

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE MAY 27, 2011

AMENDED IN SENATE MAY 10, 2011

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
(Coauthor: Senator Alquist)**

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 accountholder and the use of the signature stamp by the accountholder

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.

This 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. *The bill would additionally incorporate changes to Section 368 of the Penal Code proposed by AB 332, to be operative if both bills are enacted and become operative, as specified.*

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 accountholder if either (1) the accountholder is present to request

1 the stamp and an employee of the bank witnesses and
2 acknowledges in writing that the signature stamp was requested
3 by the stampholder, or (2) an accountholder is unable to physically
4 come into a bank due to disability, the accountholder provides a
5 letter from a physician attesting to the physical limitation, and the
6 requesting accountholder's signature has been notarized on an
7 appropriate form approved and issued by the bank.

8 (c) A bank that issues a signature stamp to an accountholder
9 shall inform the accountholder of the risks associated with loss,
10 theft, or misuse of the signature stamp, and his or her rights and
11 responsibilities as a stampholder, including, but not limited to, the
12 responsibility to review the account frequently and report any
13 unauthorized transactions promptly, and to report a lost or stolen
14 signature stamp as quickly as possible, upon the discovery that it
15 has been lost or stolen. Nothing in this subdivision shall be
16 construed to limit or expand any civil liabilities that may exist
17 between a bank and an individual customer.

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

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

25 (f) This section shall apply only to a natural person with respect
26 to his or her personal accounts, including, but not limited to, those
27 held in trust, and shall not apply to a natural person acting in the
28 capacity of a representative or an agent of an entity that is not a
29 natural person.

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

32 14409.5. (a) As used in this section, "signature stamp" means
33 a rubber or other synthetic stamp or device that is used to accurately
34 imitate the signature of an individual. Nothing in this section shall
35 limit the use of signature stamps issued by a credit union prior to
36 the enactment of this section.

37 (b) A credit union shall only issue a signature stamp to an
38 existing accountholder if either (1) the accountholder is present to
39 request the stamp, and an employee of the credit union witnesses
40 and acknowledges in writing that the signature stamp was requested

1 by the stampholder, or (2) an accountholder is unable to physically
2 come into a credit union due to disability, the accountholder
3 provides a letter from a physician attesting to the physical
4 limitation, and the requesting accountholder's signature has been
5 notarized on an appropriate form approved and issued by the credit
6 union.

7 (c) A credit union that issues a signature stamp to an
8 accountholder shall inform the accountholder of the risks associated
9 with loss, theft, or misuse of the signature stamp, and his or her
10 rights and responsibilities as a stampholder, including, but not
11 limited to, the responsibility to review the account frequently and
12 report any unauthorized transactions promptly, and to report a lost
13 or stolen signature stamp as quickly as possible, upon the discovery
14 that it has been lost or stolen. Nothing in this subdivision shall be
15 construed to limit or expand any civil liabilities that may exist
16 between a credit union and an individual customer.

17 (d) A credit union shall not honor a request to open a new
18 account that is received by mail from a signature stamp holder.

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

24 (f) This section shall apply only to a natural person with respect
25 to his or her personal accounts, including, but not limited to, those
26 held in trust, and shall not apply to a natural person acting in the
27 capacity of a representative or an agent of an entity that is not a
28 natural person.

29 SEC. 3. Section 368 of the Penal Code, *as amended by Section*
30 *9 of Chapter 28 of the Third Extraordinary Session of the Statutes*
31 *of 2009*, is amended to read:

32 368. (a) The Legislature finds and declares that crimes against
33 elders and dependent adults are deserving of special consideration
34 and protection, not unlike the special protections provided for
35 minor children, because elders and dependent adults may be
36 confused, on various medications, mentally or physically impaired,
37 or incompetent, and therefore less able to protect themselves, to
38 understand or report criminal conduct, or to testify in court
39 proceedings on their own behalf.

