

ASSEMBLY BILL

No. 2107

Introduced by Assembly Member Scott

February 22, 2000

An act to add Section 6177 to the Business and Professions Code, to amend Section 785 of, and to add Section 789.8 to, the Insurance Code, to amend Section 368 of the Penal Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2107, as introduced, Scott. Elder abuse.

(1) Existing law permits a lawyer to sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding 3 years, an attorney-client relationship if the transaction is fair and reasonable to the client and the lawyer provides the client with a specified disclosure.

This bill would prohibit a lawyer from selling an annuity, as defined, to an elder with whom the lawyer has or has had an attorney-client relationship.

(2) Existing law imposes on all insurers, brokers, agents, and others engaged in the transaction of insurance with a prospective insured who is age 65 years or older, a duty of honesty, good faith, and fair dealing, and exempts specified kinds of insurance policies from these obligations.

This bill would repeal the exemptions, and would require in the sale of financial products to elders for long-term care planning that specified disclosures be made. The bill would

also provide that any applicant for any annuity has a right to rescind the application for 30 days, as specified.

(3) Existing law makes it a crime to violate specified penal provisions proscribing theft or embezzlement relating to the property of elders and dependent adults, and makes it a felony when the money, labor, or real or personal property taken is of a value exceeding \$400.

This bill would make it a felony if that value exceeded \$100, thereby expanding the definition of a crime and imposing a state-mandated local program.

(4) Existing law defines financial abuse for the purpose of reporting and investigating elder and dependent adult abuse.

This bill would revise that definition.

(5) 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 6177 is added to the Business and
2 Professions Code, to read:

3 6177. (a) For purposes of this section, “annuity”
4 means those annuity contracts, including period-certain
5 annuities issued by a life insurer, that require for their
6 lawful issuance a certificate of authority from the
7 Insurance Commissioner.

8 (b) Notwithstanding Section 6175.3, a lawyer may not
9 sell an annuity to an elder with whom the lawyer has or
10 has had an attorney-client relationship.

11 SEC. 2. Section 785 of the Insurance Code is amended
12 to read:

13 785. (a) All insurers, brokers, agents, and others
14 engaged in the transaction of insurance owe a
15 prospective insured who is age 65 years or older, a duty
16 of honesty, good faith, and fair dealing. This duty is in



1 addition to any other duty, whether express or implied,
2 that may exist.

3 (b) Conduct of an insurer, broker, or agent, or other
4 person engaged in the transaction of insurance, during
5 the offer and sale of a policy or certificate previous to the
6 purchase is relevant to any action alleging a breach of the
7 duty of good faith and fair dealing.

8 ~~(c) Except where explicitly provided to the contrary,~~
9 ~~this article shall not apply to any of the following:~~

10 ~~(1) Medicare supplement insurance as defined in~~
11 ~~subdivision (b) of Section 10192.1.~~

12 ~~(2) Long-term care insurance as defined in Section~~
13 ~~10231.2.~~

14 ~~(3) Disability coverage provided through the~~
15 ~~insured's employer or former employer.~~

16 ~~(4) Disability insurance policies or certificates~~
17 ~~principally designed to provide coverage for accidents or~~
18 ~~expenses incurred while traveling if the premium for the~~
19 ~~policy or certificate is ten dollars (\$10) or less.~~

20 ~~(5) Blanket disability insurance as defined in Section~~
21 ~~10270.3.~~

22 ~~(6) Credit disability insurance as defined in Section~~
23 ~~779.2.~~

24 ~~(7) Accidental death insurance.~~

25 ~~(8) Until January 1, 2001, disability policies or~~
26 ~~certificates that are sold through direct response methods~~
27 ~~of delivery.~~

28 ~~(9) Disability income insurance as defined in~~
29 ~~subdivision (i) of Section 799.01.~~

30 ~~(d) Provided that the requirements of Section 10296~~
31 ~~are met, this article shall not apply to transportation~~
32 ~~ticket policies and baggage insurance policy types~~
33 ~~allowable for sale by travel agents pursuant to Section~~
34 ~~1753.~~

35 SEC. 3. Section 789.8 is added to the Insurance Code,
36 to read:

37 789.8. (a) Any person who advises a client who is an
38 elder, or that elder's agent, to purchase financial products
39 for long-term care planning with the proceeds from the
40 sale of any stock, bond, IRA, certificate of deposit,



1 annuity, or other asset shall disclose orally and in writing
2 that there may be tax consequences, early withdrawal
3 penalties, or other costs or penalties as a result of the
4 liquidations and that the individual may wish to consult
5 independent legal or financial advice before deciding
6 whether to liquidate any assets.

