

SB 33 (Simitian and Wolk) – Elder and Dependent Adult Abuse

Introduced December 6, 2010

Existing law provides for the confidentiality of financial records but does not prohibit various state and local officers and agencies from requesting information from an office or branch of a financial institution and the office or branch from responding to the request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

This bill would make a technical nonsubstantive change to the above provisions. The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under the act, care custodians of elder and dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

Existing law, until January 1, 2013, includes within these reporting requirements mandated reporters of suspected financial abuse, as defined, and, with certain exceptions, makes failure to comply with these requirements subject to a civil penalty. This bill would delete the January 1, 2013 repeal date.

Introduced by Senators Simitian and Wolk

December 6, 2010

An act to repeal Section 7480 of the Government Code, and to amend Section 15630.1 of, and to amend and repeal Sections 15633, 15634, 15640, and 15655.5 of, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as introduced, Simitian. Elder and dependent adult abuse.

Existing law provides for the confidentiality of financial records but does not prohibit various state and local officers and agencies from requesting information from an office or branch of a financial institution and the office or branch from responding to the request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

Existing law provides that a county adult protective services office and a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult is similarly not prohibited from requesting financial information and the office or branch is not prohibited from responding to the request.

This bill would make a technical nonsubstantive change to the above provisions. The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under the act, care custodians of elder or dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

Existing law, until January 1, 2013, includes within these reporting requirements mandated reporters of suspected financial abuse, as defined, and, with certain exceptions, makes failure to comply with these requirements subject to a civil penalty.

This bill would delete the January 1, 2013, repeal date.

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 7480 of the Government Code, as
2 amended by Section 2 of Chapter 709 of the Statutes of 2010, is
3 repealed.

4 ~~7480. Nothing in this chapter prohibits any of the following:~~

5 ~~(a) The dissemination of any financial information that is not~~
6 ~~identified with, or identifiable as being derived from, the financial~~
7 ~~records of a particular customer.~~

8 ~~(b) When any police or sheriff's department or district attorney~~
9 ~~in this state certifies to a bank, credit union, or savings association~~
10 ~~in writing that a crime report has been filed that involves the~~
11 ~~alleged fraudulent use of drafts, checks, or other orders drawn~~
12 ~~upon any bank, credit union, or savings association in this state,~~
13 ~~the police or sheriff's department or district attorney, a county~~
14 ~~adult protective services office when investigating the financial~~
15 ~~abuse of an elder or dependent adult, or a long-term care~~
16 ~~ombudsman when investigating the financial abuse of an elder or~~
17 ~~dependent adult, may request a bank, credit union, or savings~~
18 ~~association to furnish, and a bank, credit union, or savings~~
19 ~~association shall furnish, a statement setting forth the following~~
20 ~~information with respect to a customer account specified by the~~
21 ~~requesting party for a period 30 days prior to, and up to 30 days~~
22 ~~following, the date of occurrence of the alleged illegal act involving~~
23 ~~the account:~~

24 ~~(1) The number of items dishonored.~~

25 ~~(2) The number of items paid that created overdrafts.~~

26 ~~(3) The dollar volume of the dishonored items and items paid~~
27 ~~which created overdrafts and a statement explaining any credit~~
28 ~~arrangement between the bank, credit union, or savings association~~
29 ~~and customer to pay overdrafts.~~

1 ~~(4) The dates and amounts of deposits and debits and the account~~
2 ~~balance on these dates.~~

3 ~~(5) A copy of the signature card, including the signature and~~
4 ~~any addresses appearing on a customer's signature card.~~

5 ~~(6) The date the account opened and, if applicable, the date the~~
6 ~~account closed.~~

7 ~~(7) A bank, credit union, or savings association that provides~~
8 ~~the requesting party with copies of one or more complete account~~
9 ~~statements prepared in the regular course of business shall be~~
10 ~~deemed to be in compliance with paragraphs (1), (2), (3), and (4).~~