1 (b) (1) Any person who knows or reasonably should know that
2 a person is an elder or dependent adult and who, under
3 circumstances or conditions likely to produce great bodily harm
4 or death, willfully causes or permits any elder or dependent adult
5 to suffer, or inflicts thereon unjustifiable physical pain or mental
6 suffering, or having the care or custody of any elder or dependent
7 adult, willfully causes or permits the person or health of the elder
8 or dependent adult to be injured, or willfully causes or permits the
9 elder or dependent adult to be placed in a situation in which his or
10 her person or health is endangered, is punishable by imprisonment
11 in a county jail not exceeding one year, or by a fine not to exceed
12 twelve thousand dollars (\$12,000), *of which* any amount in excess
13 of six thousand dollars (\$6,000) ~~of which~~ shall be allocated to the
14 adult protective services agency, or equivalent elder abuse
15 prevention agency, of the county prosecuting the offense, or by
16 both that fine and imprisonment, or by imprisonment in the state
17 prison for two, three, or four years.

18 (2) If in the commission of an offense described in paragraph
19 (1), the victim suffers great bodily injury, as defined in Section
20 12022.7, the defendant shall receive an additional term in the state
21 prison as follows:

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

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

24 (3) If in the commission of an offense described in paragraph
25 (1), the defendant proximately causes the death of the victim, the
26 defendant shall receive an additional term in the state prison as
27 follows:

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

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

30 (c) Any person who knows or reasonably should know that a
31 person is an elder or dependent adult and who, under circumstances
32 or conditions other than those likely to produce great bodily harm
33 or death, willfully causes or permits any elder or dependent adult
34 to suffer, or inflicts thereon unjustifiable physical pain or mental
35 suffering, or having the care or custody of any elder or dependent
36 adult, willfully causes or permits the person or health of the elder
37 or dependent adult to be injured or willfully causes or permits the
38 elder or dependent adult to be placed in a situation in which his or
39 her person or health may be endangered, is guilty of a
40 misdemeanor. A second or subsequent violation of this subdivision

1 is punishable by a fine not to exceed four thousand dollars (\$4,000),
2 *of which* any amount in excess of two thousand dollars (\$2,000)
3 ~~of which~~ shall be allocated to the adult protective services agency,
4 or equivalent elder abuse prevention agency, of the county
5 prosecuting the offense, or by imprisonment in a county jail not
6 to exceed one year, or by both that fine and imprisonment.

7 (d) Any person who is not a caretaker who violates any provision
8 of law proscribing theft, embezzlement, forgery, or fraud, or who
9 violates Section 530.5 proscribing identity theft, with respect to
10 the property or personal identifying information of an elder or a
11 dependent adult, and who knows or reasonably should know that
12 the victim is an elder or a dependent adult, is punishable by
13 imprisonment in a county jail not exceeding one year, or in the
14 state prison for two, three, or four years, when the moneys, labor,
15 goods, services, or real or personal property taken or obtained is
16 of a value exceeding nine hundred fifty dollars (\$950), and by a
17 fine not exceeding two thousand dollars (\$2,000), *of which* any
18 amount in excess of one thousand dollars (\$1,000) ~~of which~~ shall
19 be allocated to the adult protective services agency, or equivalent
20 elder abuse prevention agency, of the county prosecuting the
21 offense, by imprisonment in a county jail not exceeding one year,
22 or by both that fine and imprisonment, when the moneys, labor,
23 goods, services, or real or personal property taken or obtained is
24 of a value not exceeding nine hundred fifty dollars (\$950).

25 (e) Any caretaker of an elder or a dependent adult who violates
26 any provision of law proscribing theft, embezzlement, forgery, or
27 fraud, or who violates Section 530.5 proscribing identity theft,
28 with respect to the property or personal identifying information of
29 that elder or dependent adult, is punishable by imprisonment in a
30 county jail not exceeding one year, or in the state prison for two,
31 three, or four years when the moneys, labor, goods, services, or
32 real or personal property taken or obtained is of a value exceeding
33 nine hundred fifty dollars (\$950), and by a fine not exceeding two
34 thousand dollars (\$2,000), *of which* any amount in excess of one
35 thousand dollars (\$1,000) ~~of which~~ shall be allocated to the adult
36 protective services agency, or equivalent elder abuse prevention
37 agency, of the county prosecuting the offense, by imprisonment
38 in a county jail not exceeding one year, or by both that fine and
39 imprisonment, when the moneys, labor, goods, services, or real or

1 personal property taken or obtained is of a value not exceeding
2 nine hundred fifty dollars (\$950).

