

AMENDED IN SENATE JULY 2, 2013
AMENDED IN SENATE JUNE 14, 2013
AMENDED IN ASSEMBLY MAY 13, 2013
AMENDED IN ASSEMBLY MAY 6, 2013
AMENDED IN ASSEMBLY APRIL 10, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 140

**Introduced by Assembly Member Dickinson
(Coauthor: Assembly Member Gatto)**

January 17, 2013

An act to add Section 86 to the Probate Code, and to amend Section 15610.30 of, and to add Section 15610.70 to, the Welfare and Institutions Code, relating to undue influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, as amended, Dickinson. Undue influence.

Existing law provides that financial abuse of an elder or dependent adult occurs when, among other instances, a person or entity takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined.

Existing law makes failing 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 also makes it a misdemeanor for any caretaker of an elder or 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 change the definition of undue influence to mean excessive persuasion that causes another person to act or refrain from acting *by overcoming that person's free will* and results in inequity. The bill would require, in determining whether the result was produced by undue influence, the vulnerability of the victim, the influencer's apparent authority, the actions or tactics used by the influencer, and the equity of the result to be considered. The bill would specify that an inequitable result, without more, is not sufficient to prove undue influence.

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

Existing law prohibits the use of undue influence and establishes protections for individuals unable to resist undue influence in various areas of the law, including wills, trusts, and conservatorships.

This bill would define undue influence for those purposes without superseding or interfering with the common law of undue influence.

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 86 is added to the Probate Code, to read:
- 2 86. "Undue influence" has the same meaning as defined in
- 3 Section 15610.70 of the Welfare and Institutions Code. It is the
- 4 intent of the Legislature that this section supplement the common
- 5 law meaning of undue influence without superseding or interfering
- 6 with the operation of that law.
- 7 SEC. 2. Section 15610.30 of the Welfare and Institutions Code
- 8 is amended to read:
- 9 15610.30. (a) "Financial abuse" of an elder or dependent adult
- 10 occurs when a person or entity does any of the following:

1 (1) Takes, secretes, appropriates, obtains, or retains real or
2 personal property of an elder or dependent adult for a wrongful
3 use or with intent to defraud, or both.

4 (2) Assists in taking, secreting, appropriating, obtaining, or
5 retaining real or personal property of an elder or dependent adult
6 for a wrongful use or with intent to defraud, or both.

7 (3) Takes, secretes, appropriates, obtains, or retains, or assists
8 in taking, secreting, appropriating, obtaining, or retaining, real or
9 personal property of an elder or dependent adult by undue
10 influence, as defined in Section 15610.70.

11 (b) A person or entity shall be deemed to have taken, secreted,
12 appropriated, obtained, or retained property for a wrongful use if,
13 among other things, the person or entity takes, secretes,
14 appropriates, obtains, or retains the property and the person or
15 entity knew or should have known that this conduct is likely to be
16 harmful to the elder or dependent adult.

17 (c) For purposes of this section, a person or entity takes, secretes,
18 appropriates, obtains, or retains real or personal property when an
19 elder or dependent adult is deprived of any property right, including
20 by means of an agreement, donative transfer, or testamentary
21 bequest, regardless of whether the property is held directly or by
22 a representative of an elder or dependent adult.

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

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

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

29 SEC. 3. Section 15610.70 is added to the Welfare and
30 Institutions Code, to read:

31 15610.70. (a) “Undue influence” means excessive persuasion
32 that causes another person to act or refrain from acting *by*
33 *overcoming that person’s free will* and results in inequity. In
34 determining whether a result was produced by undue influence,
35 all of the following shall be considered:

36 (1) The vulnerability of the victim. Evidence of vulnerability
37 may include, but is not limited to, incapacity, illness, disability,
38 injury, age, education, impaired cognitive function, emotional
39 distress, isolation, or dependency, and whether the influencer knew
40 or should have known of the alleged victim’s vulnerability.

1 (2) The influencer’s apparent authority. Evidence of apparent
2 authority may include, but is not limited to, status as a fiduciary,
3 family member, care provider, health care professional, legal
4 professional, spiritual adviser, expert, or other qualification.

5 (3) The actions or tactics used by the influencer. Evidence of
6 actions or tactics used may include, but is not limited to, all of the
7 following:

8 (A) Controlling necessities of life, medication, the victim’s
9 interactions with others, access to information, or sleep.

10 (B) Use of affection, intimidation, or coercion.

11 (C) Initiation of changes in personal or property rights, use of
12 haste or secrecy in effecting those changes, effecting changes at
13 inappropriate times and places, and claims of expertise in effecting
14 changes.

15 (4) The equity of the result. Evidence of the equity of the result
16 may include, but is not limited to, the economic consequences to
17 the victim, any divergence from the victim’s prior intent or course
18 of conduct or dealing, the relationship of the value conveyed to
19 the value of any services or consideration received, or the
20 appropriateness of the change in light of the length and nature of
21 the relationship.

22 (b) Evidence of an inequitable result, without more, is not
23 sufficient to prove undue influence.

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