

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN ASSEMBLY MAY 27, 2003

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 634

Introduced by Assembly Members Steinberg and Simitian

(Principal coauthor: Assembly Member Montanez)

**(Coauthors: Assembly Members Berg, Bermudez, Calderon,
Chan, Chavez, Chu, Diaz, Koretz, Laird, Lieber, Lowenthal,
Pavley, Reyes, and Yee)**

(Coauthors: Senators Bowen, Romero, and Speier)

February 19, 2003

An act to add Sections 2031.1 and 2031.2 to the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 634, as amended, Steinberg. Elder abuse actions: confidentiality.

The Elder Abuse and Dependent Adult Civil Protection Act, among other things, authorizes civil actions arising from abuse of elderly or dependent adults.

The Civil Discovery Act of 1986 establishes provisions relating to discovery in civil actions and *in* special proceedings of a civil nature.

This bill would provide that it is the policy of the state that in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act, confidential settlement agreements are disfavored, and would require a showing, as specified, before a confidentiality agreement in this type of proceeding may be recognized or enforced by the court.

The bill would also provide that in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act, any information that is acquired through discovery and is protected from disclosure by a stipulated protective order shall remain subject to the protective order, except for information that is evidence of abuse of an elder or dependent adult, as specified.

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

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

- 1 SECTION 1. Section 2031.1 is added to the Code of Civil
- 2 Procedure, to read:
- 3 2031.1. (a) Notwithstanding any other provision of law, it is
- 4 the policy of the State of California that confidential settlement
- 5 agreements are disfavored in any civil action the factual
- 6 foundation for which establishes a cause of action for a violation
- 7 of the Elder Abuse and Dependent Adult Civil Protection Act
- 8 (Chapter 11 (commencing with Section 15600) of Part 3 of
- 9 Division 9 of the Welfare and Institutions Code).
- 10 (b) Provisions of a confidential settlement agreement
- 11 described in subdivision (a) may not be recognized or enforced by
- 12 the court absent a showing of ~~all~~ any of the following:
- 13 (1) The information is privileged under existing law.
- 14 (2) The information is not evidence of abuse of an elder or
- 15 dependent adult as described in Sections 15610.30, 15610.57, and
- 16 15610.63 of the Welfare and Institutions Code.
- 17 (3) The party seeking to uphold the confidentiality of the
- 18 information has demonstrated that there is a substantial probability
- 19 that prejudice will result from the disclosure and that the party's



1 interest in the information cannot be adequately protected through
2 redaction.

3 (c) *Nothing in paragraph (1), (2), or (3) of subdivision (b)*
4 *permits the sealing or redacting of a defendant's name in any*
5 *information made available to the public.*

6 (d) Except as expressly provided in this section, nothing in this
7 section is intended to alter, modify, or amend existing law.

8 ~~(d)~~

9 (e) Nothing in this section may be deemed to prohibit the entry
10 or enforcement of that part of a confidentiality agreement,
11 settlement agreement, or stipulated agreement between the parties
12 that requires the nondisclosure of the amount of any money paid
13 in a settlement of a claim.

14 ~~(e) Nothing in this section is intended to affect medical~~
15 ~~malpractice actions.~~

16 (f) *Nothing in this section applies to or affects an action for*
17 *professional negligence against a health care provider.*

18 SEC. 2. Section 2031.2 is added to the Code of Civil
19 Procedure, to read:

20 2031.2. (a) In any civil action the factual foundation for
21 which establishes a cause of action for a violation of the Elder
22 Abuse and Dependent Adult Civil Protection Act (Chapter 11
23 (commencing with Section 15600) of Part 3 of Division 9 of the
24 Welfare and Institutions Code), any information that is acquired
25 through discovery and is protected from disclosure by a stipulated
26 protective order shall remain subject to the protective order, except
27 for information that is evidence of abuse of an elder or dependent
28 adult as described in Sections 15610.30, 15610.57, and 15610.63
29 of the Welfare and Institutions Code.

30 In that instance, after redacting information in the document
31 that is not evidence of abuse of an elder or dependent adult as
32 described in Sections 15610.30, 15610.57, and 15610.63 of the
33 Welfare and Institutions Code, a party may file that particularized
34 information with the court. *The party proposing to file the*
35 *information shall offer to meet and confer with the party from*
36 *whom the information was obtained at least one week prior to*
37 *filing that information with the court.*

38 (b) The filing party shall give concurrent notice of the filing
39 with the court and its basis to the party from whom the information
40 was obtained.



1 (c) Any filed information submitted to the court shall remain
2 confidential under any protective order for 30 days after the filing
3 and shall be part of the public court record thereafter, unless an
4 affected party petitions the court and shows good cause for a court
5 protective order.

6 (d) The burden of showing good cause shall be on the party
7 seeking the court protective order.

8 (e) A stipulated protective order may not be recognized or
9 enforced by the court ~~pursuant to this section~~ *to prevent disclosure*
10 *of information filed with the court pursuant to subdivision (a),*
11 *absent a showing of ~~all~~ any of the following:*

12 (1) The information is privileged under existing law.

13 (2) The information is not evidence of abuse of an elder or
14 dependent adult as described in Sections 15610.30, 15610.57, and
15 15610.63 of the Welfare and Institutions Code.

16 (3) The party seeking to uphold the confidentiality of the
17 information has demonstrated that there is a substantial probability
18 that prejudice will result from the disclosure and that the party's
19 interest in the information cannot be adequately protected through
20 redaction.

21 (f) If the court denies the petition for a court protective order,
22 it shall redact any part of the filed information it finds is not
23 evidence of abuse of an elder or dependent adult as described in
24 Sections 15610.30, 15610.57, and 15610.63. *Nothing in this*
25 *subdivision or in paragraph (1), (2), or (3) of subdivision (e)*
26 *permits the sealing or redacting of a defendant's name in any*
27 *information made available to the public.*

28 (g) *Nothing in this section applies to or affects an action for*
29 *professional negligence against a health care provider.*