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

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

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

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

22 (j) Nothing in this section shall preclude prosecution under both
23 this section and Section 187 or 12022.7 or any other provision of
24 law. However, a person shall not receive an additional term of
25 imprisonment under both paragraphs (2) and (3) of subdivision
26 (b) for any single offense, nor shall a person receive an additional
27 term of imprisonment under both Section 12022.7 and paragraph
28 (2) or (3) of subdivision (b) for any single offense.

29 (k) In any case in which a person is convicted of violating these
30 provisions, the court may require him or her to receive appropriate
31 counseling as a condition of probation. Any defendant ordered to
32 be placed in a counseling program shall be responsible for paying
33 the expense of his or her participation in the counseling program
34 as determined by the court. The court shall take into consideration
35 the ability of the defendant to pay, and no defendant shall be denied
36 probation because of his or her inability to pay.

37 SEC. 3.5. Section 368 of the Penal Code, as amended by
38 Section 336 of Chapter 15 of the Statutes of 2011, is amended to
39 read:

1 368. (a) The Legislature finds and declares that crimes against
2 elders and dependent adults are deserving of special consideration
3 and protection, not unlike the special protections provided for
4 minor children, because elders and dependent adults may be
5 confused, on various medications, mentally or physically impaired,
6 or incompetent, and therefore less able to protect themselves, to
7 understand or report criminal conduct, or to testify in court
8 proceedings on their own behalf.

9 (b) (1) Any person who knows or reasonably should know that
10 a person is an elder or dependent adult and who, under
11 circumstances or conditions likely to produce great bodily harm
12 or death, willfully causes or permits any elder or dependent adult
13 to suffer, or inflicts thereon unjustifiable physical pain or mental
14 suffering, or having the care or custody of any elder or dependent
15 adult, willfully causes or permits the person or health of the elder
16 or dependent adult to be injured, or willfully causes or permits the
17 elder or dependent adult to be placed in a situation in which his or
18 her person or health is endangered, is punishable by imprisonment
19 in a county jail not exceeding one year, or by a fine not to exceed
20 twelve thousand dollars (\$12,000), *of which* any amount in excess
21 of six thousand dollars (\$6,000) ~~of which~~ shall be allocated to the
22 adult protective services agency, or equivalent elder abuse
23 prevention agency, of the county prosecuting the offense, or by
24 both that fine and imprisonment, or by imprisonment in the state
25 prison for two, three, or four years.

26 (2) If in the commission of an offense described in paragraph
27 (1), the victim suffers great bodily injury, as defined in Section
28 12022.7, the defendant shall receive an additional term in the state
29 prison as follows:

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

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

32 (3) If in the commission of an offense described in paragraph
33 (1), the defendant proximately causes the death of the victim, the
34 defendant shall receive an additional term in the state prison as
35 follows:

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

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

38 (c) Any person who knows or reasonably should know that a
39 person is an elder or dependent adult and who, under circumstances
40 or conditions other than those likely to produce great bodily harm

1 or death, willfully causes or permits any elder or dependent adult
2 to suffer, or inflicts thereon unjustifiable physical pain or mental
3 suffering, or having the care or custody of any elder or dependent
4 adult, willfully causes or permits the person or health of the elder
5 or dependent adult to be injured or willfully causes or permits the
6 elder or dependent adult to be placed in a situation in which his or
7 her person or health may be endangered, is guilty of a
8 misdemeanor. A second or subsequent violation of this subdivision
9 is punishable by a fine not to exceed four thousand dollars (\$4,000),
10 *of which* any amount in excess of two thousand dollars (\$2,000)
11 ~~of which~~ shall be allocated to the adult protective services agency,
12 or equivalent elder abuse prevention agency, of the county
13 prosecuting the offense, or by imprisonment in a county jail not
14 to exceed one year, or by both that fine and imprisonment.

