

AMENDED IN SENATE JUNE 14, 2013

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Chau

February 19, 2013

An act to ~~amend~~ *add Section 1208 to the Civil Code, to add Section 8215 to the Government Code, and to add Section 15630.1 of 15630.2 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.*

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as amended, Chau. Elder and dependent adult abuse: mandated reporting.

Existing law, the Financial Elder Abuse Reporting Act of 2005, establishes procedures for the reporting of suspected financial abuse of an elder or dependent adult, as defined. These procedures require mandated reporters of suspected financial abuse of an elder or dependent adult, as defined, to report known or suspected instances of financial abuse of an elder or dependent adult, as specified. Existing law makes a violation of the reporting requirements subject to a civil penalty.

This bill would include notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult and would require a notary public, except as provided, to report known or suspected instances of financial abuse of an elder or dependent adult if the notary public has observed or has knowledge of suspected financial abuse in connection with providing notary services. *The bill would also*

prohibit a notary public from performing a notarial act for an elder or dependent adult under specified circumstances, including when, in the notary public’s judgment, the elder or dependent adult is not acting of his or her own free will.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

- 1 *SECTION 1. Section 1208 is added to the Civil Code, to read:*
- 2 *1208. A notary public performing services under this article*
- 3 *shall comply with the reporting mandate specified in Section*
- 4 *15630.2 of the Welfare and Institutions Code.*
- 5 *SEC. 2. Section 8215 is added to the Government Code, to*
- 6 *read:*
- 7 *8215. A notary public shall comply with the reporting mandate*
- 8 *specified in Section 15630.2 of the Welfare and Institutions Code.*
- 9 *Any violation of that reporting mandate shall be punished pursuant*
- 10 *to that section.*
- 11 *SEC. 3. Section 15630.2 is added to the Welfare and Institutions*
- 12 *Code, to read:*
- 13 *15630.2. (a) As used in this section, “mandated reporter of*
- 14 *suspected financial abuse of an elder or dependent adult” or*
- 15 *“mandated reporter” means notaries public.*
- 16 *(b) As used in this section, “financial abuse” has the same*
- 17 *meaning as in Section 15610.30.*
- 18 *(c) (1) Any notary public who, in connection with providing*
- 19 *notary services, has observed or has knowledge of suspected*
- 20 *financial abuse of an elder or dependent adult shall report the*
- 21 *known or suspected instance of financial abuse by telephone or*
- 22 *through a confidential Internet reporting tool, as authorized*
- 23 *pursuant to Section 15658, immediately, or as soon as practicably*
- 24 *possible. If reported by telephone, a written report shall be sent,*
- 25 *or an Internet report shall be made through the confidential*
- 26 *Internet reporting tool established in Section 15658, within two*
- 27 *working days to the local adult protective services agency or the*
- 28 *local law enforcement agency.*
- 29 *(2) A notary public who is also an officer or employee of a*
- 30 *financial institution is subject to the reporting requirement under*

1 *Section 15630.1 and not the reporting requirement under this*
2 *section.*

3 *(3) When two or more mandated reporters jointly have*
4 *knowledge or reasonably suspect that financial abuse of an elder*
5 *or a dependent adult for which the report is mandated has*
6 *occurred, and when there is an agreement among them, the*
7 *telephone report or Internet report, as authorized by Section 15658,*
8 *may be made by a member of the reporting team who is selected*
9 *by mutual agreement. A single report may be made and signed by*
10 *the selected member of the reporting team. Any member of the*
11 *team who has knowledge that the member designated to report*
12 *has failed to do so shall thereafter make that report.*

13 *(4) If the mandated reporter knows that the elder or dependent*
14 *adult resides in a long-term care facility, as defined in Section*
15 *15610.47, the report shall be made to the local ombudsman or*
16 *local law enforcement agency.*

17 *(d) An allegation by the elder or dependent adult, or any other*
18 *person, that financial abuse has occurred is not sufficient to trigger*
19 *the reporting requirement under this section if both of the following*
20 *conditions are met:*

21 *(1) The mandated reporter of suspected financial abuse of an*
22 *elder or dependent adult is aware of no other corroborating or*
23 *independent evidence of the alleged financial abuse of an elder or*
24 *dependent adult. The mandated reporter of suspected financial*
25 *abuse of an elder or dependent adult is not required to investigate*
26 *any accusations.*