11 ~~(c) When any police or sheriff's department or district attorney~~
12 ~~in this state certifies to a bank, credit union, or savings association~~
13 ~~in writing that a crime report has been filed that involves the~~
14 ~~alleged fraudulent use of drafts, checks, or other orders drawn~~
15 ~~upon any bank, credit union, or savings association doing business~~
16 ~~in this state, the police or sheriff's department or district attorney,~~
17 ~~a county adult protective services office when investigating the~~
18 ~~financial abuse of an elder or dependent adult, or a long-term care~~
19 ~~ombudsman when investigating the financial abuse of an elder or~~
20 ~~dependent adult, may request, with the consent of the~~
21 ~~account holder, the bank, credit union, or savings association to~~
22 ~~furnish, and the bank, credit union, or savings association shall~~
23 ~~furnish, a statement setting forth the following information with~~
24 ~~respect to a customer account specified by the requesting party for~~
25 ~~a period 30 days prior to, and up to 30 days following, the date of~~
26 ~~occurrence of the alleged illegal act involving the account:~~

27 ~~(1) The number of items dishonored.~~

28 ~~(2) The number of items paid that created overdrafts.~~

29 ~~(3) The dollar volume of the dishonored items and items paid~~
30 ~~which created overdrafts and a statement explaining any credit~~
31 ~~arrangement between the bank, credit union, or savings association~~
32 ~~and customer to pay overdrafts.~~

33 ~~(4) The dates and amounts of deposits and debits and the account~~
34 ~~balance on these dates.~~

35 ~~(5) A copy of the signature card, including the signature and~~
36 ~~any addresses appearing on a customer's signature card.~~

37 ~~(6) The date the account opened and, if applicable, the date the~~
38 ~~account closed.~~

39 ~~(7) A bank, credit union, or savings association doing business~~
40 ~~in this state that provides the requesting party with copies of one~~

1 or more complete account statements prepared in the regular course
2 of business shall be deemed to be in compliance with paragraphs
3 (1), (2), (3), and (4).

4 (d) For purposes of subdivision (c), consent of the accountholder
5 shall be satisfied if an accountholder provides to the financial
6 institution and the person or entity seeking disclosure, a signed
7 and dated statement containing all of the following:

8 (1) Authorization of the disclosure for the period specified in
9 subdivision (c).

10 (2) The name of the agency or department to which disclosure
11 is authorized and, if applicable, the statutory purpose for which
12 the information is to be obtained.

13 (3) A description of the financial records that are authorized to
14 be disclosed.

15 (e) (1) The Attorney General, a supervisory agency, the
16 Franchise Tax Board, the State Board of Equalization, the
17 Employment Development Department, the Controller or an
18 inheritance tax referee when administering the Prohibition of Gift
19 and Death Taxes (Part 8 (commencing with Section 13301) of
20 Division 2 of the Revenue and Taxation Code), a police or sheriff's
21 department or district attorney, a county adult protective services
22 office when investigating the financial abuse of an elder or
23 dependent adult, a long-term care ombudsman when investigating
24 the financial abuse of an elder or dependent adult, a county welfare
25 department when investigating welfare fraud, a county
26 auditor-controller or director of finance when investigating fraud
27 against the county, or the Department of Corporations when
28 conducting investigations in connection with the enforcement of
29 laws administered by the Commissioner of Corporations, from
30 requesting of an office or branch of a financial institution, and the
31 office or branch from responding to a request, as to whether a
32 person has an account or accounts at that office or branch and, if
33 so, any identifying numbers of the account or accounts.

34 (2) No additional information beyond that specified in this
35 section shall be released to a county welfare department without
36 either the accountholder's written consent or a judicial writ, search
37 warrant, subpoena, or other judicial order.

38 (3) A county auditor-controller or director of finance who
39 unlawfully discloses information he or she is authorized to request
40 under this subdivision is guilty of the unlawful disclosure of

1 ~~confidential data, a misdemeanor, which shall be punishable as~~
2 ~~set forth in Section 7485.~~

3 ~~(f) The examination by, or disclosure to, any supervisory agency~~
4 ~~of financial records that relate solely to the exercise of its~~
5 ~~supervisory function. The scope of an agency's supervisory~~
6 ~~function shall be determined by reference to statutes that grant~~
7 ~~authority to examine, audit, or require reports of financial records~~
8 ~~or financial institutions as follows:~~