15 (d) Any person who is not a caretaker who violates any provision
16 of law proscribing theft, embezzlement, forgery, or fraud, or who
17 violates Section 530.5 proscribing identity theft, with respect to
18 the property or personal identifying information of an elder or a
19 dependent adult, and who knows or reasonably should know that
20 the victim is an elder or a dependent adult, is punishable by
21 imprisonment in a county jail not exceeding one year, or pursuant
22 to subdivision (h) of Section 1170 for two, three, or four years,
23 when the moneys, labor, goods, services, or real or personal
24 property taken or obtained is of a value exceeding nine hundred
25 fifty dollars (\$950), and by a fine not exceeding two thousand
26 dollars (\$2,000), *of which* any amount in excess of one thousand
27 dollars (\$1,000) ~~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 (e) Any caretaker of an elder or a dependent adult who violates
35 any provision of law proscribing theft, embezzlement, forgery, or
36 fraud, or who violates Section 530.5 proscribing identity theft,
37 with respect to the property or personal identifying information of
38 that elder or dependent adult, is punishable by imprisonment in a
39 county jail not exceeding one year, or pursuant to subdivision (h)
40 of Section 1170 for two, three, or four years when the moneys,

1 labor, goods, services, or real or personal property taken or obtained
2 is of a value exceeding nine hundred fifty dollars (\$950), and by
3 a fine not exceeding two thousand dollars (\$2,000), *of which* any
4 amount in excess of one thousand dollars (\$1,000) ~~of which~~ shall
5 be allocated to the adult protective services agency, or equivalent
6 elder abuse prevention agency, of the county prosecuting the
7 offense, by imprisonment in a county jail not exceeding one year,
8 or by both that fine and imprisonment, when the moneys, labor,
9 goods, services, or real or personal property taken or obtained is
10 of a value not exceeding nine hundred fifty dollars (\$950).

11 (f) Any person who commits the false imprisonment of an elder
12 or a dependent adult by the use of violence, menace, fraud, or
13 deceit is punishable by imprisonment pursuant to subdivision (h)
14 of Section 1170 for two, three, or four years.

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

17 (h) As used in this section, “dependent adult” means any person
18 who is between 18 and 64 years of age, who has physical or mental
19 limitations which restrict his or her ability to carry out normal
20 activities or to protect his or her rights, including, but not limited
21 to, persons who have physical or developmental disabilities or
22 whose physical or mental abilities have diminished because of
23 age. “Dependent adult” includes any person between 18 and 64
24 years of age who is admitted as an inpatient to a 24-hour health
25 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
26 Health and Safety Code.

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

30 (j) Nothing in this section shall preclude prosecution under both
31 this section and Section 187 or 12022.7 or any other provision of
32 law. However, a person shall not receive an additional term of
33 imprisonment under both paragraphs (2) and (3) of subdivision
34 (b) for any single offense, nor shall a person receive an additional
35 term of imprisonment under both Section 12022.7 and paragraph
36 (2) or (3) of subdivision (b) for any single offense.

37 (k) In any case in which a person is convicted of violating these
38 provisions, the court may require him or her to receive appropriate
39 counseling as a condition of probation. Any defendant ordered to
40 be placed in a counseling program shall be responsible for paying

1 the expense of his or her participation in the counseling program
2 as determined by the court. The court shall take into consideration
3 the ability of the defendant to pay, and no defendant shall be denied
4 probation because of his or her inability to pay.

5 *SEC. 3.7. Section 368 of the Penal Code, as amended by*
6 *Section 9 of Chapter 28 of the Third Extraordinary Session of the*
7 *Statutes of 2009, is amended to read:*

8 368. (a) The Legislature finds and declares that crimes against
9 elders and dependent adults are deserving of special consideration
10 and protection, not unlike the special protections provided for
11 minor children, because elders and dependent adults may be
12 confused, on various medications, mentally or physically impaired,
13 or incompetent, and therefore less able to protect themselves, to
14 understand or report criminal conduct, or to testify in court
15 proceedings on their own behalf.

