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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 add Section 1208 to the Civil Code, to add Section 8215 to the Government Code, and to amend Sections 15632, 15633, 15634, 15637, 15640, and 15655.5 of, and to add Section 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.~~

Existing law makes specified reports, including reports of known or suspected financial abuse of an elder or dependent adult, confidential. Any violation of the confidentiality of these reports is a misdemeanor.

This bill would extend that confidentiality to a notary public's report of known or suspected financial abuse of an elder or dependent adult. By increasing the scope of a crime, the bill would impose a state-mandated local program.

Existing law authorizes a care custodian, clergy member, health practitioner, and an employee of an adult protective services agency or a law enforcement agency to present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in any action against that person for making a report of known or suspected abuse of an elder or dependent adult, as specified.

This bill would additionally authorize ~~a mandated reporter of known or suspected financial abuse of an elder or dependent adult~~ *notary public* to present a claim to the board for reasonable attorney's fees incurred in an action against that person for making a report pursuant to these provisions.

Existing law requires a county adult protective services agency to report every known or suspected instance of abuse of an elder or dependent adult, as specified, to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse. Existing law also requires a county adult protective services agency to provide mandated reporters of suspected financial abuse of an elder or dependent adult with instructional materials regarding abuse and neglect of an elder or dependent adult and their obligation to report under these provisions.

The bill would require a county adult protective services agency to additionally report a known or suspected instance of abuse reported by a notary public and to additionally provide instructional materials to

notaries public. By increasing the duties of local agencies, this bill would impose 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 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
12 Institutions 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,

1 or an Internet report shall be made through the confidential Internet
2 reporting tool established in Section 15658, within two working
3 days to the local adult protective services agency or the local law
4 enforcement agency.

5 (2) A notary public who is also an officer or employee of a
6 financial institution is subject to the reporting requirement under
7 Section 15630.1 and not the reporting requirement under this
8 section.

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

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

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

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

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

37 (e) Failure to report financial abuse under this section shall be
38 subject to a civil penalty not exceeding one thousand dollars
39 (\$1,000) or if the failure to report is willful, a civil penalty not
40 exceeding five thousand dollars (\$5,000), which shall be paid by

1 the mandated reporter to the party bringing the action. Subdivision
2 (h) of Section 15630 shall not apply to violations of this section.

3 (f) The civil penalty provided for in subdivision (e) shall be
4 recovered only in a civil action brought against the mandated
5 reporter by the Attorney General, district attorney, or county
6 counsel. No action shall be brought under this section by any
7 person other than the Attorney General, district attorney, or county
8 counsel. Multiple actions for the civil penalty shall not be brought
9 for the same violation.

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

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

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

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

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

29 SEC. 4. Section 15632 of the Welfare and Institutions Code is
30 amended to read:

31 15632. (a) In any court proceeding or administrative hearing,
32 neither the physician-patient privilege nor the
33 psychotherapist-patient privilege applies to the specific information
34 reported pursuant to this chapter.

35 (b) Nothing in this chapter shall require the disclosure of
36 information protected by the attorney-client privilege or the duty
37 under subdivision (e) of Section 6068 of the Business and
38 Professions Code.

39 SEC. 5. Section 15633 of the Welfare and Institutions Code is
40 amended to read:

1 15633. (a) The reports made pursuant to Sections 15630,
2 15630.1, 15630.2, and 15631 shall be confidential and may be
3 disclosed only as provided in subdivision (b). Any violation of the
4 confidentiality required by this chapter is a misdemeanor
5 punishable by not more than six months in the county jail, by a
6 fine of five hundred dollars (\$500), or by both that fine and
7 imprisonment.

8 (b) Reports of suspected abuse of an elder or dependent adult
9 and information contained therein may be disclosed only to the
10 following:

11 (1) Persons or agencies to whom disclosure of information or
12 the identity of the reporting party is permitted under Section
13 15633.5.

14 (2) (A) Persons who are trained and qualified to serve on
15 multidisciplinary personnel teams may disclose to one another
16 information and records that are relevant to the prevention,
17 identification, or treatment of abuse of elderly or dependent
18 persons.

19 (B) Except as provided in subparagraph (A), any personnel of
20 the multidisciplinary team or agency that receives information
21 pursuant to this chapter, shall be under the same obligations and
22 subject to the same confidentiality penalties as the person
23 disclosing or providing that information. The information obtained
24 shall be maintained in a manner that ensures the maximum
25 protection of privacy and confidentiality rights.

26 (c) This section shall not be construed to allow disclosure of
27 any reports or records relevant to the reports of abuse of an elder
28 or dependent adult if the disclosure would be prohibited by any
29 other provisions of state or federal law applicable to the reports or
30 records relevant to the reports of the abuse, nor shall it be construed
31 to prohibit the disclosure by a financial institution of any reports
32 or records relevant to the reports of abuse of an elder or dependent
33 adult if the disclosure would be required of a financial institution
34 by otherwise applicable state or federal law or court order.