9 ~~(1) With respect to the Commissioner of Financial Institutions~~
10 ~~by reference to Division 1 (commencing with Section 99), Division~~
11 ~~1.5 (commencing with Section 4800), Division 2 (commencing~~
12 ~~with Section 5000), Division 5 (commencing with Section 14000),~~
13 ~~Division 7 (commencing with Section 18000), Division 15~~
14 ~~(commencing with Section 31000), and Division 16 (commencing~~
15 ~~with Section 33000) of the Financial Code.~~

16 ~~(2) With respect to the Controller by reference to Title 10~~
17 ~~(commencing with Section 1300) of Part 3 of the Code of Civil~~
18 ~~Procedure.~~

19 ~~(3) With respect to the Administrator of Local Agency Security~~
20 ~~by reference to Article 2 (commencing with Section 53630) of~~
21 ~~Chapter 4 of Part 1 of Division 2 of Title 5 of the Government~~
22 ~~Code.~~

23 ~~(g) The disclosure to the Franchise Tax Board of (1) the amount~~
24 ~~of any security interest that a financial institution has in a specified~~
25 ~~asset of a customer or (2) financial records in connection with the~~
26 ~~filing or audit of a tax return or tax information return that are~~
27 ~~required to be filed by the financial institution pursuant to Part 10~~
28 ~~(commencing with Section 17001), Part 11 (commencing with~~
29 ~~Section 23001), or Part 18 (commencing with Section 38001) of~~
30 ~~the Revenue and Taxation Code.~~

31 ~~(h) The disclosure to the State Board of Equalization of any of~~
32 ~~the following:~~

33 ~~(1) The information required by Sections 6702, 6703, 8954,~~
34 ~~8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,~~
35 ~~41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,~~
36 ~~46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the~~
37 ~~Revenue and Taxation Code.~~

38 ~~(2) The financial records in connection with the filing or audit~~
39 ~~of a tax return required to be filed by the financial institution~~
40 ~~pursuant to Part 1 (commencing with Section 6001), Part 2~~

1 (~~commencing with Section 7301~~), Part 3 (~~commencing with Section~~
2 ~~8601~~), Part 13 (~~commencing with Section 30001~~), Part 14
3 (~~commencing with Section 32001~~), and Part 17 (~~commencing with~~
4 ~~Section 37001~~) of Division 2 of the Revenue and Taxation Code.

5 (3) ~~The amount of any security interest a financial institution~~
6 ~~has in a specified asset of a customer, if the inquiry is directed to~~
7 ~~the branch or office where the interest is held.~~

8 (i) ~~The disclosure to the Controller of the information required~~
9 ~~by Section 7853 of the Revenue and Taxation Code.~~

10 (j) ~~The disclosure to the Employment Development Department~~
11 ~~of the amount of any security interest a financial institution has in~~
12 ~~a specified asset of a customer, if the inquiry is directed to the~~
13 ~~branch or office where the interest is held.~~

14 (k) ~~The disclosure by a construction lender, as defined in Section~~
15 ~~3087 of the Civil Code, to the Registrar of Contractors, of~~
16 ~~information concerning the making of progress payments to a~~
17 ~~prime contractor requested by the registrar in connection with an~~
18 ~~investigation under Section 7108.5 of the Business and Professions~~
19 ~~Code.~~

20 (f) ~~Upon receipt of a written request from a local child support~~
21 ~~agency referring to a support order pursuant to Section 17400 of~~
22 ~~the Family Code, a financial institution shall disclose the following~~
23 ~~information concerning the account or the person named in the~~
24 ~~request, whom the local child support agency shall identify,~~
25 ~~whenever possible, by social security number:~~

26 (1) ~~If the request states the identifying number of an account at~~
27 ~~a financial institution, the name of each owner of the account.~~

28 (2) ~~Each account maintained by the person at the branch to~~
29 ~~which the request is delivered, and, if the branch is able to make~~
30 ~~a computerized search, each account maintained by the person at~~
31 ~~any other branch of the financial institution located in this state.~~

32 (3) ~~For each account disclosed pursuant to paragraphs (1) and~~
33 ~~(2), the account number, current balance, street address of the~~
34 ~~branch where the account is maintained, and, to the extent available~~
35 ~~through the branch's computerized search, the name and address~~
36 ~~of any other person listed as an owner.~~

37 (4) ~~Whenever the request prohibits the disclosure, a financial~~
38 ~~institution shall not disclose either the request or its response, to~~
39 ~~an owner of the account or to any other person, except the officers~~
40 ~~and employees of the financial institution who are involved in~~

1 responding to the request and to attorneys, employees of the local
2 child support agencies, auditors, and regulatory authorities who
3 have a need to know in order to perform their duties, and except
4 as disclosure may be required by legal process.

