

Assembly Bill No. 2105

Passed the Assembly August 12, 2008

Chief Clerk of the Assembly

Passed the Senate August 7, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 10170.5 of the Business and Professions Code, and to amend Section 15630.1 of the Welfare and Institutions Code, relating to abuse of elders and dependent adults.

LEGISLATIVE COUNSEL’S DIGEST

AB 2105, DeSaulnier. Elder and dependent adult abuse.

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. 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. Pursuant to these provisions, existing law, effective until January 1, 2013, provides for various reporting requirements for mandated reporters of suspected financial abuse, as defined, and makes failure to comply with these requirements subject to a civil penalty.

This bill would, commencing July 1, 2009, expand the category of mandated reporters of suspected financial abuse to include both licensees, as that term is defined under the California Finance Lenders Law and the California Residential Mortgage Lending Act, and employees of licensees engaged in lending or servicing activities, except for those employees involved solely in administrative or clerical practices.

Existing law, the Real Estate Law, requires the licensure of a person by the Real Estate Commissioner to engage in the business of, act in the capacity of, or advertise or assume to act as, a real estate broker or a real estate salesperson. Existing law requires applicants for a real estate license renewal to meet certain education requirements, including at least 18-clock hours of courses or programs related to consumer protection, as specified.

This bill would require the consumer protection courses to include instruction in financial elder and dependent adult abuse signs and reporting requirements.

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

SECTION 1. Section 10170.5 of the Business and Professions Code is amended to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45-clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) A three-hour course in risk management that shall include, but need not be limited to, principles, practices, and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities.

(6) Not less than 18-clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, financial elder and dependent adult abuse signs and reporting requirements, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities,

mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

(7) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45-clock hours of education provided for in Section 10170.4, including an eight-hour update survey course that covers the subject areas specified in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) For purposes of this section, “successful completion” of a course described in paragraphs (1) to (5), inclusive, of subdivision (a) means the passing of a final examination.

SEC. 2. 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, all licensees, and all employees of licensees engaged in lending or servicing activities, except for those employees involved solely in administrative or clerical practices.

(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, “licensee” means licensee, as defined in Section 22007 or subdivision (m) of Section 50003 of the Financial Code.

(d) As used in this section, “financial abuse” has the same meaning as in Section 15610.30.

(e) (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.

(f) 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.

(g) 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 or the employer of the mandated reporter listed in subdivision (a) to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(h) (1) The civil penalty provided for in subdivision (g) shall be recovered only in a civil action brought against the financial institution or licensee 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.

(i) 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.

(j) Reports of suspected financial abuse of an elder or dependent adult made by a mandated reporter, as defined in subdivision (a), pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

(k) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(l) The amendments to this section made by the act that added this subdivision shall become operative on July 1, 2009.

Approved _____, 2008

Governor