

AMENDED IN SENATE AUGUST 24, 2000
AMENDED IN SENATE AUGUST 18, 2000
AMENDED IN SENATE AUGUST 7, 2000
AMENDED IN ASSEMBLY MAY 31, 2000
AMENDED IN ASSEMBLY MAY 16, 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
(Coauthor: Assembly Member Jackson)

February 22, 2000

An act to add Section 6177 to the Business and Professions Code, and to amend and renumber Section 10193 of, to amend Section 10234.8 of, and to add Section 789.8 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 imposes on all insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with a policyholder, a duty of honesty, good faith, and fair dealing.

This bill would impose the duty of honesty, good faith, and fair dealing on insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with respect to prospective policyholders.

The bill would only permit life agents, *on or after July 1, 2001*, 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 providing the elder or his or her agent with a specified disclosure, in writing, explaining the resource and income requirements of the Medi-Cal program, including, but not limited to, certain exempt resources, certain protections against spousal impoverishment, and certain circumstances under which an interest in a home may be transferred without affecting Medi-Cal eligibility. *The bill would exclude from the application of these disclosure provisions credit life insurance, as defined.*

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

This bill would require the State Bar to make a report, by December 31 of each year, to the Legislature on the provision of financial services by lawyers to elders, as specified. The report would include the number of complaints filed and investigations initiated, the type of charges made, and the number and nature of disciplinary actions taken by the State Bar.

(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: yes. 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. The State Bar by December 31 of each year shall
 4 report to the Legislature on the number of complaints
 5 filed against California attorneys alleging a violation of
 6 this article. The report shall also include the type of



1 charges made in each complaint, the number of resulting
2 investigations initiated, and the number and nature of
3 any disciplinary actions take by the State Bar for
4 violations of this article.

5 SEC. 2. Section 789.8 is added to the Insurance Code,
6 to read:

7 789.8. (a) “Elder” for purposes of this section means
8 any person residing in this state, 65 years of age or older.

9 (b) If a life agent offers to sell to an elder any life
10 insurance or annuity product, the life agent shall advise
11 an elder or elder’s agent in writing that the sale or
12 liquidation of any stock, bond, IRA, certificate of deposit,
13 mutual fund, annuity, or other asset to fund the purchase
14 of this product may have tax consequences, early
15 withdrawal penalties, or other costs or penalties as a result
16 of the sale or liquidation, and that the elder or elder’s
17 agent may wish to consult independent legal or financial
18 advice before selling or liquidating any assets and prior to
19 the purchase of any life or annuity products being
20 solicited, offered for sale, or sold. *This section does not*
21 *apply to a credit life insurance product as defined in*
22 *Section 779.2.*

23 (c) A life agent who offers for sale or sells a financial
24 product to an elder on the basis of the product’s
25 treatment under the Medi-Cal program may not
26 negligently misrepresent the treatment of any asset
27 under the statutes and rules and regulations of the
28 Medi-Cal program, as it pertains to the determination of
29 the elder’s eligibility for any program of public assistance.

30 (d) A life agent who offers for sale or sells any financial
31 product on the basis of its treatment under the Medi-Cal
32 program shall provide, in writing, the following
33 disclosure to the elder or the elder’s agent:

34
35 “NOTICE REGARDING STANDARDS FOR
36 MEDI-CAL ELIGIBILITY
37

38 If you or your spouse are considering purchasing a
39 financial product based on its treatment under the
40 Medi-Cal program, read this important message!

1 You or your spouse do not have to use up all of your
2 savings before applying for Medi-Cal.

3
4
5

UNMARRIED RESIDENT

6 An unmarried resident may be eligible for Medi-Cal
7 benefits if he or she has less than (insert amount of
8 individual’s resource allowance) in countable resources.

9 The Medi-Cal recipient is allowed to keep from his or
10 her monthly income a personal allowance of (insert
11 amount of personal needs allowance) plus the amount of
12 any health insurance premiums paid. The remainder of
13 the monthly income is paid to the nursing facility as a
14 monthly share of cost.

15
16
17

MARRIED RESIDENT

18 COMMUNITY SPOUSE RESOURCE ALLOWANCE:
19 If one spouse lives in a nursing facility, and the other
20 spouse does not live in a facility, the Medi-Cal program
21 will pay some or all of the nursing facility costs as long as
22 the couple together does not have more than (insert
23 amount of community countable assets).

24 MINIMUM MONTHLY MAINTENANCE NEEDS
25 ALLOWANCE: If a spouse is eligible for Medi-Cal
26 payment of nursing facility costs, the spouse living at
27 home is allowed to keep a monthly income of at least his
28 or her individual monthly income or (insert amount of
29 the minimum monthly maintenance needs allowance),
30 whichever is greater.

31
32
33

FAIR HEARINGS AND COURT ORDERS

34 Under certain circumstances, an at-home spouse can
35 obtain an order from an administrative law judge or court
36 that will allow the at-home spouse to retain additional
37 resources or income. The order may allow the couple to
38 retain more than (insert amount of community spouse
39 resource allowance plus individual’s resource allowance)
40 in countable resources. The order also may allow the



1 at-home spouse to retain more than (insert amount of the
2 monthly maintenance need allowance) in monthly
3 income.