16 (b) (1) Any person who knows or reasonably should know that
17 a person is an elder or dependent adult and who, under
18 circumstances or conditions likely to produce great bodily harm
19 or death, willfully causes or permits any elder or dependent adult
20 to suffer, or inflicts thereon unjustifiable physical pain or mental
21 suffering, or having the care or custody of any elder or dependent
22 adult, willfully causes or permits the person or health of the elder
23 or dependent adult to be injured, or willfully causes or permits the
24 elder or dependent adult to be placed in a situation in which his or
25 her person or health is endangered, is punishable by imprisonment
26 in a county jail not exceeding one year, or by a fine not to exceed
27 *twelve thousand dollars (\$12,000), of which any amount in excess*
28 *of six thousand dollars (~~\$6,000~~), or (\$6,000) shall be allocated to*
29 *the adult protective services agency, or equivalent elder abuse*
30 *prevention agency, of the county prosecuting the offense, or by*
31 both that fine and imprisonment, or by imprisonment in the state
32 prison for two, three, or four years.

33 (2) If in the commission of an offense described in paragraph
34 (1), the victim suffers great bodily injury, as defined in Section
35 12022.7, the defendant shall receive an additional term in the state
36 prison as follows:

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

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

39 (3) If in the commission of an offense described in paragraph
40 (1), the defendant proximately causes the death of the victim, the

1 defendant shall receive an additional term in the state prison as
2 follows:

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

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

5 (c) Any person who knows or reasonably should know that a
6 person is an elder or dependent adult and who, under circumstances
7 or conditions other than those likely to produce great bodily harm
8 or death, willfully causes or permits any elder or dependent adult
9 to suffer, or inflicts thereon unjustifiable physical pain or mental
10 suffering, or having the care or custody of any elder or dependent
11 adult, willfully causes or permits the person or health of the elder
12 or dependent adult to be injured or willfully causes or permits the
13 elder or dependent adult to be placed in a situation in which his or
14 her person or health may be endangered, is guilty of a
15 misdemeanor. A second or subsequent violation of this subdivision
16 is punishable by a fine not to exceed *four thousand dollars*
17 *(\$4,000), of which any amount in excess of two thousand dollars*
18 *(\$2,000) shall be allocated to the adult protective services agency,*
19 *or equivalent elder abuse prevention agency, of the county*
20 *prosecuting the offense, or by imprisonment in a county jail not*
21 *to exceed one year, or by both that fine and imprisonment.*

22 (d) Any person who is not a caretaker who violates any provision
23 of law proscribing theft, embezzlement, forgery, or fraud, or who
24 violates Section 530.5 proscribing identity theft, with respect to
25 the property or personal identifying information of an elder or a
26 dependent adult, and who knows or reasonably should know that
27 the victim is an elder or a dependent adult, is punishable ~~by~~
28 ~~imprisonment in a county jail not exceeding one year, or in the~~
29 ~~state prison for two, three, or four years, when the moneys, labor,~~
30 ~~goods, services, or real or personal property taken or obtained is~~
31 ~~of a value exceeding nine hundred fifty dollars (\$950); and by a~~
32 ~~fine not exceeding one thousand dollars (\$1,000), by imprisonment~~
33 ~~in a county jail not exceeding one year, or by both that fine and~~
34 ~~imprisonment, when the moneys, labor, goods, services, or real or~~
35 ~~personal property taken or obtained is of a value not exceeding~~
36 ~~nine hundred fifty dollars (\$950). as follows:~~

37 (1) *By a fine not exceeding two thousand five hundred dollars*
38 *(\$2,500), or by imprisonment in a county jail not exceeding one*
39 *year, or by both that fine and imprisonment or, by a fine not*
40 *exceeding ten thousand dollars (\$10,000), or by imprisonment in*

1 *the state prison for two, three, or four years, or by both that fine*
2 *and imprisonment, when the moneys, labor, goods, services, or*
3 *real or personal property taken or obtained is of a value exceeding*
4 *nine hundred fifty dollars (\$950).*

5 (2) *By a fine not exceeding two thousand dollars (\$2,000), of*
6 *which any amount in excess of one thousand dollars (\$1,000) shall*
7 *be allocated to the adult protective services agency, or equivalent*
8 *elder abuse prevention agency, of the county prosecuting the*
9 *offense, by imprisonment in a county jail not exceeding one year,*
10 *or by both that fine and imprisonment, when the moneys, labor,*
11 *goods, services, or real or personal property taken or obtained is*
12 *of a value not exceeding nine hundred fifty dollars (\$950).*