27 *(2) In the exercise of his or her professional judgment, the*
28 *mandated reporter of suspected financial abuse of an elder or*
29 *dependent adult reasonably believes that financial abuse of an*
30 *elder or dependent adult did not occur.*

31 *(e) Failure to report financial abuse under this section shall be*
32 *subject to a civil penalty not exceeding one thousand dollars*
33 *(\$1,000) or if the failure to report is willful, a civil penalty not*
34 *exceeding five thousand dollars (\$5,000), which shall be paid by*
35 *the mandated reporter to the party bringing the action. Subdivision*
36 *(h) of Section 15630 shall not apply to violations of this section.*

37 *(f) (1) The civil penalty provided for in subdivision (e) shall be*
38 *recovered only in a civil action brought against the mandated*
39 *reporter by the Attorney General, district attorney, or county*
40 *counsel. No action shall be brought under this section by any*

1 person other than the Attorney General, district attorney, or county
2 counsel. Multiple actions for the civil penalty shall not be brought
3 for the same violation.

4 (2) Nothing in the Financial Elder Abuse Reporting Act of 2005
5 shall be construed to limit, expand, or otherwise modify any civil
6 liability or remedy that may exist under this or any other law.

7 (g) As used in this section, “suspected financial abuse of an
8 elder or dependent adult” occurs when a person who is required
9 to report under subdivision (c) observes or has knowledge of
10 behavior or unusual circumstances or transactions, or a pattern
11 of behavior or unusual circumstances or transactions, that would
12 lead an individual with like training or experience, based on the
13 same facts, to form a reasonable belief that an elder or dependent
14 adult is the victim of financial abuse as defined in Section
15 15610.30.

16 (h) Reports of suspected financial abuse of an elder or dependent
17 adult made by a mandated reporter pursuant to this section are
18 covered under subdivision (b) of Section 47 of the Civil Code.

19 (i) A notary public shall not perform a notarial act for an elder
20 or dependent adult in the either of following circumstances:

21 (1) The elder or dependent adult has a demeanor that causes
22 the notary public to have a compelling doubt about whether the
23 elder or dependent adult understands the consequences of the
24 transaction or document requiring the notarial act.

25 (2) In the notary public’s judgment, the elder or dependent adult
26 is not acting of his or her own free will.

27 ~~SECTION 1. Section 15630.1 of the Welfare and Institutions~~
28 ~~Code is amended to read:~~

29 ~~15630.1. (a) As used in this section, “mandated reporter of~~
30 ~~suspected financial abuse of an elder or dependent adult” or~~
31 ~~“mandated reporter” means all officers and employees of financial~~
32 ~~institutions and notaries public.~~

33 ~~(b) As used in this section, the term “financial institution” means~~
34 ~~any of the following:~~

35 ~~(1) A depository institution, as defined in Section 3(e) of the~~
36 ~~Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(e)).~~

37 ~~(2) An institution-affiliated party, as defined in Section 3(u) of~~
38 ~~the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).~~

39 ~~(3) A federal credit union or state credit union, as defined in~~
40 ~~Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),~~

1 including, but not limited to, an institution-affiliated party of a
2 credit union, as defined in Section 206(r) of the Federal Credit
3 Union Act (12 U.S.C. Sec. 1786(r)).

4 (e) As used in this section, “financial abuse” has the same
5 meaning as in Section 15610.30.

6 (d) (1) Any officer or employee of a financial institution who
7 has direct contact with the elder or dependent adult or who reviews
8 or approves the elder or dependent adult’s financial documents,
9 records, or transactions, in connection with providing financial
10 services with respect to an elder or dependent adult, and who,
11 within the scope of his or her employment or professional practice,
12 has observed or has knowledge of an incident, that is directly
13 related to the transaction or matter that is within that scope of
14 employment or professional practice, that reasonably appears to
15 be financial abuse, or who reasonably suspects that abuse, based
16 solely on the information before him or her at the time of reviewing
17 or approving the document, record, or transaction in the case of
18 mandated reporters who do not have direct contact with the elder
19 or dependent adult, shall report the known or suspected instance
20 of financial abuse by telephone or through a confidential Internet
21 reporting tool, as authorized pursuant to Section 15658,
22 immediately, or as soon as practicably possible. If reported by
23 telephone, a written report shall be sent, or an Internet report shall
24 be made through the confidential Internet reporting tool established
25 in Section 15658, within two working days to the local adult
26 protective services agency or the local law enforcement agency.