4

5 REAL AND PERSONAL PROPERTY EXEMPTIONS

6

7 Many of your assets may already be exempt. Exempt
8 means that the assets are not counted when determining
9 eligibility for Medi-Cal.

10

11 REAL PROPERTY EXEMPTIONS

12

13 ONE PRINCIPAL RESIDENCE. One property used as
14 a home is exempt. The home will remain exempt in
15 determining eligibility if the applicant intends to return
16 home someday.

17 The home also continues to be exempt if the applicant's
18 spouse or dependent relative continues to live in it.

19 Money received from the sale of a home can be exempt
20 for up to six months if the money is going to be used for
21 the purchase of another home.

22 REAL PROPERTY USED IN A BUSINESS OR
23 TRADE. Real estate used in a trade or business is exempt
24 regardless of its equity value and whether it produces
25 income.

26

27 PERSONAL PROPERTY AND OTHER EXEMPT
28 ASSETS

29

30 IRAs, KEOGHs, AND OTHER WORK-RELATED
31 PENSION PLANS. These funds are exempt if the family
32 member whose name it is in does not want Medi-Cal. If
33 held in the name of a person who wants Medi-Cal and
34 payments of principal and interest are being received,
35 the balance is considered unavailable and is not counted.
36 It is not necessary to annuitize, convert to an annuity, or
37 otherwise change the form of the assets in order for them
38 to be unavailable.

39



1 PERSONAL PROPERTY USED IN A TRADE OR
2 BUSINESS.

3
4 ONE MOTOR VEHICLE.

5
6 IRREVOCABLE BURIAL TRUSTS OR
7 IRREVOCABLE PREPAID BURIAL CONTRACTS.

8
9 THERE MAY BE OTHER ASSETS THAT MAY BE
10 EXEMPT.

11
12 This is only a brief description of the Medi-Cal
13 eligibility rules, for more detailed information, you should
14 call your county welfare department. Also, you are
15 advised to contact a legal services program for seniors or
16 an attorney that is not connected with the sale of this
17 product.

18
19 I have read the above notice and have received a copy.
20 Dated: _____ Signature:
21 _____”

22
23 The statement required in this subdivision shall be
24 printed in at least 12-point type, shall be clearly separate
25 from any other document or writing, and shall be signed
26 by the prospective purchaser and that person’s spouse,
27 and legal representative, if any.

28 (e) The State Department of Health Services shall
29 update this form to ensure consistency with state and
30 federal law and make the disclosure available to agents
31 and brokers through its Internet website.

32 (f) Nothing in this section allows or is intended to allow
33 the unlawful practice of law.

34 (g) *Subdivisions (b) and (d) shall become operative*
35 *on July 1, 2001.*

36 SEC. 3. Section 10193 of the Insurance Code is
37 amended and renumbered to read:

38 10192.55. (a) With regard to Medicare supplement
39 insurance, all insurers, brokers, agents, and others
40 engaged in the business of insurance owe a policyholder



1 or a prospective policyholder a duty of honesty, and a
2 duty of good faith and fair dealing.

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

7 SEC. 4. Section 10234.8 of the Insurance Code is
8 amended to read:

9 10234.8. (a) With regard to long-term care
10 insurance, all insurers, brokers, agents, and others
11 engaged in the business of insurance owe a policyholder
12 or a prospective policyholder a duty of honesty, and a
13 duty of good faith and fair dealing.

14 (b) Conduct of an insurer, broker, or agent during the
15 offer and sale of a policy previous to the purchase is
16 relevant to any action alleging a breach of the duty of
17 honesty, and a duty of good faith and fair dealing.

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

20 15610.30. (a) “Financial abuse” of an elder or
21 dependent adult occurs when a person or entity does any
22 of the following:

23 (1) Takes, secretes, appropriates, or retains real or
24 personal property of an elder or dependent adult to a
25 wrongful use or with intent to defraud, or both.

26 (2) Assists in taking, secreting, appropriating, or
27 retaining real or personal property of an elder or
28 dependent adult to a wrongful use or with intent to
29 defraud, or both.

30 (b) A person or entity shall be deemed to have taken,
31 secreted, appropriated, or retained property for a
32 wrongful use if, among other things, the person or entity
33 takes, secretes, appropriates or retains possession of
34 property in bad faith.

35 (1) A person or entity shall be deemed to have acted
36 in bad faith if the person or entity knew or should have
37 known that the elder or dependent adult had the right to
38 have the property transferred or made readily available
39 to the elder or dependent adult or to his or her
40 representative.



1 (2) For purposes of this section, a person or entity
2 should have known of a right specified in paragraph (1)
3 if, on the basis of the information received by the person
4 or entity or the person or entity's authorized third party,
5 or both, it is obvious to a reasonable person that the elder
6 or dependent adult has a right specified in paragraph (1).

7 (c) For purposes of this section, "representative"
8 means a person or entity that is either of the following:

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

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

