

## Senate Bill No. 72

### CHAPTER 454

An act to add Article 10.5 (commencing with Section 6175) to Chapter 4 of Division 3 of the Business and Professions Code, relating to financial services by lawyers.

[Approved by Governor September 21, 1999. Filed  
with Secretary of State September 21, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 72, Murray. Lawyers: financial services.

Existing law regulating the practice of law establishes that properly adopted rules of professional conduct are binding upon all members of the State Bar. These rules provide that lawyers may enter into business transactions with their clients or acquire pecuniary interests adverse to their clients if certain prerequisites, including the client's informed written consent, are met.

This bill would authorize a lawyer, while acting as a fiduciary, to sell financial products to any client who is an elder or dependent adult with whom he or she has or has had an attorney-client relationship within the preceding 3 years, if the transaction is fair and reasonable to the client and the lawyer provides that client with a written disclosure that includes certain information about the financial product and the terms of the proposed sale, as specified.

This bill would provide that an injured client may sue for civil damages and other civil remedies. It would also provide for an additional award if certain specified conditions are met. This bill would provide that a violation of these provisions would be cause for discipline by the State Bar.

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

SECTION 1. Article 10.5 (commencing with Section 6175) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

#### Article 10.5. Provision of Financial Services by Lawyers

6175. As used in this article, the following definitions apply:

(a) "Lawyer" means a member of the State Bar or a person who is admitted and in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or licensed to practice law in, or is admitted in good standing

and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer or law firm or law corporation doing business in the state.

(b) “Client” means a person who has, within the three years preceding the sale of financial products by a lawyer to that person, employed that lawyer for legal services. The settlor and trustee of a trust shall be considered one person.

(c) “Elder” and “dependent elder” shall have the meaning as defined in Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) “Financial products” means long-term care insurance, life insurance, and annuities governed by the Insurance Code, or its successors.

(e) “Sell” means to act as a broker for a commission.

6175.3. A lawyer, while acting as a fiduciary, may sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding three years, an attorney-client relationship, if the transaction or acquisition and its terms are fair and reasonable to the client, and if the lawyer provides that client with a disclosure that satisfies all of the following conditions:

(a) The disclosure is in writing and is clear and conspicuous. The disclosure shall be a separate document, appropriately entitled, in 12-point print with one inch of space on all borders.

(b) The disclosure, in a manner that should reasonably have been understood by that client, is signed by the client, or the client’s conservator, guardian, or agent under a valid durable power of attorney.

(c) The disclosure states that the lawyer shall receive a commission and sets forth the amount of the commission and the actual percentage rate of the commission, if any. If the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure shall include the actual percentage rate of the commission or the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated.

(d) The disclosure identifies the source of the commission and the relationship between the source of the commission and the person receiving the commission.

(e) The disclosure is presented to the client at or prior to the time the recommendation of the financial product is made.

(f) The disclosure advises the client that he or she may obtain independent advice regarding the purchase of the financial product and will be given a reasonable opportunity to seek that advice.

(g) The disclosure contains a statement that the financial product may be returned to the issuing company within 30 days of receipt by



the client for a refund as set forth in Section 10127.10 of the Insurance Code.

(h) The disclosure contains a statement that if the purchase of the financial product is for the purposes of Medi-Cal planning, the client has been advised of other appropriate alternatives, including spend-down strategies, and of the possibility of obtaining a fair hearing or obtaining a court order.

6175.4. (a) A client who suffers any damage as the result of a violation of this article by any lawyer may bring an action against that person to recover or obtain one or more of the following remedies:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than five thousand dollars (\$5,000).

(2) An order enjoining the violation.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars (\$10,000) where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings.

6175.5. A violation of this article by a member shall be cause for discipline by the State Bar.

6175.6. The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agencies for review and possible disciplinary action.

6176. Nothing in this article shall be deemed to limit, reduce, or preclude enforcement of any obligation, statute, State Bar Rule of Professional Conduct, or court rule, including, but not limited to, those relating to the lawyer's fiduciary duties, that are otherwise applicable to any transaction in which a lawyer is involved.

