, post hoc, the financial

abuse was obvious; there must be actual evidence that, given what the mandated reporter knew at the time, in the context of their personal and financial experience, the mandated reporter should have had strong suspicions that the elder or dependent adult was being harmed yet chose to remain silent.

5. Possible unintended consequences and matters to address going forward

The bill's opponents argue that the bill's imposition of liability based on a "knew or should have known standard," determined based on what a "reasonable person" would have known or should have known based on all the circumstances, is overly vague and fails to provide financial institutions with clear guidance for how to avoid liability in transactions with elder and dependent adult customers. As explained in the Senate Banking and Financial Institutions Committee analysis:

Financial institutions find themselves on the front lines of elder financial exploitation due to their roles in offering savings, payments, lending, and investment products and services that help consumers manage their financial lives. These financial institutions end up standing in between their customers and the criminals who are constantly trying to rip them off. In the large majority of these cases, the financial institution does not have actual knowledge that a given customer is being defrauded, nor does the financial institution have an incentive to allow the fraud to take place – the transfer of deposits or investments out of a customer's account and into a fraudster's account at another institution rarely benefits the customer's financial institution. Tension arises, however, when a financial institution's desire to protect a customer conflicts with the institution's desire to serve the customer's expressed instructions to execute specific transactions.

Supporters of this bill want financial institutions to act more proactively in preventing elder financial exploitation before it happens, even if that means refusing to process certain suspicious transactions. The financial institutions, on the other hand, are generally inclined to honor the requests of their customers. While financial institutions have policies and procedures in place to detect and prevent fraudulent transactions and have the contractual right to refuse to process suspicious transactions, employees at financial institutions may find it difficult to refuse a customer who is insistent on processing a transaction, even after being warned about the likelihood that the transaction is connected to fraud.¹² This bill will likely cause financial institutions to implement more conservative policies and procedures for handling transactions of elder

¹² It is standard practice for financial institutions to include language in their agreements with customers that the financial institution may block, restrict, delay, or refuse to process transactions that may be suspicious, unauthorized, fraudulent, or otherwise unlawful. See, e.g., page 22 of Chase's deposit account agreement: <https://www.chase.com/content/dam/chase-ux/documents/personal/checking/deposit-account-agreement.pdf>.

customers, especially transactions of higher amounts and less routine transactions.

The author and Committee staff have engaged in multiple discussions with the sponsors and stakeholders on how to address these concerns. The author has committed to continuing this effort going forward and amend the bill to include:

- A safe harbor or similar mechanism to clearly outline what steps a financial institution may take in response to a suspicious transaction in order to avoid liability. This may include steps such as giving the elder or dependent adult a warning about the potential fraud and/or holding the transaction and referring the matter to adult protective services and/or law enforcement.
- Language to ensure that low-level employees, such as tellers, are not personally liable for the fraud.

These changes should help financial institutions devise procedures for interacting with their customers who are elders or dependent adults. It is unlikely, however, that any amendments in this space will completely eliminate financial institutions' need to slow down certain transactions involving elder Californians and dependent adults. At the end of the day, this bill reflects a policy choice that preventing a greater number of instances of elder financial abuse – or giving elders the right to recover from banks who turn a blind eye – is worth adding friction to a greater number of elders' financial transactions. Given the prevalence of financial scams, there is little question that this bill will serve to prevent scams or provide recovery where a financial institution failed to stop an obvious scam. But some of the transactions halted by the financial institutions seeking to avoid liability will not be fraudulent; and in both cases, it is likely that the affected elder adults will be extremely frustrated that their financial institutions will not allow them access to their own funds. The question of whether this trade-off is worthwhile is at the heart of this bill.

6. Amendments

As noted above, the author has agreed to amendments to clarify the factors to be considered in determining whether a mandated reporter, other than a financial institution, is liable for assisting in the financial abuse of an elder or dependent adult. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

On page 2, in line 11, strike out “or” and insert “and”

Amendment 2

On page 3, in line 25, strike out lines 26 and 27 and insert “to engage in either of the following”

Amendment 3

On page 3, in line 28, strike out “Executing” and insert “If a person is a mandated reporter pursuant to Section 15630.1 or 15630.1, executing”

Amendment 4

On page 4, in line 6, after “of” insert “the”

Amendment 5

On page 4, in line 7, strike out “The” and insert “If a person is a mandated reporter pursuant to Section 15630, the”

Amendment 6

On page 4, in line 9, strike out “including their past interactions with the elder or”, strike out lines 10 to 15, inclusive, and insert:

including, but not limited to, any of the following:

(A) The vulnerability of the elder or dependent adult, taking into account the evidence described in paragraph (1) of subdivision (a) of Section 15610.70.

(B) The extent to which the elder or dependent adult relied on the mandated reporter to handle their finances or for financial advice or financial decisions.

(C) Any information the elder or dependent adult provided to the mandated reporter about the situation.

(D) The mandated reporter’s past interactions with the elder or dependent adult and whether the elder or dependent adult’s behavior was markedly different than in their prior interactions with the mandated reporter.

(E) Whether the mandated reporter has a fiduciary duty to the elder or dependent adult.

(F) Any instructions or information the mandated reporter has been given about the elder or dependent adult’s capacity or ability to make decisions.