35 SEC. 6. Section 15634 of the Welfare and Institutions Code is
36 amended to read:

37 15634. (a) A care custodian, clergy member, health
38 practitioner, mandated reporter of suspected financial abuse of an
39 elder or dependent adult, or employee of an adult protective
40 services agency or a local law enforcement agency who reports a

1 known or suspected instance of abuse of an elder or dependent
2 adult shall not be civilly or criminally liable for any report required
3 or authorized by this chapter. Any other person reporting a known
4 or suspected instance of abuse of an elder or dependent adult shall
5 not incur civil or criminal liability as a result of any report
6 authorized by this chapter, unless it can be proven that a false
7 report was made and the person knew that the report was false. A
8 person required to make a report pursuant to this chapter, or any
9 person taking photographs at his or her discretion, shall not incur
10 any civil or criminal liability for taking photographs of a suspected
11 victim of abuse of an elder or dependent adult or causing
12 photographs to be taken of a suspected victim or for disseminating
13 the photographs with the reports required by this chapter. However,
14 this section shall not be construed to grant immunity from this
15 liability with respect to any other use of the photographs.

16 (b) A care custodian, clergy member, health practitioner,
17 mandated reporter of suspected financial abuse of an elder or
18 dependent adult, or employee of an adult protective services agency
19 or a local law enforcement agency who, pursuant to a request from
20 an adult protective services agency or a local law enforcement
21 agency investigating a report of known or suspected abuse of an
22 elder or dependent adult, provides the requesting agency with
23 access to the victim of a known or suspected instance of abuse of
24 an elder or dependent adult, shall not incur civil or criminal liability
25 as a result of providing that access.

26 (c) The Legislature finds that, even though it has provided
27 immunity from liability to persons required to report abuse of an
28 elder or dependent adult, immunity does not eliminate the
29 possibility that actions may be brought against those persons based
30 upon required reports of abuse. In order to further limit the financial
31 hardship that those persons may incur as a result of fulfilling their
32 legal responsibilities, it is necessary that they not be unfairly
33 burdened by legal fees incurred in defending those actions.
34 Therefore, a care custodian, clergy member, health practitioner,
35 ~~mandated reporter of suspected financial abuse of an elder or~~
36 ~~dependent adult~~, *notary public*, or an employee of an adult
37 protective services agency or a local law enforcement agency may
38 present to the California Victim Compensation and Government
39 Claims Board a claim for reasonable attorney's fees incurred in
40 any action against that person on the basis of making a report

1 required or authorized by this chapter if the court has dismissed
2 the action upon a demurrer or motion for summary judgment made
3 by that person, or if he or she prevails in the action. The California
4 Victim Compensation and Government Claims Board shall allow
5 that claim if the requirements of this subdivision are met, and the
6 claim shall be paid from an appropriation to be made for that
7 purpose. Attorney's fees awarded pursuant to this section shall not
8 exceed an hourly rate greater than the rate charged by the Attorney
9 General at the time the award is made and shall not exceed an
10 aggregate amount of fifty thousand dollars (\$50,000). This
11 subdivision shall not apply if a public entity has provided for the
12 defense of the action pursuant to Section 995 of the Government
13 Code.

14 SEC. 7. Section 15637 of the Welfare and Institutions Code is
15 amended to read:

16 15637. In any court proceeding or administrative hearing,
17 neither the physician-patient privilege nor the
18 psychotherapist-patient privilege applies to the specific information
19 required to be reported pursuant to this chapter. Nothing in this
20 chapter shall require the disclosure of information protected by
21 the attorney-client privilege or the duty under subdivision (e) of
22 Section 6068 of the Business and Professions Code.

23 SEC. 8. Section 15640 of the Welfare and Institutions Code is
24 amended to read:

25 15640. (a) (1) An adult protective services agency shall
26 immediately, or as soon as practically possible, report by telephone
27 to the law enforcement agency having jurisdiction over the case
28 any known or suspected instance of criminal activity, and to any
29 public agency given responsibility for investigation in that
30 jurisdiction of cases of elder and dependent adult abuse, every
31 known or suspected instance of abuse of an elder or dependent
32 adult pursuant to Section 15630, 15630.1, or 15630.2. A county
33 adult protective services agency shall also send a written report
34 thereof within two working days of receiving the information
35 concerning the incident to each agency to which it is required to
36 make a telephone report under this subdivision. Prior to making
37 any cross-report of allegations of financial abuse to law
38 enforcement agencies, an adult protective services agency shall
39 first determine whether there is reasonable suspicion of any
40 criminal activity.