5 (5) No financial institution, or any officer, employee, or agent
6 thereof, shall be liable to any person for (A) disclosing information
7 in response to a request pursuant to this subdivision, (B) failing to
8 notify the owner of an account, or complying with a request under
9 this paragraph not to disclose to the owner, the request or disclosure
10 under this subdivision, or (C) failing to discover any account owned
11 by the person named in the request pursuant to a computerized
12 search of the records of the financial institution.

13 (6) The local child support agency may request information
14 pursuant to this subdivision only when the local child support
15 agency has received at least one of the following types of physical
16 evidence:

17 (A) Any of the following, dated within the last three years:

18 (i) Form 599.

19 (ii) Form 1099.

20 (iii) A bank statement.

21 (iv) A check.

22 (v) A bank passbook.

23 (vi) A deposit slip.

24 (vii) A copy of a federal or state income tax return.

25 (viii) A debit or credit advice.

26 (ix) Correspondence that identifies the child support obligor by
27 name, the bank, and the account number.

28 (x) Correspondence that identifies the child support obligor by
29 name, the bank, and the banking services related to the account of
30 the obligor.

31 (xi) An asset identification report from a federal agency.

32 (B) A sworn declaration of the custodial parent during the 12
33 months immediately preceding the request that the person named
34 in the request has had or may have had an account at an office or
35 branch of the financial institution to which the request is made.

36 (7) Information obtained by a local child support agency
37 pursuant to this subdivision shall be used only for purposes that
38 are directly connected with the administration of the duties of the
39 local child support agency pursuant to Section 17400 of the Family
40 Code.

1 ~~(m) (1) As provided in paragraph (1) of subdivision (e) of~~
2 ~~Section 666 of Title 42 of the United States Code, upon receipt of~~
3 ~~an administrative subpoena on the current federally approved~~
4 ~~interstate child support enforcement form, as approved by the~~
5 ~~federal Office of Management and Budget, a financial institution~~
6 ~~shall provide the information or documents requested by the~~
7 ~~administrative subpoena.~~

8 ~~(2) The administrative subpoena shall refer to the current federal~~
9 ~~Office of Management and Budget control number and be signed~~
10 ~~by a person who states that he or she is an authorized agent of a~~
11 ~~state or county agency responsible for implementing the child~~
12 ~~support enforcement program set forth in Part D (commencing~~
13 ~~with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the~~
14 ~~United States Code. A financial institution may rely on the~~
15 ~~statements made in the subpoena and has no duty to inquire into~~
16 ~~the truth of any statement in the subpoena.~~

17 ~~(3) If the person who signs the administrative subpoena directs~~
18 ~~a financial institution in writing not to disclose either the subpoena~~
19 ~~or its response to any owner of an account covered by the subpoena,~~
20 ~~the financial institution shall not disclose the subpoena or its~~
21 ~~response to the owner.~~

22 ~~(4) No financial institution, or any officer, employee, or agent~~
23 ~~thereof, shall be liable to any person for (A) disclosing information~~
24 ~~or providing documents in response to a subpoena pursuant to this~~
25 ~~subdivision, (B) failing to notify any owner of an account covered~~
26 ~~by the subpoena or complying with a request not to disclose to the~~
27 ~~owner, the subpoena or disclosure under this subdivision, or (C)~~
28 ~~failing to discover any account owned by the person named in the~~
29 ~~subpoena pursuant to a computerized search of the records of the~~
30 ~~financial institution.~~

31 ~~(n) The dissemination of financial information and records~~
32 ~~pursuant to any of the following:~~

33 ~~(1) Compliance by a financial institution with the requirements~~
34 ~~of Section 2892 of the Probate Code.~~

35 ~~(2) Compliance by a financial institution with the requirements~~
36 ~~of Section 2893 of the Probate Code.~~

37 ~~(3) An order by a judge upon a written ex parte application by~~
38 ~~a peace officer showing specific and articulable facts that there~~
39 ~~are reasonable grounds to believe that the records or information~~
40 ~~sought are relevant and material to an ongoing investigation of a~~

1 felony violation of Section 186.10 or of any felony subject to the
2 enhancement set forth in Section 186.11.

