

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 586

Introduced by Senator Pavley

February 17, 2011

An act to add Sections 953.5 and 14409.5 to the Financial Code, and to amend Section 368 of the Penal Code, relating to banks and credit unions.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, as amended, Pavley. Banks and credit unions: signature stamps.

Existing law, the Banking Law, regulates the organization and operations of state-organized banks, and the California Credit Union Law regulates the organization and operation of credit unions, the willful violation of which is a crime. Existing law does not regulate the issuance or use of a signature stamp in financial transactions.

This bill would define "signature stamp" and regulate the issuance of a signature stamp by a state-organized bank or credit union to an ~~account holder~~ *account holder* and the use of the signature stamp by the ~~account holder~~ *account holder* in financial transactions with a bank or credit union. The bill would require a ~~stamp holder~~ *stamp holder* to report a lost or stolen signature stamp to the bank or credit union, as specified.

Existing law prohibits various types of elder abuse, punishable by incarceration, fines, or both incarceration and fines, including imprisonment in the county jail not exceeding one year, or by a fine

not to exceed \$1,000, for specified types of abuse involving theft, embezzlement, forgery, fraud, or identity theft.

This bill would add to those offenses the use of a signature stamp in a financial transaction without the express written authorization of a ~~stamp holder~~ *stamp holder* who is an elder or dependent adult, as specified. The bill would increase the amount of each of the fines otherwise imposed for the existing law offenses, and would provide that the additional fine amount be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense. The bill would provide for restitution for a violation of these provisions.

Because this bill would create new crimes, the bill would create 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 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 953.5 is added to the Financial Code, to
2 read:
3 953.5. (a) As used in this section, “signature stamp” means a
4 rubber or other synthetic stamp or device that is used to accurately
5 imitate the signature of an individual. *Nothing in this section shall*
6 *limit the use of signature stamps issued by a bank prior to the*
7 *enactment of this section.*
8 (b) A bank shall only issue a signature stamp to an existing
9 ~~account holder~~ *account holder* if either (1) the ~~account holder~~
10 *account holder* is present to request the stamp and an employee
11 of the bank witnesses and acknowledges in writing that the
12 signature stamp was requested by the ~~stamp holder~~ *stamp holder*,
13 or (2) *an account holder is unable to physically come into a bank*
14 *due to disability, the account holder provides a letter from a*
15 *physician attesting to the physical limitation, and the requesting*
16 ~~account holder’s~~ *account holder’s* signature has been notarized on
17 an appropriate form approved and issued by the bank.

(c) A bank that issues a signature stamp to an ~~account holder~~ *account holder* shall inform the ~~account holder~~ *account holder* of the risks associated with loss, theft, or misuse of the signature stamp, and his or her rights and responsibilities as a ~~stamp holder~~ *stamp holder*, including, but not limited to, the responsibility to review the account frequently and report any unauthorized transactions promptly, and to report a lost or stolen signature stamp as quickly as possible, upon the discovery that it has been lost or stolen.

(d) A bank shall not honor a request to open a new account that is received by mail from a signature ~~stamp holder~~ *stamp holder*.

(e) Any person who uses a signature stamp in violation of subdivision (d) or (e) of Section 368 of the Penal Code shall, in addition to the penalties set forth therein, be liable for restitution of all funds fraudulently obtained thereby, including the monetary value of any goods or services so obtained.

(f) This section shall apply only to a natural person with respect to his or her personal account and shall not apply to a natural person acting in the capacity of a representative or an agent of an entity that is not a natural person.

SEC. 2. Section 14409.5 is added to the Financial Code, to read:

14409.5. (a) As used in this section, “signature stamp” means a rubber or other synthetic stamp or device that is used to accurately imitate the signature of an individual. *Nothing in this section shall limit the use of signature stamps issued by a credit union prior to the enactment of this section.*

(b) A credit union shall only issue a signature stamp to an existing ~~account holder~~ *account holder* if either (1) the ~~account holder~~ *account holder* is present to request the stamp, and an employee of the credit union witnesses and acknowledges in writing that the signature stamp was requested by the ~~stamp holder~~ *stamp holder*, or (2) *an account holder is unable to physically come into a credit union due to disability, the account holder provides a letter from a physician attesting to the physical limitation, and the requesting* ~~account holder's~~ *account holder's* signature has been notarized on an appropriate form approved and issued by the credit union.

