

Introduced by Senator SteinbergFebruary 4, 2008

An act to amend Sections 15610.30 and 15657.5 of, and to add Section 15657.7 to, the Welfare and Institutions Code, relating to financial abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as introduced, Steinberg. Financial abuse.

(1) Under existing law, financial abuse of an elder or dependent adult occurs when a person or entity takes, secretes, appropriates, or retains, or assists in the taking, secreting, appropriating, or retaining, of real or personal property of an elder or dependent adult for a wrongful use or with the intent to defraud, or both.

Existing law makes the failure to report, or impeding or inhibiting a report of, among other things, financial abuse of an elder or dependent adult, in violation of certain reporting requirements a misdemeanor.

Existing law makes it a misdemeanor for any caretaker of an elder or a dependent adult to violate any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult.

This bill would, among other things, add to the definition of financial abuse, the taking, secreting, appropriating, obtaining, or retaining, or assisting in the taking, secreting, appropriating, obtaining, or retaining, of real or personal property of an elder or dependent adult when the elder or dependent adult lacks capacity, as defined, or by undue influence, as defined, or both. It would also make various conforming changes to these provisions.

By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law provides that where an elder or dependent adult proves by a preponderance of the evidence that a defendant is liable for financial abuse, the elder or dependent adult may bring a civil action to recover all remedies provided by law and reasonable attorney’s fees and costs.

Existing law requires that specified standards regarding the imposition of punitive damages on an employer based upon the act of an employee be satisfied before any damages or attorney’s fees are awarded in a civil action for financial abuse.

The bill would eliminate the requirement that these standards be satisfied before damages, other than punitive damages, and attorney’s fees are awarded.

(3) Existing law does not provide for a statute of limitations in which to commence a civil action for financial abuse of an elder or dependent adult.

This bill would provide for a 4-year statute of limitations in which to commence a civil action for financial abuse of an elder or dependent adult.

(4) 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.
State-mandated local program: yes.

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

1 SECTION 1. Section 15610.30 of the Welfare and Institutions
 2 Code is amended to read:
 3 15610.30. (a) “Financial abuse” of an elder or dependent adult
 4 occurs when a person or entity does any of the following:
 5 (1) Takes, secretes, appropriates, *obtains*, or retains real or
 6 personal property of an elder or dependent adult ~~to~~ *for* a wrongful
 7 use or with intent to defraud, or both.
 8 (2) Assists in taking, secreting, appropriating, *obtaining*, or
 9 retaining real or personal property of an elder or dependent adult
 10 ~~to~~ *for* a wrongful use or with intent to defraud, or both.
 11 (3) *Takes, secretes, appropriates, obtains, or retains, or assists*
 12 *in taking, secreting, appropriating, obtaining, or retaining, real*

1 *or personal property of an elder or dependent adult when the elder*
2 *or dependent adult lacks capacity pursuant to Section 812 of the*
3 *Probate Code, or by undue influence, as defined in Section 1575*
4 *of the Civil Code, or both.*

5 (b) A person or entity shall be deemed to have taken, secreted,
6 appropriated, *obtained*, or retained property for a wrongful use if,
7 among other things, the person or entity takes, secretes,
8 appropriates, *obtains*, or retains possession of the property in bad
9 faith and the person or entity knew or should have known that this
10 conduct is likely to be harmful to the elder or dependent adult.

11 ~~(1) A person or entity shall be deemed to have acted in bad faith~~
12 ~~if the person or entity knew or should have known that the elder~~
13 ~~or dependent adult had the right to have the property transferred~~
14 ~~or made readily available to the elder or dependent adult or to his~~
15 ~~or her representative.~~

16 ~~(2) For purposes of this section, a person or entity should have~~
17 ~~known of a right specified in paragraph (1) if, on the basis of the~~
18 ~~information received by the person or entity or the person or~~
19 ~~entity's authorized third party, or both, it is obvious to a reasonable~~
20 ~~person that the elder or dependent adult has a right specified in~~
21 ~~paragraph (1).~~

22 (c) For purposes of this section, *a person or entity takes,*
23 *secretes, appropriates, obtains, or retains real or personal property*
24 *when an elder or dependent adult is deprived of any property right*
25 *by means of an agreement, donative transfer, or testamentary*
26 *bequest, regardless of whether the property is held directly or by*
27 *an attorney-in-fact, conservator, trustee, or other representative*
28 *of an elder or dependent adult.*

29 (d) For purposes of this section, “representative” means a person
30 or entity that is either of the following:

31 (1) A conservator, trustee, or other representative of the estate
32 of an elder or dependent adult.

33 (2) An attorney-in-fact of an elder or dependent adult who acts
34 within the authority of the power of attorney.

35 SEC. 2. Section 15657.5 of the Welfare and Institutions Code
36 is amended to read:

37 15657.5. (a) Where it is proven by a preponderance of the
38 evidence that a defendant is liable for financial abuse, as defined
39 in Section 15610.30, in addition to *compensatory damages and*
40 all other remedies otherwise provided by law, the court shall award

1 to the plaintiff reasonable attorney’s fees and costs. The term
2 “costs” includes, but is not limited to, reasonable fees for the
3 services of a conservator, if any, devoted to the litigation of a claim
4 brought under this article.

5 (b) Where it is proven by a preponderance of the evidence that
6 a defendant is liable for financial abuse, as defined in Section
7 15610.30, and where it is proven by clear and convincing evidence
8 that the defendant has been guilty of recklessness, oppression,
9 fraud, or malice in the commission of the abuse, in addition to
10 reasonable attorney’s fees and costs set forth in subdivision (a),
11 and *compensatory damages* and all other remedies otherwise
12 provided by law, ~~the following shall apply: limitations imposed~~
13 ~~by Section 377.34 of the Code of Civil Procedure on the damages~~
14 ~~recoverable shall not apply.~~

15 ~~(1) The limitations imposed by Section 377.34 of the Code of~~
16 ~~Civil Procedure on the damages recoverable shall not apply.~~

17 ~~(2)~~

18 (c) The standards set forth in subdivision (b) of Section 3294
19 of the Civil Code regarding the imposition of punitive damages
20 on an employer based upon the acts of an employee shall be
21 satisfied before any *punitive damages* or *attorney’s fees* permitted
22 ~~under this section~~ may be imposed against an employer *found*
23 *liable for financial abuse as defined in Section 15610.30. This*
24 *subdivision shall not apply to the recovery of damages, other than*
25 *punitive damages, or attorney’s fees.*

26 (e)

27 (d) Nothing in this section affects the award of punitive damages
28 under Section 3294 of the Civil Code.

29 SEC. 3. Section 15657.7 is added to the Welfare and
30 Institutions Code, to read:

31 15657.7. An action for damages pursuant to Section 15657.5
32 for financial abuse of an elder or dependent adult, as defined in
33 Section 15610.30, shall be commenced within four years after the
34 plaintiff discovers or, through the exercise of reasonable diligence,
35 should have discovered, the facts constituting the financial abuse.

36 SEC. 4. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

O