

Date Published: 09/07/2019 04:00 AM
BILL START

Senate Bill No. 496 **CHAPTER 272**

An act to amend Sections 15633, 15633.5, 15640, and 15655.5 of, and to add Section 15630.2 to, the Welfare and Institutions Code, relating to elder or dependent adult abuse.

[Approved by Governor September 06, 2019. Filed with Secretary of State September 06, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 496, Moorlach. Financial abuse of elder or dependent adults.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures and requirements for the reporting, investigation, and prosecution of elder and dependent adult abuse. Existing law imposes various reporting requirements on mandated reporters of suspected financial abuse, as defined, and imposes a civil penalty for a violation of these provisions. Under existing law, all officers and employees of financial institutions, as defined, are mandated reporters of suspected financial abuse.

This bill would expand the category of mandated reporters of suspected financial abuse to include a broker-dealer and an investment adviser, as defined. The bill would authorize a broker-dealer or investment adviser who makes a report to notify any trusted contact person who had previously been designated by the elder or dependent adult of any known or suspected financial abuse, and to temporarily delay a requested disbursement or transaction from an account of an elder or dependent adult or an account to which an elder or dependent adult is a beneficiary if specified conditions are met. The bill would provide a mandated reporter with civil immunity for any notification or temporary disbursement or transaction delay made in good faith and with reasonable care pursuant to these provisions.

Existing law makes specified reports, including reports of known or suspected financial abuse of an elder or dependent adult, confidential. Any violation of the confidentiality of these reports is a misdemeanor.

This bill would extend that confidentiality to a report of known or suspected financial abuse of an elder or dependent adult by a broker-dealer or investment adviser. By increasing the scope of a crime, the bill would impose a state-mandated local program.

Existing law authorizes information relevant to the incident of elder or dependent adult abuse to be given to specified investigators, including, among others, investigators from an adult protective services agency, a local law enforcement agency, and the probate court.

This bill would instead require information relevant to the incident of elder or dependent adult abuse to be given to those investigators, and would include an investigator from the Department of Business Oversight among those investigators to whom the information is to be given.

Existing law requires a county adult protective services agency to report every known or suspected instance of abuse of an elder or dependent adult, as specified, to law enforcement with jurisdiction over the case and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse. Existing law also requires a county adult protective services agency to provide mandated reporters of suspected financial abuse of an elder or dependent adult with instructional materials regarding abuse and neglect of an elder or dependent adult and their obligation to report under these provisions.

The bill would require a county adult protective services agency to additionally report a known or suspected instance of abuse reported by a broker-dealer or investment adviser and to additionally provide instructional materials to broker-dealers or investment advisers. By increasing the duties of local agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 15630.2 is added to the Welfare and Institutions Code, to read:

15630.2.

(a) For purposes of this section, the following terms have the following definitions:

- (1) "Financial abuse" has the same meaning as in Section 15610.30.
- (2) "Broker-dealer" has the same meaning as in Section 25004 of the Corporations Code.
- (3) "Investment adviser" has the same meaning as in Section 25009 of the Corporations Code.
- (4) "Mandated reporter of suspected financial abuse of an elder or dependent adult" means a broker-dealer or an investment adviser.

(b) (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 their 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 them 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 or through a confidential internet reporting tool, as authorized pursuant to Section 15658, immediately, or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an internet report shall be made through the confidential internet reporting tool established in Section 15658, within two working days to the local adult protective services agency, the local law enforcement agency, and the Department of Business Oversight.

(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 or internet report, as authorized by Section 15658, 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, local law enforcement agency, and the Department of Business Oversight.

(c) 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 their 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.

(d) 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 employer of the mandated reporter of suspected financial abuse of an elder or dependent adult to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(e) The civil penalty provided for in subdivision (d) shall be recovered only in a civil action brought against the broker-dealer or investment adviser by the Attorney General, district attorney, or county counsel. An action shall not 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.

(f) 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 (b) 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.

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

(h) (1) A mandated reporter of suspected financial abuse of an elder or dependent adult who makes a report pursuant to this section may notify any trusted contact person who had previously been designated by the elder or dependent adult to receive notification of any known or suspected financial abuse, unless the trusted contact person is suspected of the financial abuse. This authority does not affect the ability of the mandated reporter to make any other notifications otherwise permitted by law.

(2) A mandated reporter of suspected financial abuse of an elder or dependent adult shall not be civilly liable for any notification made in good faith and with reasonable care pursuant to this subdivision.

(i) (1) A mandated reporter of suspected financial abuse of an elder or dependent adult is authorized to not honor a power of attorney described in Division 4.5 (commencing with Section 4000) of the Probate Code as to an attorney-in-fact, if the mandated reporter of suspected financial abuse of an elder or dependent adult makes a report to an adult protective services agency or a local law enforcement agency of any state that the principal may be subject to financial abuse, as described in this chapter or as defined in similar laws of another state, by that attorney-in-fact or person acting for or with that attorney-in-fact.