7 (b) No person shall misrepresent the “exempt” or
8 “unavailable” status of any asset as it pertains to the
9 determination of eligibility for any program of public
10 assistance.

11 (c) No person shall offer for sale or sell any annuity to
12 any individual when the annuity will be funded with
13 assets which are already considered exempt for the
14 purposes of Medi-Cal eligibility or could otherwise be
15 made exempt.

16 (d) No person shall offer for sale or sell any annuity to
17 any individual as a replacement for long-term care
18 insurance.

19 (e) No person shall offer for sale or sell any deferred
20 annuity instead of an immediate annuity to any individual
21 for the purpose of long-term care planning unless there
22 is a financial advantage to the individual in purchasing a
23 deferred annuity.

24 (f) No financial services agent, including, but not
25 limited to, an insurance agent or broker, mortgage
26 broker, real estate broker, or securities broker, shall enter
27 into a compensated referral arrangement with any
28 lawyer who offers legal services to that agent’s client or
29 agent.

30 (g) An applicant for an annuity has the right to rescind
31 the application within 30 days and have any premiums
32 refunded with no proration, and no deduction for sales
33 charges. If an applicant is 65 years of age or older, the
34 applicant shall be provided a separate disclosure of the
35 right to rescind, and the application shall be void unless
36 the applicant has acknowledged on the application
37 receipt of the disclosure.

38 SEC. 4. Section 368 of the Penal Code is amended to
39 read:



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

10 (b) (1) Any person who, under circumstances or
11 conditions likely to produce great bodily harm or death,
12 willfully causes or permits any elder or dependent adult,
13 with knowledge that he or she is an elder or a dependent
14 adult, to suffer, or inflicts thereon unjustifiable physical
15 pain or mental suffering, or having the care or custody of
16 any elder or dependent adult, willfully causes or permits
17 the person or health of the elder or dependent adult to be
18 injured, or willfully causes or permits the elder or
19 dependent adult to be placed in a situation in which his
20 or her person or health is endangered, is punishable by
21 imprisonment in a county jail not exceeding one year, or
22 in the state prison for two, three, or four years.

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

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

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

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

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

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

36 (c) Any person who, under circumstances or
37 conditions other than those likely to produce great bodily
38 harm or death, willfully causes or permits any elder or
39 dependent adult, with knowledge that he or she is an
40 elder or a dependent adult, to suffer, or inflicts thereon



1 unjustifiable physical pain or mental suffering, or having
2 the care or custody of any elder or dependent adult,
3 willfully causes or permits the person or health of the
4 elder or dependent adult to be injured or willfully causes
5 or permits the elder or dependent adult to be placed in
6 a situation in which his or her person or health may be
7 endangered, is guilty of a misdemeanor.

8 (d) Any person who is not a caretaker who violates any
9 provision of law proscribing theft or embezzlement, with
10 respect to the property of an elder or dependent adult,
11 and who knows or reasonably should know that the victim
12 is an elder or dependent adult, is punishable by
13 imprisonment in a county jail not exceeding one year, or
14 in the state prison for two, three, or four years, when the
15 money, labor, or real or personal property taken is of a
16 value exceeding ~~four~~ *one* hundred dollars ~~(\$400)~~ *(\$100)*;
17 and by a fine not exceeding one thousand dollars (\$1,000),
18 by imprisonment in a county jail not exceeding one year,
19 or by both that fine and imprisonment, when the money,
20 labor, or real or personal property taken is of a value not
21 exceeding ~~four~~ *one* hundred dollars ~~(\$400)~~ *(\$100)*.

