

AMENDED IN SENATE MAY 10, 2005

SENATE BILL

No. 1018

Introduced by Senator Simitian

(Principal coauthors: Senators Alquist and Scott)

(Principal coauthors: Assembly Members Berg, Evans, and Wolk)

(Coauthors: Senators ~~Alquist and Scott~~ Kuehl and Romero)

~~(Coauthor: Assembly Member Pavley)~~ *Coauthors: Assembly Members
Cohn and Pavley)*

February 22, 2005

An act to amend Sections 15634 and 15655.5 of, and to add Section 15630.1 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1018, as amended, Simitian. Elder and dependent adult abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. These procedures require persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under existing law, 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.

This bill would include within these reporting requirements mandated reporters of suspected financial abuse, as defined, and would, with certain exceptions, ~~make the related misdemeanor provisions applicable to mandated reporters of suspected financial elder abuse, as defined, thereby imposing a state-mandated local program by changing the definition of a crime~~ *failure to comply with these requirements subject to a civil penalty.*

~~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 no reimbursement is required by this act for a specified reason.~~

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

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

1 SECTION 1. Section 15630.1 is added to the Welfare and
2 Institutions Code, to read:
3 15630.1. (a) As used in this section, “mandated reporter of
4 suspected financial elder *or dependent adult* abuse” includes all
5 officers and employees of financial institutions.
6 (b) As used in this section, the term “financial institution”
7 means any of the following:
8 (1) A depository institution, as defined in Section 3(c) of the
9 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).
10 (2) An institution-affiliated party, as defined in Section 3(u) of
11 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).
12 (3) A federal credit union or state credit union, as defined in
13 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec.
14 1752), including, but not limited to, an institution-affiliated party
15 of a credit union, as defined in Section 206(r) of the Federal
16 Credit Union Act (12 U.S.C. Sec. 1786(r)).
17 (c) *As used in this section, “financial abuse” has the same*
18 *meaning as in Section 15610.30.*
19 ~~(e)~~
20 (d) Any mandated reporter of suspected financial elder *or*
21 *dependent adult* abuse who has direct contact with the elder *or*
22 *dependent adult* or who reviews or approves the ~~elder’s~~ *elder or*
23 *dependent adult’s* financial documents, records, or transactions,
24 in connection with providing financial services with respect to an
25 elder or dependent adult, and who, within the scope of his or her
26 employment and professional practice, has observed or has
27 knowledge of an incident, that is directly related to the
28 transaction or matter that is within that scope of *employment or*
29 *professional* practice, that reasonably appears to be financial

1 abuse, or *who* reasonably suspects that abuse, shall report the
2 known or suspected instance of financial abuse by telephone
3 immediately, or as soon as practicably possible, and by written
4 report sent within two working days to the local adult protective
5 services agency or the local law enforcement agency.

6 ~~(d)~~

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

11 (1) The mandated reporter of suspected financial elder *or*
12 *dependent adult* abuse is aware of no other corroborating or
13 independent evidence of the alleged ~~elder~~ *financial elder or*
14 *dependent adult* abuse. The mandated reporter of suspected
15 financial elder *or dependent adult* abuse is not required to
16 investigate any accusations.

17 (2) In the exercise of his or her professional judgment, the
18 mandated reporter of suspected financial elder *or dependent*
19 *adult* abuse reasonably believes that financial elder *or dependent*
20 *adult* abuse did not occur.

21 ~~(e)~~

22 (f) Failure to report financial abuse under this section shall be
23 ~~subject to subdivision (h) of Section 15630: subject to a civil~~
24 ~~penalty not exceeding one thousand dollars (\$1,000) or if the~~
25 ~~failure to report results in great bodily injury or death of the~~
26 ~~elder or dependent adult, a civil penalty not exceeding five~~
27 ~~thousand dollars (\$5,000), which shall be paid by the financial~~
28 ~~institution who is the employer of the mandated reporter to the~~
29 ~~party bringing the action. Subdivision (h) of Section 15630 shall~~
30 ~~not apply to violations of this section.~~

31 ~~(f)~~

32 (g) A person employed as a teller in an institution described in
33 paragraphs (1) and (2) of subdivision ~~(a)~~ (b) shall not be subject
34 to subdivision (h) of Section 15630 during the first six months of
35 his or her employment, if the person has not received training or
36 instructional materials regarding the duties imposed by this
37 article including, but not limited to, identification and reporting
38 of financial elder abuse *his or her employment*.