1 (2) If an adult protective services agency receives a report of
2 abuse alleged to have occurred in a long-term care facility, that
3 adult protective services agency shall immediately inform the
4 person making the report that he or she is required to make the
5 report to the long-term care ombudsman program or to a local law
6 enforcement agency. The adult protective services agency shall
7 not accept the report by telephone but shall forward any written
8 report received to the long-term care ombudsman.

9 (b) If an adult protective services agency or local law
10 enforcement agency or ombudsman program receiving a report of
11 known or suspected elder or dependent adult abuse determines,
12 pursuant to its investigation, that the abuse is being committed by
13 a health practitioner licensed under Division 2 (commencing with
14 Section 500) of the Business and Professions Code, or any related
15 initiative act, or by a person purporting to be a licensee, the adult
16 protective services agency or local law enforcement agency or
17 ombudsman program shall immediately, or as soon as practically
18 possible, report this information to the appropriate licensing
19 agency. The licensing agency shall investigate the report in light
20 of the potential for physical harm. The transmittal of information
21 to the appropriate licensing agency shall not relieve the adult
22 protective services agency or local law enforcement agency or
23 ombudsman program of the responsibility to continue its own
24 investigation as required under applicable provisions of law. The
25 information reported pursuant to this paragraph shall remain
26 confidential and shall not be disclosed.

27 (c) A local law enforcement agency shall immediately, or as
28 soon as practically possible, report by telephone to the long-term
29 care ombudsman program when the abuse is alleged to have
30 occurred in a long-term care facility or to the county adult
31 protective services agency when it is alleged to have occurred
32 anywhere else, and to the agency given responsibility for the
33 investigation of cases of elder and dependent adult abuse every
34 known or suspected instance of abuse of an elder or dependent
35 adult. A local law enforcement agency shall also send a written
36 report thereof within two working days of receiving the information
37 concerning the incident to any agency to which it is required to
38 make a telephone report under this subdivision.

39 (d) A long-term care ombudsman coordinator may report the
40 instance of abuse to the county adult protective services agency

1 or to the local law enforcement agency for assistance in the
2 investigation of the abuse if the victim gives his or her consent. A
3 long-term care ombudsman program and the Licensing and
4 Certification Division of the State Department of Public Health
5 shall immediately report by telephone and in writing within two
6 working days to the bureau any instance of neglect occurring in a
7 health care facility that has seriously harmed any patient or
8 reasonably appears to present a serious threat to the health or
9 physical well-being of a patient in that facility. If a victim or
10 potential victim of the neglect withholds consent to being identified
11 in that report, the report shall contain circumstantial information
12 about the neglect, but shall not identify that victim or potential
13 victim. The bureau and the reporting agency shall maintain the
14 confidentiality of the report until the report becomes a matter of
15 public record.

16 (e) When a county adult protective services agency, a long-term
17 care ombudsman program, or a local law enforcement agency
18 receives a report of abuse, neglect, or abandonment of an elder or
19 dependent adult alleged to have occurred in a long-term care
20 facility, that county adult protective services agency, long-term
21 care ombudsman coordinator, or local law enforcement agency
22 shall report the incident to the licensing agency by telephone as
23 soon as possible.

24 (f) County adult protective services agencies, long-term care
25 ombudsman programs, and local law enforcement agencies shall
26 report the results of their investigations of referrals or reports of
27 abuse to the respective referring or reporting agencies.

28 SEC. 9. Section 15655.5 of the Welfare and Institutions Code
29 is amended to read:

30 15655.5. A county adult protective services agency shall
31 provide the organizations listed in paragraphs (v), (w), and (x) of
32 Section 15610.17, and mandated reporters of suspected financial
33 abuse of an elder or dependent adult pursuant to Sections 15630.1
34 and 15630.2, with instructional materials regarding abuse and
35 neglect of an elder or dependent adult and their obligation to report
36 under this chapter. At a minimum, the instructional materials shall
37 include all of the following:

38 (a) An explanation of abuse and neglect of an elder or dependent
39 adult, as defined in this chapter.

1 (b) Information on how to recognize potential abuse and neglect
2 of an elder or dependent adult.

3 (c) Information on how the county adult protective services
4 agency investigates reports of known or suspected abuse and
5 neglect.

6 (d) Instructions on how to report known or suspected incidents
7 of abuse and neglect, including the appropriate telephone numbers
8 to call and what types of information would assist the county adult
9 protective services agency with its investigation of the report.

10 SEC. 10. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution for certain
12 costs that may be incurred by a local agency or school district
13 because, in that regard, this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty for a crime
15 or infraction, within the meaning of Section 17556 of the
16 Government Code, or changes the definition of a crime within the
17 meaning of Section 6 of Article XIII B of the California
18 Constitution.

19 However, if the Commission on State Mandates determines that
20 this act contains other costs mandated by the state, reimbursement
21 to local agencies and school districts for those costs shall be made
22 pursuant to Part 7 (commencing with Section 17500) of Division
23 4 of Title 2 of the Government Code.