3 (A) The ex parte application shall specify with particularity the
4 records to be produced, which shall be only those of the individual
5 or individuals who are the subject of the criminal investigation.

6 (B) The ex parte application and any subsequent judicial order
7 shall be open to the public as a judicial record unless ordered sealed
8 by the court, for a period of 60 days. The sealing of these records
9 may be extended for 60-day periods upon a showing to the court
10 that it is necessary for the continuance of the investigation.
11 Sixty-day extensions may continue for up to one year or until
12 termination of the investigation of the individual or individuals,
13 whichever is sooner.

14 (C) The records ordered to be produced shall be returned to the
15 peace officer applicant or his or her designee within a reasonable
16 time period after service of the order upon the financial institution.

17 (D) Nothing in this subdivision shall preclude the financial
18 institution from notifying a customer of the receipt of the order
19 for production of records unless a court orders the financial
20 institution to withhold notification to the customer upon a finding
21 that the notice would impede the investigation.

22 (E) Where a court has made an order pursuant to this paragraph
23 to withhold notification to the customer under this paragraph, the
24 peace officer or law enforcement agency who obtained the financial
25 information shall notify the customer by delivering a copy of the
26 ex parte order to the customer within 10 days of the termination
27 of the investigation.

28 (4) An order by a judge issued pursuant to subdivision (c) of
29 Section 532f of the Penal Code.

30 (5) No financial institution, or any officer, employee, or agent
31 thereof, shall be liable to any person for any of the following:

32 (A) Disclosing information to a probate court pursuant to
33 Sections 2892 and 2893.

34 (B) Disclosing information in response to a court order pursuant
35 to paragraph (3).

36 (C) Complying with a court order under this subdivision not to
37 disclose to the customer, the order, or the dissemination of
38 information pursuant to the court order.

1 ~~(o) Disclosure by a financial institution to a peace officer, as~~
2 ~~defined in Section 830.1 of the Penal Code, pursuant to the~~
3 ~~following:~~

4 ~~(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the~~
5 ~~Civil Code, provided that the financial institution has first complied~~
6 ~~with the requirements of paragraph (2) of subdivision (a) and~~
7 ~~subdivision (b) of Section 1748.95 of the Civil Code.~~

8 ~~(2) Paragraph (1) of subdivision (a) of Section 4002 of the~~
9 ~~Financial Code, provided that the financial institution has first~~
10 ~~complied with the requirements of paragraph (2) of subdivision~~
11 ~~(a) and subdivision (b) of Section 4002 of the Financial Code.~~

12 ~~(3) Paragraph (1) of subdivision (a) of Section 22470 of the~~
13 ~~Financial Code, provided that any financial institution that is a~~
14 ~~finance lender has first complied with the requirements of~~
15 ~~paragraph (2) of subdivision (a) and subdivision (b) of Section~~
16 ~~22470 of the Financial Code.~~

17 ~~(p) When the governing board of the Public Employees'~~
18 ~~Retirement System or the State Teachers' Retirement System~~
19 ~~certifies in writing to a financial institution that a benefit recipient~~
20 ~~has died and that transfers to the benefit recipient's account at the~~
21 ~~financial institution from the retirement system occurred after the~~
22 ~~benefit recipient's date of death, the financial institution shall~~
23 ~~furnish the retirement system the name and address of any coowner,~~
24 ~~cosigner, or any other person who had access to the funds in the~~
25 ~~account following the date of the benefit recipient's death, or if~~
26 ~~the account has been closed, the name and address of the person~~
27 ~~who closed the account.~~