(c) A credit union that issues a signature stamp to an ~~account holder~~ *account holder* shall inform the ~~account holder~~

1 *account holder* of the risks associated with loss, theft, or misuse
2 of the signature stamp, and his or her rights and responsibilities
3 as a ~~stamp holder~~ *stamp holder*, including, but not limited to, the
4 responsibility to review the account frequently and report any
5 unauthorized transactions promptly, and to report a lost or stolen
6 signature stamp as quickly as possible, upon the discovery that it
7 has been lost or stolen.

8 (d) A credit union shall not honor a request to open a new
9 account that is received by mail from a ~~signature-stamp holder~~
10 *stamp holder*.

11 (e) Any person who uses a signature stamp in violation of
12 subdivision (d) or (e) of Section 368 of the Penal Code shall, in
13 addition to the penalties set forth therein, be liable for restitution
14 of all funds fraudulently obtained thereby, including the monetary
15 value of any goods or services so obtained.

16 (f) This section shall apply only to a natural person with respect
17 to his or her personal account and shall not apply to a natural
18 person acting in the capacity of a representative or an agent of an
19 entity that is not a natural person.

20 SEC. 3. Section 368 of the Penal Code is amended to read:

21 368. (a) The Legislature finds and declares that crimes against
22 elders and dependent adults are deserving of special consideration
23 and protection, not unlike the special protections provided for
24 minor children, because elders and dependent adults may be
25 confused, on various medications, mentally or physically impaired,
26 or incompetent, and therefore less able to protect themselves, to
27 understand or report criminal conduct, or to testify in court
28 proceedings on their own behalf.

29 (b) (1) Any person who knows or reasonably should know that
30 a person is an elder or dependent adult and who, under
31 circumstances or conditions likely to produce great bodily harm
32 or death, willfully causes or permits any elder or dependent adult
33 to suffer, or inflicts thereon unjustifiable physical pain or mental
34 suffering, or having the care or custody of any elder or dependent
35 adult, willfully causes or permits the person or health of the elder
36 or dependent adult to be injured, or willfully causes or permits the
37 elder or dependent adult to be placed in a situation in which his or
38 her person or health is endangered, is punishable by imprisonment
39 in a county jail not exceeding one year, or by a fine not to exceed
40 twelve thousand dollars (\$12,000), 50 percent of which shall be

1 allocated to the adult protective services agency, or equivalent
2 elder abuse prevention agency, of the county prosecuting the
3 offense, or by both that fine and imprisonment, or by imprisonment
4 in the state prison for two, three, or four years.

5 (2) If in the commission of an offense described in paragraph
6 (1), the victim suffers great bodily injury, as defined in Section
7 12022.7, the defendant shall receive an additional term in the state
8 prison as follows:

9 (A) Three years if the victim is under 70 years of age.

10 (B) Five years if the victim is 70 years of age or older.

11 (3) If in the commission of an offense described in paragraph
12 (1), the defendant proximately causes the death of the victim, the
13 defendant shall receive an additional term in the state prison as
14 follows:

15 (A) Five years if the victim is under 70 years of age.

16 (B) Seven years if the victim is 70 years of age or older.

17 (c) Any person who knows or reasonably should know that a
18 person is an elder or dependent adult and who, under circumstances
19 or conditions other than those likely to produce great bodily harm
20 or death, willfully causes or permits any elder or dependent adult
21 to suffer, or inflicts thereon unjustifiable physical pain or mental
22 suffering, or having the care or custody of any elder or dependent
23 adult, willfully causes or permits the person or health of the elder
24 or dependent adult to be injured or willfully causes or permits the
25 elder or dependent adult to be placed in a situation in which his or
26 her person or health may be endangered, is guilty of a
27 misdemeanor. A second or subsequent violation of this subdivision
28 is punishable by a fine not to exceed four thousand dollars (\$4,000),
29 50 percent of which shall be allocated to the adult protective
30 services agency, or equivalent elder abuse prevention agency, of
31 the county prosecuting the offense, or by imprisonment in a county
32 jail not to exceed one year, or by both that fine and imprisonment.