39 (h) As used in this section, “suspected financial elder *or*
40 *dependent adult abuse*” occurs when a person who is required to

1 *report under subdivision (a) observes or has knowledge of*
2 *behavior or unusual circumstances or transactions, or a pattern*
3 *of behavior or unusual circumstances or transactions, that would*
4 *lead an individual with like training or experience, based on the*
5 *same facts, to form a reasonable belief that an elder or*
6 *dependent adult is the victim of financial abuse as defined in*
7 *Section 15610.30.*

8 SEC. 2. Section 15634 of the Welfare and Institutions Code is
9 amended to read:

10 15634. (a) No care custodian, clergy member, health
11 practitioner, mandated reporter of suspected financial elder *or*
12 *dependent adult* abuse, or employee of an adult protective
13 services agency or a local law enforcement agency who reports a
14 known or suspected instance of elder or dependent adult abuse
15 shall be civilly or criminally liable for any report required or
16 authorized by this article. Any other person reporting a known or
17 suspected instance of elder or dependent adult abuse shall not
18 incur civil or criminal liability as a result of any report authorized
19 by this article, unless it can be proven that a false report was
20 made and the person knew that the report was false. No person
21 required to make a report pursuant to this article, or any person
22 taking photographs at his or her discretion, shall incur any civil
23 or criminal liability for taking photographs of a suspected victim
24 of elder or dependent adult abuse or causing photographs to be
25 taken of such a suspected victim or for disseminating the
26 photographs with the reports required by this article. However,
27 this section shall not be construed to grant immunity from this
28 liability with respect to any other use of the photographs.

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

39 (c) The Legislature finds that, even though it has provided
40 immunity from liability to persons required to report elder or

1 dependent adult abuse, immunity does not eliminate the
2 possibility that actions may be brought against those persons
3 based upon required reports of abuse. In order to further limit the
4 financial hardship that those persons may incur as a result of
5 fulfilling their legal responsibilities, it is necessary that they not
6 be unfairly burdened by legal fees incurred in defending those
7 actions. Therefore, a care custodian, clergy member, health
8 ~~practitioner, mandated reporter of suspected financial elder abuse~~
9 *practitioner*, or an employee of an adult protective services
10 agency or a local law enforcement agency may present to the
11 State Board of Control a claim for reasonable attorneys' fees
12 incurred in any action against that person on the basis of making
13 a report required or authorized by this article if the court has
14 dismissed the action upon a demurrer or motion for summary
15 judgment made by that person, or if he or she prevails in the
16 action. The State Board of Control shall allow that claim if the
17 requirements of this subdivision are met, and the claim shall be
18 paid from an appropriation to be made for that purpose.
19 Attorneys' fees awarded pursuant to this section shall not exceed
20 an hourly rate greater than the rate charged by the Attorney
21 General at the time the award is made and shall not exceed an
22 aggregate amount of fifty thousand dollars (\$50,000). This
23 subdivision shall not apply if a public entity has provided for the
24 defense of the action pursuant to Section 995 of the Government
25 Code.

26 SEC. 3. Section 15655.5 of the Welfare and Institutions Code
27 is amended to read:

28 15655.5. A county adult protective services agency shall
29 provide the organizations listed in paragraphs (v), (w), and (x) of
30 Section 15610.17, and mandated reporters of suspected financial
31 elder *or dependent adult* abuse pursuant to Section 15630.1, with
32 instructional materials regarding elder and dependent adult abuse
33 and neglect and their obligation to report under this chapter. At a
34 minimum, the instructional materials shall include the following:

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

37 (b) Information on how to recognize potential elder and
38 dependent adult abuse and neglect.

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

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

9 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
10 ~~Section 6 of Article XIII B of the California Constitution because~~
11 ~~the only costs that may be incurred by a local agency or school~~
12 ~~district will be incurred because this act creates a new crime or~~
13 ~~infraction, eliminates a crime or infraction, or changes the~~
14 ~~penalty for a crime or infraction, within the meaning of Section~~
15 ~~17556 of the Government Code, or changes the definition of a~~
16 ~~crime within the meaning of Section 6 of Article XIII B of the~~
17 ~~California Constitution.~~