(2) If a mandated reporter of suspected financial abuse of an elder or dependent adult does not honor a power of attorney as to an attorney-in-fact pursuant to paragraph (1), the power of attorney shall remain enforceable as to every other attorney-in-fact also designated in the power of attorney about whom a report has not been made.

(3) For purposes of this subdivision, the terms "principal" and "attorney-in-fact" have the same meanings as those terms are used in Division 4.5 (commencing with Section 4000) of the Probate Code.

(j) (1) A mandated reporter of suspected financial abuse of an elder or dependent adult may temporarily delay a requested disbursement from, or a requested transaction involving, an account of an elder or dependent adult or an account to which an elder or dependent adult is a beneficiary if the mandated reporter meets all of following conditions:

(A) They have a reasonable belief, after initiating an internal review of the requested disbursement or transaction and the suspected financial abuse, that the requested disbursement or transaction may result in the financial abuse of an elder or dependent adult.

(B) Immediately, but no later than two business days after the requested disbursement or transaction is delayed, they provide written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless a party is reasonably believed to have engaged in suspected financial abuse of the elder or dependent.

(C) Immediately, but no later than two business days after the requested disbursement or transaction is delayed, they notify the local county adult protective services agency, local law enforcement agency, and the Department of Business Oversight about the delay.

(D) They provide any updates relevant to the report to the local adult protective services agency, the local law enforcement agency, and the Department of Business Oversight.

(2) Any delay of a requested disbursement or transaction authorized by this subdivision shall expire upon either of the following, whichever is sooner:

(A) A determination by the mandated reporter that the requested disbursement or transaction will not result in financial abuse of the elder or dependent adult provided that the mandated reporter first consults with the local county adult protective services agency, local law enforcement agency, and the Department of Business Oversight, and receives no objection from those entities.

(B) Fifteen business days after the date on which the mandated reporter first delayed the requested disbursement or transaction, unless the adult protective services agency, local law enforcement agency, or the Department of Business Oversight requests that the mandated reporter extend the delay, in which case the delay shall expire no more than 25 business days after the date on which the mandated reporter first delayed the requested disbursement or transaction, unless sooner terminated by the adult protective services agency, local law enforcement agency, the Department of Business Oversight, or an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the requested disbursement or transaction or may order other protective relief based on the petition of the adult protective services agency, the mandated reporter who initiated the delay, or any other interested party.

(4) A mandated reporter of suspected financial abuse of an elder or dependent adult shall not be civilly liable for any temporary disbursement delay or transaction made in good faith and with reasonable care on an account pursuant to this subdivision.

(k) Notwithstanding any provision of law, a local adult protective services agency, a local law enforcement agency, and the Department of Business Oversight may disclose to a mandated reporter of suspected financial abuse of an elder or dependent adult or their employer, upon request, the general status or final disposition of any investigation that arose from a report made by that mandated reporter of suspected financial abuse of an elder or dependent adult pursuant to this section.

SEC. 2.

Section 15633 of the Welfare and Institutions Code is amended to read:

15633.

(a) The reports made pursuant to Sections 15630, 15630.1, 15630.2, 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 who 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.

(3) A trusted contact person, as specified in subdivision (h) of Section 15630.2.

(c) This section does not 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 does it prohibit the disclosure by a financial institution, broker-dealer, or investment adviser 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, broker-dealer, or investment adviser by otherwise applicable state or federal law or court order.

SEC. 3.

Section 15633.5 of the Welfare and Institutions Code is amended to read:

15633.5.

(a) Information relevant to the incident of elder or dependent adult abuse shall be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, the Department of Business Oversight, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

- (1) An adult protective services agency.
- (2) A long-term care ombudsman program.
- (3) A licensing agency.
- (4) A local law enforcement agency.
- (5) The office of the district attorney.
- (6) The office of the public guardian.
- (7) The probate court.
- (8) The bureau.
- (9) The Department of Business Oversight.
- (10) The Department of Consumer Affairs, Division of Investigation.
- (11) Counsel representing an adult protective services agency.

(c) The identity of a person who reports pursuant to this chapter may also be disclosed under the following circumstances:

(1) To the district attorney in a criminal prosecution.

(2) When a person reporting waives confidentiality.

(3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), a person reporting pursuant to Section 15631 shall not be required to include their name in the report.

SEC. 4.

Section 15640 of the Welfare and Institutions Code 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 of an elder or dependent adult pursuant to Section 15630, 15630.1, or 15630.2. 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 they are 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 subdivision 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 their consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of 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. 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. 5.

Section 15655.5 of the Welfare and Institutions Code is amended to read:

15655.5.

A county adult protective services agency shall provide the organizations listed in subdivisions (v), (w), and (x) of Section 15610.17, and mandated reporters of suspected financial abuse of an elder or dependent adult pursuant to Sections 15630.1 and 15630.2, 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 all of 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. 6.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the

Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.