27 (2) (A) Any notary public who, in connection with providing
28 notary services, has observed or has knowledge of suspected
29 financial abuse of an elder or dependent adult shall report the
30 known or suspected instance of financial abuse by telephone or
31 through a confidential Internet reporting tool, as authorized
32 pursuant to Section 15658, immediately, or as soon as practicably
33 possible. If reported by telephone, a written report shall be sent,
34 or an Internet report shall be made through the confidential Internet
35 reporting tool established in Section 15658, within two working
36 days to the local adult protective services agency or the local law
37 enforcement agency.

38 (B) A notary public who is also an officer or employee of a
39 financial institution is subject to the reporting requirement under

1 paragraph (1) and not the reporting requirement under this
2 paragraph:

3 (C) The requirement of a notary public to report suspected
4 financial abuse of an elder or dependent adult pursuant to this
5 paragraph does not apply if the information to be reported is
6 protected from disclosure by the attorney-client privilege or the
7 notary public is subject to the duty under paragraph (1) of
8 subdivision (e) of Section 6068 of the Business and Professions
9 Code.

10 (3) When two or more mandated reporters jointly have
11 knowledge or reasonably suspect that financial abuse of an elder
12 or a dependent adult for which the report is mandated has occurred,
13 and when there is an agreement among them, the telephone report
14 or Internet report, as authorized by Section 15658, may be made
15 by a member of the reporting team who is selected by mutual
16 agreement. A single report may be made and signed by the selected
17 member of the reporting team. Any member of the team who has
18 knowledge that the member designated to report has failed to do
19 so shall thereafter make that report.

20 (4) If the mandated reporter knows that the elder or dependent
21 adult resides in a long-term care facility, as defined in Section
22 15610.47, the report shall be made to the local ombudsman or local
23 law enforcement agency.

24 (e) An allegation by the elder or dependent adult, or any other
25 person, that financial abuse has occurred is not sufficient to trigger
26 the reporting requirement under this section if both of the following
27 conditions are met:

28 (1) The mandated reporter of suspected financial abuse of an
29 elder or dependent adult is aware of no other corroborating or
30 independent evidence of the alleged financial abuse of an elder or
31 dependent adult. The mandated reporter of suspected financial
32 abuse of an elder or dependent adult is not required to investigate
33 any accusations.

34 (2) In the exercise of his or her professional judgment, the
35 mandated reporter of suspected financial abuse of an elder or
36 dependent adult reasonably believes that financial abuse of an
37 elder or dependent adult did not occur.

38 (f) Failure to report financial abuse under this section shall be
39 subject to a civil penalty not exceeding one thousand dollars
40 (\$1,000) or if the failure to report is willful, a civil penalty not

1 exceeding five thousand dollars (\$5,000), which shall be paid by
2 the financial institution that is the employer of the mandated
3 reporter or the notary public to the party bringing the action.
4 Subdivision (h) of Section 15630 shall not apply to violations of
5 this section.

6 ~~(g) (1) The civil penalty provided for in subdivision (f) shall~~
7 ~~be recovered only in a civil action brought against the financial~~
8 ~~institution or the notary public by the Attorney General, district~~
9 ~~attorney, or county counsel. No action shall be brought under this~~
10 ~~section by any person other than the Attorney General, district~~
11 ~~attorney, or county counsel. Multiple actions for the civil penalty~~
12 ~~may not be brought for the same violation.~~

13 ~~(2) Nothing in the Financial Elder Abuse Reporting Act of 2005~~
14 ~~shall be construed to limit, expand, or otherwise modify any civil~~
15 ~~liability or remedy that may exist under this or any other law.~~

16 ~~(h) As used in this section, “suspected financial abuse of an~~
17 ~~elder or dependent adult” occurs when a person who is required~~
18 ~~to report under subdivision (a) observes or has knowledge of~~
19 ~~behavior or unusual circumstances or transactions, or a pattern of~~
20 ~~behavior or unusual circumstances or transactions, that would lead~~
21 ~~an individual with like training or experience, based on the same~~
22 ~~facts, to form a reasonable belief that an elder or dependent adult~~
23 ~~is the victim of financial abuse as defined in Section 15610.30.~~

24 ~~(i) Reports of suspected financial abuse of an elder or dependent~~
25 ~~adult made by an employee or officer of a financial institution~~
26 ~~pursuant to this section are covered under subdivision (b) of Section~~
27 ~~47 of the Civil Code.~~