28 ~~(q) When the retirement board of a retirement system established~~
29 ~~under the County Employees Retirement Law of 1937 certifies in~~
30 ~~writing to a financial institution that a retired member or the~~
31 ~~beneficiary of a retired member has died and that transfers to the~~
32 ~~account of the retired member or beneficiary of a retired member~~
33 ~~at the financial institution from the retirement system occurred~~
34 ~~after the date of death of the retired member or beneficiary of a~~
35 ~~retired member, the financial institution shall furnish the retirement~~
36 ~~system the name and address of any coowner, cosigner, or any~~
37 ~~other person who had access to the funds in the account following~~
38 ~~the date of death of the retired member or beneficiary of a retired~~
39 ~~member, or if the account has been closed, the name and address~~
40 ~~of the person who closed the account.~~

1 ~~(r) When the Franchise Tax Board certifies in writing to a~~
2 ~~financial institution that (1) a taxpayer filed a tax return that~~
3 ~~authorized a direct deposit refund with an incorrect financial~~
4 ~~institution account or routing number that resulted in all or a~~
5 ~~portion of the refund not being received, directly or indirectly, by~~
6 ~~the taxpayer; (2) the direct deposit refund was not returned to the~~
7 ~~Franchise Tax Board; and (3) the refund was deposited directly~~
8 ~~on a specified date into the account of an accountholder of the~~
9 ~~financial institution who was not entitled to receive the refund;~~
10 ~~then the financial institution shall furnish to the Franchise Tax~~
11 ~~Board the name and address of any coowner, cosigner, or any other~~
12 ~~person who had access to the funds in the account following the~~
13 ~~date of direct deposit refund, or if the account has been closed, the~~
14 ~~name and address of the person who closed the account.~~

15 ~~(s) This section shall become operative on January 1, 2013.~~

16 SEC. 2. Section 15630.1 of the Welfare and Institutions Code
17 is amended to read:

18 15630.1. (a) As used in this section, “mandated reporter of
19 suspected financial abuse of an elder or dependent adult” means
20 all officers and employees of financial institutions.

21 (b) As used in this section, the term “financial institution” means
22 any of the following:

23 (1) A depository institution, as defined in Section 3(c) of the
24 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

25 (2) An institution-affiliated party, as defined in Section 3(u) of
26 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

27 (3) A federal credit union or state credit union, as defined in
28 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),
29 including, but not limited to, an institution-affiliated party of a
30 credit union, as defined in Section 206(r) of the Federal Credit
31 Union Act (12 U.S.C. Sec. 1786(r)).

32 (c) As used in this section, “financial abuse” has the same
33 meaning as in Section 15610.30.

34 (d) (1) Any mandated reporter of suspected financial abuse of
35 an elder or dependent adult who has direct contact with the elder
36 or dependent adult or who reviews or approves the elder or
37 dependent adult’s financial documents, records, or transactions,
38 in connection with providing financial services with respect to an
39 elder or dependent adult, and who, within the scope of his or her
40 employment or professional practice, has observed or has

1 knowledge of an incident, that is directly related to the transaction
2 or matter that is within that scope of employment or professional
3 practice, that reasonably appears to be financial abuse, or who
4 reasonably suspects that abuse, based solely on the information
5 before him or her at the time of reviewing or approving the
6 document, record, or transaction in the case of mandated reporters
7 who do not have direct contact with the elder or dependent adult,
8 shall report the known or suspected instance of financial abuse by
9 telephone immediately, or as soon as practicably possible, and by
10 written report sent within two working days to the local adult
11 protective services agency or the local law enforcement agency.

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

21 (3) If the mandated reporter knows that the elder or dependent
22 adult resides in a long-term care facility, as defined in Section
23 15610.47, the report shall be made to the local ombudsman or local
24 law enforcement agency.

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

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

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

39 (f) Failure to report financial abuse under this section shall be
40 subject to a civil penalty not exceeding one thousand dollars

(1) (\$1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars (\$5,000), which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

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

(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

~~(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 3. Section 15633 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 140 of the Statutes of 2005, is amended to read:

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

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

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

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

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

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

~~(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 4. Section 15633 of the Welfare and Institutions Code, as added by Section 6 of Chapter 140 of the Statutes of 2005, is repealed.

