

AMENDED IN ASSEMBLY MAY 11, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000
AMENDED IN ASSEMBLY APRIL 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

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 Sections 789.8 and 789.9 to, the Insurance Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2107, as amended, 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 only permit a licensed life agent who has a National Association of Securities Dealers Series 7 license and who is either a certified financial planner or certified financial analyst to advise about and sell to an elder or his or her agent financial products for long-term care planning with the proceeds from the sale of assets.~~ The bill would only permit those life agents to sell or offer for sale to an elder or his or her agent any financial product on the basis of the product’s treatment under Medi-Cal after making specified disclosures. ~~The bill would also provide that an elder applicant for any annuity has a right to rescind the application for 30 days, as specified.~~

~~(3)–~~

(2) Existing law prohibits conflicts of interest between an attorney and client.

This bill would prohibit a financial services agent, as specified, from entering into a compensated referral arrangement with a lawyer who offers legal services to that agent’s client or agent.

~~(4)–This bill would prohibit a lawyer from entering into a compensated referral arrangement with a financial services agent, as specified.~~

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

This bill would revise that definition.

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 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~~



1 ~~lawful issuance a certificate of authority from the~~
2 ~~Insurance Commissioner.~~

3 ~~(b) Notwithstanding Section 6175.3, a lawyer may not~~
4 ~~sell an annuity to an elder with whom the lawyer has or~~
5 ~~has had an attorney-client relationship. Nothing in this~~
6 ~~subdivision shall be construed to prohibit a lawyer from~~
7 ~~providing to an elder with whom the lawyer has or has~~
8 ~~had an attorney-client relationship advice with regard to~~
9 ~~the purchase or sale of an annuity.~~

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

12 785. (a) All insurers, brokers, agents, and others
13 engaged in the transaction of insurance owe a
14 prospective insured who is age 65 years or older, a duty
15 of honesty, good faith, and fair dealing. This duty is in
16 addition to any other duty, whether express or implied,
17 that may exist.

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

23 ~~SEC. 3.~~

24 ~~SEC. 2.~~ Section 789.8 is added to the Insurance Code,
25 to read:

26 ~~789.8. (a) Only a licensed life agent who has a~~
27 ~~National Association of Securities Dealers Series 7 license~~
28 ~~and who is a certified financial planner or certified~~
29 ~~financial analyst may advise about and sell to an elder, or~~
30 ~~the elder's agent, financial products for long-term care~~
31 ~~planning with the proceeds from the sale of any stock,~~
32 ~~bond, IRA, certificate of deposit, mutual fund, annuity, or~~
33 ~~other asset.~~

34 ~~(b)~~ "Elder" for purposes of this section means any
35 person residing in this state, 65 years of age or older.

36 ~~(e)~~

37 (b) The life agent shall advise an elder or elder's agent
38 orally and in writing that the sale of any stock, bond, IRA,
39 certificate of deposit, mutual fund, annuity, or other asset
40 may have tax consequences, early withdrawal penalties,



1 or other costs or penalties as a result of the liquidation,
2 and that the elder or elder's agent may wish to consult
3 independent legal or financial advice before liquidating
4 any assets.

5 ~~(d)~~

6 (c) The life agent may not misrepresent the treatment
7 of any asset under the statutes and rules and regulations
8 of the Medi-Cal program, as it pertains to the
9 determination of eligibility for any program of public
10 assistance.

11 ~~(e)~~

12 (d) The life agent may not offer for sale or sell any
13 financial product on the basis of the product's treatment
14 under the Medi-Cal program without first fully disclosing
15 to the elder or the elder's agent the treatment under the
16 statutes and rules and regulations of the Medi-Cal
17 program in effect at the time of the sale of any assets used
18 to purchase, or any assets liquidated in order to purchase,
19 the financial product. The disclosure shall include, but is
20 not limited to, the treatment of the home, community
21 spouse resource allowance, community minimum
22 monthly maintenance need allowance, pensions, and
23 IRAs. The disclosure shall also include whether income,
24 if any, generated by the financial product will affect the
25 share of cost for Medi-Cal, and whether, after the elder's
26 death, the remainder interest, if any, will be subject to
27 estate recovery under the rules and regulations and
28 statutes in effect at the time of the sale.

29 ~~(f) An elder applicant for an annuity has the right to~~
30 ~~rescind the application within 30 days of receipt of the~~
31 ~~policy or receipt of all the disclosures required by this~~
32 ~~section, whichever occurs later. Upon rescinding the~~
33 ~~application, the elder shall be refunded any premiums~~
34 ~~paid with no proration and no deduction for sales charges.~~
35 ~~For a sale of an annuity to an elder, the notice of the right~~
36 ~~to rescind shall be affixed to the policy and the applicant~~
37 ~~shall also be provided a separate disclosure of the right to~~
38 ~~rescind. The application shall be void unless the applicant~~
39 ~~has acknowledged on the application receipt of the~~
40 ~~separate disclosure.~~



1 ~~SEC. 4.~~

2 *SEC. 3.* Section 789.9 is added to the Insurance Code,
3 to read:

4 789.9. A financial services agent, including, but not
5 limited to, an insurance agent or broker, mortgage
6 broker, real estate broker, or securities broker, may not
7 enter into a compensated referral arrangement with any
8 lawyer who offers legal services to that agent's client or
9 agent. *A lawyer shall not enter into a compensated*
10 *referral arrangement with a financial services agent,*
11 *including, but not limited to, an insurance agent or*
12 *broker, mortgage broker, real estate broker, or securities*
13 *broker who offers financial services to that lawyer's*
14 *client.*

15 *SEC. 5.* Section 15610.30 of the Welfare and
16 Institutions Code is amended to read:

17 15610.30. (a) "Financial abuse" of an elder or
18 dependent adult occurs when a person or entity does any
19 of the following:

20 (1) Takes, secretes, or appropriates real or personal
21 property of an elder or dependent adult to a wrongful use
22 or with intent to defraud, or both.

23 (2) Assists in taking, secreting, or appropriating real or
24 personal property of an elder or dependent adult to a
25 wrongful use or with intent to defraud, or both.

26 ~~(3) Continues to hold the real or personal property of~~
27 ~~an elder or dependent adult, or fails to take reasonable~~
28 ~~steps to make the real or personal property readily~~
29 ~~available to the elder or dependent adult, to his or her~~
30 ~~representative, or to a court appointed receiver, under~~
31 ~~the following conditions:~~

32 ~~(A) The person or entity has possession of or control of~~
33 ~~or access to the real or personal property that belongs to,~~
34 ~~or is held in express trust, constructive trust, or resulting~~
35 ~~trust for, the elder or dependent adult.~~

36 ~~(B) The elder or dependent adult or his or her~~
37 ~~representative requests the person or entity to transfer~~
38 ~~the real or personal property to the elder or dependent~~
39 ~~adult, or to his or her representative, or to a court~~
40 ~~appointed receiver.~~

1 ~~(C) The person or entity takes, secretes, or~~
2 ~~appropriates the real or personal property to a wrongful~~
3 ~~use or with intent to defraud.~~

4 (b) For purposes of this section, “representative”
5 means a person or entity that is either of the following:

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

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

