SB 33 (Simitian and Wolk) – Elder and Dependent Adult Abuse

Introduced December 6, 2010, Amended June 15, 2011

Existing law provides for the confidentiality of financial records but does not prohibit various state and local officers and agencies from requesting information from an office or branch of a financial institution and the office or branch from responding to the request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under the act, care custodians of elder and dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

Existing law, until January 1, 2013, includes within these reporting requirements mandated reporters of suspected financial abuse, as defined, and, with certain exceptions, makes failure to comply with these requirements subject to a civil penalty. This bill would delete the January 1, 2013 repeal date.

July 2011 Summary:

In 2006, the Legislature enacted the Financial Elder Abuse Reporting Act of 2005 (the Act). (SB 1018 (Simitian, Ch. 140, Stats. 2005) The Act, which sunsets January 1, 2013, was enacted so that individuals in a position of witnessing elder or dependent adult financial abuse would make timely reports to law enforcement or adult protective services in order to protect elderly and dependent adults from financial predators. Under the Act, all officials and employees of specified financial institutions are considered mandated reporters of financial elder abuse. The Act immunizes these mandated reporters from civil or criminal liability for making these reports but provides civil penalties for failing to report financial abuse and the failure to report resulted in death or great bodily injury.

The Act became operative on January 1, 2007. In April 2007, Adult Protective Services of the California Department of Social Services began tracking reports of financial abuse of elder and dependent adults. Between April 2007 and 2010, financial institutions submitted 26,402 reports of elder financial abuse. These reports can be found at http://www.dss.cahwnet.gov/research/PG345.htm.

This bill would remove the January 1, 2013 sunset provisions of the Financial Elder Abuse Reporting Act of 2005 in order to make this Act permanent.

CHANGES TO EXISTING LAW

Existing law requires mandated reporting of elder and dependent adult financial abuse by certain financial institutions, as specified, and provides civil and criminal penalties for

failing to report elder and dependent adult financial abuse, as specified. (Welf. & Inst. Code Sec. 15630.1.)

Existing law provides immunity from civil and criminal prosecution to mandated reporters of financial elder or dependent adult abuse. (Welf. & Inst. Code Sec. 15634.)

Existing law requires county adult protective services to report, as specified, instances of reported elder and dependent adult financial abuse. (Welf. & Inst. Code Sec. 15640.)

Existing law requires the county adult protective services to provide financial abuse instructional materials to mandated reporters. (Welf. & Inst. Code Sec. 15655.5.)

Existing law requires financial institutions to release information, as specified, requested by a county adult protective services office or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult. (Gov. Code Sec. 7480(e)(1).)

Existing law provides that the above provisions sunset on January 1, 2013.

This bill would delete the January 1, 2013 sunset date, thereby extending the operation of these provisions indefinitely, and makes technical, nonsubstantive changes. The bill does NOT substantively alter existing law, but merely deletes the 2013 sunset that was included in SB 1018.

The author believes it is important to delete the 2013 sunset date because mandated reporting for financial institutions has increased the number of confirmed reports of elder financial abuse. According to data collected by Adult Protective Services, the number of confirmed cases of elder and dependent adult financial abuse rose over 16% from 4,784 in 2006 to 5,568 in 2007 (the law was implemented in 2007). The number of confirmed cases in 2010 was 5,602.

AMENDED IN ASSEMBLY JUNE 15, 2011

SENATE BILL No. 33

Introduced by Senators Simitian and Wolk
(Principal coauthor: Assembly Member Wagner)

December 6, 2010

~~An act to repeal Section 7480 of the Government Code, and to amend~~ *An act to amend* Section 15630.1 of, and to amend and repeal Sections 15633, 15634, 15640, and 15655.5 of, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as amended, Simitian. Elder and dependent adult abuse.

Existing law provides for the confidentiality of financial records but does not prohibit various state and local officers and agencies from requesting information from an office or branch of a financial institution and the office or branch from responding to the request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

Existing law provides that a county adult protective services office and a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult is similarly not prohibited from requesting financial information and the office or branch is not prohibited from responding to the request.

~~This bill would make a technical nonsubstantive change to the above provisions. The~~

The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires persons, defined as mandated reporters, to report known or suspected instances of elder or

dependent adult abuse. Under the act, care custodians of elder or dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

Existing law, until January 1, 2013, includes within these reporting requirements mandated reporters of suspected financial abuse, as defined, and, with certain exceptions, makes failure to comply with these requirements subject to a civil penalty.

This bill would delete the January 1, 2013, repeal date.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 7480 of the Government Code, as amended by Section 2 of Chapter 709 of the Statutes of 2010, is repealed.~~

~~SEC. 2.~~

SECTION 1. Section 15630.1 of the Welfare and Institutions Code is amended to read:

15630.1. (a) As used in this section, "mandated reporter of suspected financial abuse of an elder or dependent adult" means all officers and employees of financial institutions.

(b) As used in this section, the term "financial institution" means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) As used in this section, "financial abuse" has the same meaning as in Section 15610.30.

(d) (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions,

in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

(3) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

(e) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or

dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(f) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars ($1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars ($5,000), which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(h) As used in this section, "suspected financial abuse of an elder or dependent adult" occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

~~SEC. 3.~~

SEC. 2. Section 15633 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 140 of the Statutes of 2005, is amended to read:

15633. (a) The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a

fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution by otherwise applicable state or federal law or court order.

~~SEC. 4.~~

SEC. 3. Section 15633 of the Welfare and Institutions Code, as added by Section 6 of Chapter 140 of the Statutes of 2005, is repealed.

~~SEC. 5.~~

SEC. 4. Section 15634 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 140 of the Statutes of 2005, is amended to read:

15634. (a) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective

services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present to the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* a claim for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized

by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

~~SEC. 6.~~

SEC. 5. Section 15634 of the Welfare and Institutions Code, as amended by Section 711 of Chapter 538 of the Statutes of 2006, is repealed.

~~SEC. 7.~~

SEC. 6. Section 15640 of the Welfare and Institutions Code, as amended by Section 9 of Chapter 140 of the Statutes of 2005, is amended to read:

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 or 15630.1 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the

report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of ~~Health Services~~

Public Health shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

~~SEC. 8.~~

SEC. 7. Section 15640 of the Welfare and Institutions Code, as added by Section 10 of Chapter 140 of the Statutes of 2005, is repealed.

~~SEC. 9.~~

SEC. 8. Section 15655.5 of the Welfare and Institutions Code, as amended by Section 11 of Chapter 140 of the Statutes of 2005, is amended to read:

15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17, and mandated reporters of suspected financial abuse of an elder or dependent adult pursuant to Section 15630.1, with instructional materials regarding abuse and neglect of an elder or dependent adult and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:

(a) An explanation of abuse and neglect of an elder or dependent adult, as defined in this chapter.

(b) Information on how to recognize potential abuse and neglect of an elder or dependent adult.

(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.

(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.

~~SEC. 10.~~

SEC. 9. Section 15655.5 of the Welfare and Institutions Code, as amended by Section 712 of Chapter 538 of the Statutes of 2006, is repealed.

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