33 (d) Any person who is not a caretaker who violates any provision
34 of law proscribing theft, embezzlement, forgery, or fraud, or who
35 violates Section 530.5 proscribing identity theft, or who uses a
36 signature stamp, as defined in subdivision (a) of Sections 953.5
37 and 14409.5 of the Financial Code, in a financial transaction
38 without the knowledge and express written authorization of the
39 ~~stamp holder~~ *stamp holder* with respect to the property or personal
40 identifying information of an elder or a dependent adult, and who

1 knows or reasonably should know that the victim is an elder or a
2 dependent adult, is punishable by imprisonment in a county jail
3 not exceeding one year, or in the state prison for two, three, or four
4 years, when the moneys, labor, goods, services, or real or personal
5 property taken or obtained is of a value exceeding nine hundred
6 fifty dollars (\$950); and by a fine not exceeding two thousand
7 dollars (\$2,000), 50 percent of which shall be allocated to the adult
8 protective services agency, or equivalent elder abuse prevention
9 agency, of the county prosecuting the offense, by imprisonment
10 in a county jail not exceeding one year, or by both that fine and
11 imprisonment, when the moneys, labor, goods, services, or real or
12 personal property taken or obtained is of a value not exceeding
13 nine hundred fifty dollars (\$950).

14 (e) Any caretaker of an elder or a dependent adult who violates
15 any provision of law proscribing theft, embezzlement, forgery, or
16 fraud, or who violates Section 530.5 proscribing identity theft, or
17 who uses a signature stamp, as defined in subdivision (a) of
18 Sections 953.5 and 14409.5 of the Financial Code, in a financial
19 transaction without the express written authorization of the
20 ~~stamp holder~~ *stamp holder* with respect to the property or personal
21 identifying information of that elder or dependent adult, is
22 punishable by imprisonment in a county jail not exceeding one
23 year, or in the state prison for two, three, or four years when the
24 moneys, labor, goods, services, or real or personal property taken
25 or obtained is of a value exceeding nine hundred fifty dollars
26 (\$950), and by a fine not exceeding two thousand dollars (\$2,000),
27 50 percent of which shall be allocated to the adult protective
28 services agency, or equivalent elder abuse prevention agency, of
29 the county prosecuting the offense, by imprisonment in a county
30 jail not exceeding one year, or by both that fine and imprisonment,
31 when the moneys, labor, goods, services, or real or personal
32 property taken or obtained is of a value not exceeding nine hundred
33 fifty dollars (\$950).

34 (f) Any person who commits the false imprisonment of an elder
35 or a dependent adult by the use of violence, menace, fraud, or
36 deceit is punishable by imprisonment in the state prison for two,
37 three, or four years.

38 (g) As used in this section, “elder” means any person who is 65
39 years of age or older.

1 (h) As used in this section, “dependent adult” means any person
2 who is between the ages of 18 and 64, who has physical or mental
3 limitations which restrict his or her ability to carry out normal
4 activities or to protect his or her rights, including, but not limited
5 to, persons who have physical or developmental disabilities or
6 whose physical or mental abilities have diminished because of
7 age. “Dependent adult” includes any person between the ages of
8 18 and 64 who is admitted as an inpatient to a 24-hour health
9 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
10 Health and Safety Code.

11 (i) As used in this section, “caretaker” means any person who
12 has the care, custody, or control of, or who stands in a position of
13 trust with, an elder or a dependent adult.

14 (j) Nothing in this section shall preclude prosecution under both
15 this section and Section 187 or 12022.7 or any other provision of
16 law. However, a person shall not receive an additional term of
17 imprisonment under both paragraphs (2) and (3) of subdivision
18 (b) for any single offense, nor shall a person receive an additional
19 term of imprisonment under both Section 12022.7 and paragraph
20 (2) or (3) of subdivision (b) for any single offense.

21 (k) In any case in which a person is convicted of violating these
22 provisions, the court may require him or her to receive appropriate
23 counseling as a condition of probation. Any defendant ordered to
24 be placed in a counseling program shall be responsible for paying
25 the expense of his or her participation in the counseling program
26 as determined by the court. The court shall take into consideration
27 the ability of the defendant to pay, and no defendant shall be denied
28 probation because of his or her inability to pay.

29 SEC. 4. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.