13 (e) Any caretaker of an elder or a dependent adult who violates
14 any provision of law proscribing theft, embezzlement, forgery, or
15 fraud, or who violates Section 530.5 proscribing identity theft,
16 with respect to the property or personal identifying information of
17 that elder or dependent adult, is punishable ~~by imprisonment in a~~
18 ~~county jail not exceeding one year, or in the state prison for two,~~
19 ~~three, or four years when the moneys, labor, goods, services, or~~
20 ~~real or personal property taken or obtained is of a value exceeding~~
21 ~~nine hundred fifty dollars (\$950), and by a as follows:~~

22 (1) *By a fine not exceeding two thousand five hundred dollars*
23 *(\$2,500), or by imprisonment in a county jail not exceeding one*
24 *year, or by both that fine and imprisonment, or by a fine not*
25 *exceeding ten thousand dollars (\$10,000), or by imprisonment in*
26 *the state prison for two, three, or four years, or by both that fine*
27 *and imprisonment, when the moneys, labor, goods, services, or*
28 *real or personal property taken or obtained is of a value exceeding*
29 *nine hundred fifty dollars (\$950).*

30 (2) *By a fine not exceeding two thousand dollars (\$2,000), of*
31 *which any amount in excess of one thousand dollars ~~(\$1,000);~~*
32 *(\$1,000) shall be allocated to the adult protective services agency,*
33 *or equivalent elder abuse prevention agency, of the county*
34 *prosecuting the offense, by imprisonment in a county jail not*
35 *exceeding one year, or by both that fine and imprisonment, when*
36 *the moneys, labor, goods, services, or real or personal property*
37 *taken or obtained is of a value not exceeding nine hundred fifty*
38 *dollars (\$950).*

39 (f) Any person who commits the false imprisonment of an elder
40 or a dependent adult by the use of violence, menace, fraud, or

1 deceit is punishable by imprisonment in the state prison for two,
2 three, or four years.

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

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

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

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

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

33 *SEC. 3.9. Section 368 of the Penal Code, as amended by*
34 *Section 336 of Chapter 15 of the Statutes of 2011, is amended to*
35 *read:*

36 368. (a) The Legislature finds and declares that crimes against
37 elders and dependent adults are deserving of special consideration
38 and protection, not unlike the special protections provided for
39 minor children, because elders and dependent adults may be
40 confused, on various medications, mentally or physically impaired,

1 or incompetent, and therefore less able to protect themselves, to
2 understand or report criminal conduct, or to testify in court
3 proceedings on their own behalf.

4 (b) (1) Any person who knows or reasonably should know that
5 a person is an elder or dependent adult and who, under
6 circumstances or conditions likely to produce great bodily harm
7 or death, willfully causes or permits any elder or dependent adult
8 to suffer, or inflicts thereon unjustifiable physical pain or mental
9 suffering, or having the care or custody of any elder or dependent
10 adult, willfully causes or permits the person or health of the elder
11 or dependent adult to be injured, or willfully causes or permits the
12 elder or dependent adult to be placed in a situation in which his or
13 her person or health is endangered, is punishable by imprisonment
14 in a county jail not exceeding one year, or by a fine not to exceed
15 *twelve thousand dollars (\$12,000), of which any amount in excess*
16 *of six thousand dollars (\$6,000), or (\$6,000) shall be allocated to*
17 *the adult protective services agency, or equivalent elder abuse*
18 *prevention agency, of the county prosecuting the offense, or by*
19 both that fine and imprisonment, or by imprisonment in the state
20 prison for two, three, or four years.

21 (2) If in the commission of an offense described in paragraph
22 (1), the victim suffers great bodily injury, as defined in Section
23 12022.7, the defendant shall receive an additional term in the state
24 prison as follows:

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

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

27 (3) If in the commission of an offense described in paragraph
28 (1), the defendant proximately causes the death of the victim, the
29 defendant shall receive an additional term in the state prison as
30 follows:

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

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

33 (c) Any person who knows or reasonably should know that a
34 person is an elder or dependent adult and who, under circumstances
35 or conditions other than those likely to produce great bodily harm
36 or death, willfully causes or permits any elder or dependent adult
37 to suffer, or inflicts thereon unjustifiable physical pain or mental
38 suffering, or having the care or custody of any elder or dependent
39 adult, willfully causes or permits the person or health of the elder
40 or dependent adult to be injured or willfully causes or permits the