22 (e) Any caretaker of an elder or a dependent adult
23 who violates any provision of law proscribing theft or
24 embezzlement, with respect to the property of that elder
25 or dependent adult, is punishable by imprisonment in a
26 county jail not exceeding one year, or in the state prison
27 for two, three, or four years when the money, labor, or
28 real or personal property taken is of a value exceeding
29 ~~four~~ *one* hundred dollars ~~(\$400)~~ *(\$100)*, and by a fine not
30 exceeding one thousand dollars (\$1,000), by
31 imprisonment in a county jail not exceeding one year, or
32 by both that fine and imprisonment, when the money,
33 labor, or real or personal property taken is of a value not
34 exceeding ~~four~~ *one* hundred dollars ~~(\$400)~~ *(\$100)*.

35 (f) Any person who commits the false imprisonment
36 of an elder or dependent adult by the use of violence,
37 menace, fraud, or deceit is punishable by imprisonment
38 in the state prison for two, three, or four years.

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



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

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

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

24 SEC. 5. Section 15610.30 of the Welfare and
 25 Institutions Code is amended to read:

26 15610.30. (a) “Financial abuse” means a situation in
 27 which one or both of the following apply:

28 (1) A person, ~~including, but not limited to, one who~~
 29 ~~has the care or custody of, or who stands in a position of~~
 30 ~~trust to, an elder or a dependent adult,~~ takes, secretes, or
 31 appropriates ~~their~~ *the* money or property *of an elder,* ~~to~~
 32 *for* any wrongful use, or with the intent to defraud.

33 (2) ~~A situation in which all of the following conditions~~
 34 ~~are satisfied:~~

35 ~~(A)~~ An elder (who would be a dependent adult if he
 36 or she were between the ages of 18 and 64) or dependent
 37 adult or his or her representative requests that a third
 38 party transfer to the elder or dependent adult or to his or
 39 her representative, or to a court appointed receiver,



1 property ~~that meets~~ and all of the following criteria are
2 met:

3 ~~(i)~~

4 (A) The third party holds or has control of the
5 property *which is claimed to belong to the elder or*
6 *dependent.*

7 ~~(ii)~~

8 (B) The property belongs to, or is held in express trust,
9 constructive trust or resulting trust for, the elder or
10 dependent adult.

11 ~~(iii)~~

12 (C) The ownership or control of the property was
13 acquired in whole or in part by the third party or someone
14 acting in concert with the third party from the elder or
15 dependent adult ~~at a time when the elder or dependent~~
16 ~~adult was a dependent adult or was a person who would~~
17 ~~have been a dependent adult if he or she had then been~~
18 ~~between the ages of 18 and 64.~~

19 ~~(B)~~

20 (D) Despite the request for the transfer of property,
21 the third party without good cause either continues to
22 hold the property or fails to take reasonable steps to make
23 the property readily available to the elder or dependent
24 adult, to his or her representative or to a court appointed
25 receiver.

26 ~~(C) The third party committed acts described in this~~
27 ~~paragraph in bad faith. A third party shall be deemed to~~
28 ~~have acted in bad faith if the third party either knew or~~
29 ~~should have known that the elder or dependent adult had~~
30 ~~the right to have the property transferred or made~~
31 ~~readily available. For purposes of this subdivision, a third~~
32 ~~party should have known of this right if, on the basis of the~~
33 ~~information received by the elder or dependent adult, or~~
34 ~~the elder or dependent adult's representative, it is~~
35 ~~obvious to a reasonable person that the elder or~~
36 ~~dependent adult had this right.~~

37 (b) For the purpose of this section, the term “third
38 party” means a person who holds or has control of
39 property that belongs to or is held in express trust,



1 constructive trust or resulting trust for an elder or
2 dependent adult.

3 (c) For the purposes of this section, ~~the term~~
4 “representative” means an elder or dependent adult’s
5 ~~conservator of the estate, or~~ attorney-in-fact acting within
6 the authority of the power of attorney.

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

