AMENDED IN SENATE MAY 10, 2011
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE APRIL 13, 2011
AMENDED IN SENATE MARCH 21, 2011

# 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 and the use of the signature stamp by the account holder in financial transactions with a bank or credit union. The bill would require a 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.

Thisbill would add to those offenses the use of a signature stamp in a financial transaction without the express written authorization of a stamp holder whe is an elder or dependent adult, as speeified. 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 make changes to conform those provisions to changes made in AB 109 of the 2011-12 Regular Session. The bill would provide for restitution for a violation of these provisions committed through use of a signature stamp.

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:

SECTION 1. Section 953.5 is added to the Financial Code, to read:
953.5. (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 bank prior to the enactment of this section.
(b) A bank shall only issue a signature stamp to an existing account holder if either (1) the account holder is present to request the stamp and an employee of the bank witnesses and acknowledges in writing that the signature stamp was requested by the stamp holder, or (2) an account holder is unable to physically come into a bank due to disability, the account holder provides a letter from a physician attesting to the physical limitation, and the
requesting account holder's signature has been notarized on an appropriate form approved and issued by the bank.
(c) A bank that issues a signature stamp to an account holder shall inform the 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, 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.
(e) Any person who uses a signature stampin when committing $a$ 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 if either (1) the 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, 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 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 shall inform the 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, 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 credit union shall not honor a request to open a new account that is received by mail from a signature stamp holder.
(e) Any person who uses a signature stampin when committing $a$ 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. 3. Section 368 of the Penal Code is amended to read:
368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.
(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed twelve thousand dollars $(\$ 12,000)$, 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the
offense, or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.
(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:
(A) Three years if the victim is under 70 years of age.
(B) Five years if the victim is 70 years of age or older.
(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:
(A) Five years if the victim is under 70 years of age.
(B) Seven years if the victim is 70 years of age or older.
(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed four thousand dollars $(\$ 4,000)$, 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.
(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, or who uses a signature stamp, as defmed in subdivision (a) of Sections 953.5 and 14409.5 of the Financial Code, in a finaneial transaction without the knowledge and express written authorization of the stamp holder with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding
one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ( $\$ 950$ ); and by a fine not exceeding two thousand dollars ( $\$ 2,000$ ), 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).
(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft,or who uses a signature stamp, as defined in subdivision (a) of Seetions 953.5 and 14409.5 of the Finaneial Code, in a finaneial transaetion without the express written authorization of the stamp holder with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding two thousand dollars ( $\$ 2,000$ ), 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).
(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.
(g) As used in this section, "elder" means any person who is 65 years of age or older.
(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64 , who has physical or mental limitations which restrict his or her ability to carry out normal
activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24 -hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.
(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.
(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

SEC. 3.5. Section 368 of the Penal Code, as amended by Section 336 of Chapter 15 of the Statutes of 2011, is amended to read:
368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.
(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult
to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six twelve thousand dollars $(\$ 6,000)(\$ 12,000), 50$ percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.
(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:
(A) Three years if the victim is under 70 years of age.
(B) Five years if the victim is 70 years of age or older.
(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:
(A) Five years if the victim is under 70 years of age.
(B) Seven years if the victim is 70 years of age or older.
(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two four thousand dollars $(\$ 2,000)(\$ 4,000), 50$ percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, or by
imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.
(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170 for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950); and by a fine not exceeding-me two thousand dollars ( $\$ 1,000$ ) ( $\$ 2,000$ ), 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).
(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170 for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding-one two thousand dollars $(\$ 1,000)(\$ 2,000)$, 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).
(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or
deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.
(g) As used in this section, "elder" means any person who is 65 years of age or older.
(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64 , who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.
(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.
(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 368 of the Penal Code proposed by both this bill and $A B$ 109, which has been chaptered but is not operative. Section 3.5 shall become operative only if (1) this bill is enacted and becomes effective on or before January 1, 2012, (2) this bill amends Section 368 of the Penal Code, and (3) AB 109 becomes operative, in which case Section 368 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date
of AB 109, at which time Section 3.5 of this bill shall become 2 operative.
3 SEC. 4.
4 SEC. 5. No reimbursement is required by this act pursuant to 5 Section 6 of Article XIIIB of the California Constitution because 6 the only costs that may be incurred by a local agency or school 7 district will be incurred because this act creates a new crime or 8 infraction, eliminates a crime or infraction, or changes the penalty 9 for a crime or infraction, within the meaning of Section 17556 of 10 the Government Code, or changes the definition of a crime within 11 the meaning of Section 6 of Article XIII B of the California 12 Constitution.