1 elder or dependent adult to be placed in a situation in which his or
2 her person or health may be endangered, is guilty of a
3 misdemeanor. A second or subsequent violation of this subdivision
4 is punishable by a fine not to exceed *four thousand dollars*
5 *(\$4,000), of which any amount in excess of two thousand dollars*
6 ~~*(\$2,000), or (\$2,000)*~~ *shall be allocated to the adult protective*
7 *services agency, or equivalent elder abuse prevention agency, of*
8 *the county prosecuting the offense, or by imprisonment in a county*
9 *jail not to exceed one year, or by both that fine and imprisonment.*

10 (d) Any person who is not a caretaker who violates any provision
11 of law proscribing theft, embezzlement, forgery, or fraud, or who
12 violates Section 530.5 proscribing identity theft, with respect to
13 the property or personal identifying information of an elder or a
14 dependent adult, and who knows or reasonably should know that
15 the victim is an elder or a dependent adult, is punishable ~~by~~
16 ~~imprisonment in a county jail not exceeding one year, or pursuant~~
17 ~~to subdivision (h) of Section 1170 for two, three, or four years,~~
18 ~~when the moneys, labor, goods, services, or real or personal~~
19 ~~property taken or obtained is of a value exceeding nine hundred~~
20 ~~fifty dollars (\$950); and by a fine not exceeding one thousand~~
21 ~~dollars (\$1,000), by imprisonment in a county jail not exceeding~~
22 ~~one year, or by both that fine and imprisonment, when the moneys,~~
23 ~~labor, goods, services, or real or personal property taken or obtained~~
24 ~~is of a value not exceeding nine hundred fifty dollars (\$950). as~~
25 *follows:*

26 (1) *By a fine not exceeding two thousand five hundred dollars*
27 *(\$2,500), or by imprisonment in a county jail not exceeding one*
28 *year, or by both that fine and imprisonment, or by a fine not*
29 *exceeding ten thousand dollars (\$10,000), or by imprisonment*
30 *pursuant to subdivision (h) of Section 1170 for two, three, or four*
31 *years, or by both that fine and imprisonment, when the moneys,*
32 *labor, goods, services, or real or personal property taken or*
33 *obtained is of a value exceeding nine hundred fifty dollars (\$950).*

34 (2) *By a fine not exceeding two thousand dollars (\$2,000), of*
35 *which any amount in excess of one thousand dollars (\$1,000) shall*
36 *be allocated to the adult protective services agency, or equivalent*
37 *agency, of the county prosecuting the offense, by imprisonment in*
38 *a county jail not exceeding one year, or by both that fine and*
39 *imprisonment, when the moneys, labor, goods, services, or real*

1 *or personal property taken or obtained is of a value not exceeding*
2 *nine hundred fifty dollars (\$950).*

3 (e) Any caretaker of an elder or a dependent adult who violates
4 any provision of law proscribing theft, embezzlement, forgery, or
5 fraud, or who violates Section 530.5 proscribing identity theft,
6 with respect to the property or personal identifying information of
7 that elder or dependent adult, is punishable ~~by imprisonment in a~~
8 ~~county jail not exceeding one year, or pursuant to subdivision (h)~~
9 ~~of Section 1170 for two, three, or four years when the moneys,~~
10 ~~labor, goods, services, or real or personal property taken or obtained~~
11 ~~is of a value exceeding nine hundred fifty dollars (\$950), and by~~
12 ~~a as follows:~~

13 (1) *By a fine not exceeding two thousand five hundred dollars*
14 *(\$2,500), or by imprisonment in a county jail not exceeding one*
15 *year, or by both that fine and imprisonment, or by a fine not*
16 *exceeding ten thousand dollars (\$10,000), or by imprisonment*
17 *pursuant to subdivision (h) of Section 1170 for two, three, or four*
18 *years, or by both that fine and imprisonment, when the moneys,*
19 *labor, goods, services, or real or personal property taken or*
20 *obtained is of a value exceeding nine hundred fifty dollars (\$950).*