(G) Any trainings the mandated reporter has taken or should have taken, or information the mandated reporter has received or should have received, on the subjects of elder or dependent adult abuse and financial abuse.

7. Arguments in support

According to the sponsors of the bill, the California Low-Income Consumer Coalition, Consumer Attorneys of California, and Elder Law & Advocacy:

Financial scams against elders are on the rise in California, and too often those tasked with protecting elders are turning a blind eye while scammers rob older Californians of their life savings. Often called the “crime of the 21st Century,” financial scams against elders are an epidemic, with estimates of annual economic

losses of \$3 billion dollars. Victims come from all socioeconomic backgrounds. This form of financial exploitation robs victims of their resources, dignity, and quality of life. Perpetrators can be family members, caregivers, trusted financial professionals, or unknown scam artists. Once an aging adult falls prey to financial fraud, they may never recover...

SB 278 would clarify that the term “wrongful use” as defined in Welfare & Institutions Code § 15610.30(b) applies not only when a person “takes” property under Welfare & Institutions Code § 15610.30(a)(1) but also when a person “assists in taking” property under Welfare & Institutions Code § 15610.30(a)(2). By clarifying that the standard is whether the assister “knew or should have known” that the conduct would result in harm to the elder or dependent adult, this bill will help victims of financial elder abuse hold perpetrators of the abuse responsible, as intended by the law.

8. Arguments in opposition

According to the California Business Properties Association and the California Business Roundtable, writing in opposition:

SB 278 is presented as a bill to protect seniors and dependent adults. However, by requiring banks and any other business involved in a transaction to scrutinize their elder and dependent adult customers’ decisions to avoid legal liability, the measure would harm the very customers it is intended to protect. It would also lead to an increased burden on businesses to verify the legitimacy of every transaction initiated by senior customers, which could slow down the transaction process and potentially lead to frustration for customers. It could potentially stigmatize senior and dependent adult customers as being more prone to fraud, which could negatively impact their experience as customers and erode their sense of independence. Furthermore, it is our view that SB 278 will likely lead banks to reconsider their willingness to serve senior customers, given the litigation risk involved. While it is important for businesses to take steps to prevent financial abuse against seniors, it is also important to balance these efforts with the need to maintain a positive customer experience and respect the autonomy and independence of all customers.

SUPPORT

California Low-Income Consumer Coalition (co-sponsor)

Consumer Attorneys of California (co-sponsor)

Elder Law & Advocacy (co-sponsor)

AARP

Bet Tzedek Legal Services

California Advocates for Nursing Home Reform

California Alliance for Retired Americans
California District Attorneys Association
California Elder Justice Coalition
California Health Advocates
California Long-Term Care Ombudsman Association
California Senior Legislature
Choice in Aging
Community Legal Services of East Palo Alto
Consumer Federation of California
Consumer Reports
Consumers for Auto Reliability and Safety
Darrell Steinberg, Mayor of the City of Sacramento
Disability Law
Disability Rights Advocates
Disability Rights California
East Bay Community Law Center
Empowered Aging
Fund Her
Housing and Economic Rights Advocates
Institute on Aging
Justice in Aging
La Raza Centro Legal
Legal Assistance for Seniors
Legal Assistance for the Elderly
Meals on Wheels Diablo Valley Region
National Consumer Law Center
Office of the State Long Term-Care Ombudsman
Open Door Legal
Peace Officers' Research Association of California
Public Counsel
Public Law Center
Riverside Legal Aid
SEIU California
One individual

OPPOSITION

California Bankers Association
Bay Area Council
California Chamber of Commerce
California Business Properties Association
California Business Roundtable
California Community Banking Network
California Credit Union League

California Financial Services Association
California Mortgage Bankers Association
Civil Justice Association of California
Orange County Taxpayers Association
Securities Industry and Financial Markets Association

RELATED LEGISLATION

Pending Legislation:

AB 1417 (Wood, 2023) reorganizes and modifies the existing provisions for caregivers, family, and law enforcement, health practitioner, and clergy who are mandated reporters under the Elder Abuse and Dependent Adult Civil Protection Act, including modifying the timeframes in which a report of suspected abuse may be made and the conditions that give rise to a larger or smaller reporting window. AB 1417 is pending before the Assembly Aging and Long-Term Care Committee.

AB 386 (Stephanie Nguyen, 2023) expands the types of information that law enforcement or a county APS agency may obtain from a financial institution when a law enforcement agency certifies that the information is needed in connection with a criminal report of financial abuse of an elder. AB 386 is pending on the Assembly Floor.

Prior Legislation:

AB 170 (Dickinson, Ch. 668, Stats. 2013) modified the definition of “undue influence” for purposes of financial abuse of an elder to be a multi-factor test that considers the specific circumstances of the elder and the tactics used by the alleged abuser.

SB 1140 (Steinberg, Ch. 475, Stats. 2008) expanded the cause of action for financial abuse of an elder or dependent adult by, among other things, expanding the definition of “financial abuse” and specifying that a person is deemed to have taken, secreted, appropriated, or obtained, or retained property for a wrongful use if the person doing so knew or should have known that it was likely to be harmful to the elder or dependent adult.

PRIOR VOTES:

Senate Banking & Financial Institutions Committee (Ayes 4, Noes 1)