21 (2) *By a fine not exceeding two thousand dollars (\$2,000), of*
22 *which any amount in excess of one thousand dollars (\$1,000),*
23 *(\$1,000) shall be allocated to the adult protective services agency,*
24 *or equivalent elder abuse prevention agency, of the county*
25 *prosecuting the offense, by imprisonment in a county jail not*
26 *exceeding one year, or by both that fine and imprisonment, when*
27 *the moneys, labor, goods, services, or real or personal property*
28 *taken or obtained is of a value not exceeding nine hundred fifty*
29 *dollars (\$950).*

30 (f) Any person who commits the false imprisonment of an elder
31 or a dependent adult by the use of violence, menace, fraud, or
32 deceit is punishable by imprisonment pursuant to subdivision (h)
33 of Section 1170 for two, three, or four years.

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

36 (h) As used in this section, “dependent adult” means any person
37 who is between ~~the ages of 18 and 64,~~ *64 years of age* who has
38 physical or mental limitations which restrict his or her ability to
39 carry out normal activities or to protect his or her rights, including,
40 but not limited to, persons who have physical or developmental

1 disabilities or whose physical or mental abilities have diminished
2 because of age. “Dependent adult” includes any person between
3 ~~the ages of 18 and 64 years of age~~ who is admitted as an inpatient
4 to a 24-hour health facility, as defined in Sections 1250, 1250.2,
5 and 1250.3 of the Health and Safety Code.

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

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

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

24 SEC. 4. (a) Section 3.5 of this bill incorporates amendments
25 to Section 368 of the Penal Code proposed by both this bill and
26 ~~AB~~ *Assembly Bill 109*, which has been chaptered but is not
27 operative. Section 3.5 shall become operative only if (1) this bill
28 is enacted and becomes effective on or before January 1, 2012, (2)
29 this bill amends Section 368 of the Penal Code, ~~and (3) AB (3)~~
30 *Assembly Bill 332 is not enacted or, as enacted, does not amend*
31 *Section 368 of the Penal Code, and (4) Assembly Bill 109 becomes*
32 *operative, in which case Section 368 of the Penal Code, as amended*
33 *by Section 3 of this bill, shall remain operative only until the*
34 *operative date of ~~AB~~ Assembly Bill 109, at which time Section 3.5*
35 *of this bill shall become operative and Sections 3.7 and 3.9 of this*
36 *bill shall not become operative.*

37 (b) *Section 3.7 of this bill incorporates amendments to Section*
38 *368 of the Penal Code, as amended by Section 9 of Chapter 28 of*
39 *the Third Extraordinary Session of the Statutes of 2009, proposed*
40 *by both this bill and Assembly Bill 332. Section 3.7 shall only*

1 *become operative if (1) both bills are enacted and become effective*
2 *on or before January 1, 2012, (2) each bill amends Section 368 of*
3 *the Penal Code as amended by Section 9 of Chapter 28 of the Third*
4 *Extraordinary Session of the Statutes of 2009, (3) Assembly Bill*
5 *109 has not become operative, and (4) this bill is enacted after*
6 *Assembly Bill 332, in which case Sections 3, 3.5, and 3.9 of this*
7 *bill shall not become operative.*

8 *(c) Section 3.9 of this bill incorporates amendments to Section*
9 *368 of the Penal Code proposed by this bill, Assembly Bill 109,*
10 *which has been chaptered but is not operative, and Assembly Bill*
11 *332. It shall only become operative if (1) this bill and Assembly*
12 *Bill 332 are enacted and become effective on or before January*
13 *1, 2012, (2) this bill and Assembly Bill 332 amend Section 368 of*
14 *the Penal Code, (3) Assembly Bill 109 has become operative, and*
15 *(4) this bill is enacted after Assembly Bill 332, in which case*
16 *Sections 3, 3.5, and 3.7 of this bill shall not become operative. If*
17 *Assembly Bill 109 becomes operative after January 1, 2012,*
18 *Section 368 of the Penal Code, as amended by Section 3.7 of this*
19 *bill shall remain operative until Assembly Bill 109 becomes*
20 *operative, at which time Section 3.9 of this bill shall become*
21 *operative.*

22 SEC. 5. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

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