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

1 ~~(b) Reports of suspected elder or dependent adult abuse and~~
2 ~~information contained therein may be disclosed only to the~~
3 ~~following:~~

4 ~~(1) Persons or agencies to whom disclosure of information or~~
5 ~~the identity of the reporting party is permitted under Section~~
6 ~~15633.5.~~

7 ~~(2) (A) Persons who are trained and qualified to serve on~~
8 ~~multidisciplinary personnel teams may disclose to one another~~
9 ~~information and records that are relevant to the prevention,~~
10 ~~identification, or treatment of abuse of elderly or dependent~~
11 ~~persons.~~

12 ~~(B) Except as provided in subparagraph (A), any personnel of~~
13 ~~the multidisciplinary team or agency that receives information~~
14 ~~pursuant to this chapter, shall be under the same obligations and~~
15 ~~subject to the same confidentiality penalties as the person~~
16 ~~disclosing or providing that information. The information obtained~~
17 ~~shall be maintained in a manner that ensures the maximum~~
18 ~~protection of privacy and confidentiality rights.~~

19 ~~(c) This section shall not be construed to allow disclosure of~~
20 ~~any reports or records relevant to the reports of elder or dependent~~
21 ~~adult abuse if the disclosure would be prohibited by any other~~
22 ~~provisions of state or federal law applicable to the reports or records~~
23 ~~relevant to the reports of the abuse.~~

24 ~~(d) This section shall become operative on January 1, 2013.~~

25 SEC. 5. Section 15634 of the Welfare and Institutions Code,
26 as amended by Section 7 of Chapter 140 of the Statutes of 2005,
27 is amended to read:

28 15634. (a) No care custodian, clergy member, health
29 practitioner, mandated reporter of suspected financial abuse of an
30 elder or dependent adult, or employee of an adult protective
31 services agency or a local law enforcement agency who reports a
32 known or suspected instance of abuse of an elder or dependent
33 adult shall be civilly or criminally liable for any report required
34 or authorized by this article. Any other person reporting a known
35 or suspected instance of abuse of an elder or dependent adult shall
36 not incur civil or criminal liability as a result of any report
37 authorized by this article, unless it can be proven that a false report
38 was made and the person knew that the report was false. No person
39 required to make a report pursuant to this article, or any person
40 taking photographs at his or her discretion, shall incur any civil or

1 criminal liability for taking photographs of a suspected victim of
2 abuse of an elder or dependent adult or causing photographs to be
3 taken of such a suspected victim or for disseminating the
4 photographs with the reports required by this article. However,
5 this section shall not be construed to grant immunity from this
6 liability with respect to any other use of the photographs.

7 (b) No care custodian, clergy member, health practitioner,
8 mandated reporter of suspected financial abuse of an elder or
9 dependent adult, or employee of an adult protective services agency
10 or a local law enforcement agency who, pursuant to a request from
11 an adult protective services agency or a local law enforcement
12 agency investigating a report of known or suspected abuse of an
13 elder or dependent adult, provides the requesting agency with
14 access to the victim of a known or suspected instance of abuse of
15 an elder or dependent adult, shall incur civil or criminal liability
16 as a result of providing that access.

17 (c) The Legislature finds that, even though it has provided
18 immunity from liability to persons required to report abuse of an
19 elder or dependent adult, immunity does not eliminate the
20 possibility that actions may be brought against those persons based
21 upon required reports of abuse. In order to further limit the financial
22 hardship that those persons may incur as a result of fulfilling their
23 legal responsibilities, it is necessary that they not be unfairly
24 burdened by legal fees incurred in defending those actions.
25 Therefore, a care custodian, clergy member, health practitioner,
26 or an employee of an adult protective services agency or a local
27 law enforcement agency may present to the State Board of Control
28 a claim for reasonable attorneys' fees incurred in any action against
29 that person on the basis of making a report required or authorized
30 by this article if the court has dismissed the action upon a demurrer
31 or motion for summary judgment made by that person, or if he or
32 she prevails in the action. The State Board of Control shall allow
33 that claim if the requirements of this subdivision are met, and the
34 claim shall be paid from an appropriation to be made for that
35 purpose. Attorneys' fees awarded pursuant to this section shall not
36 exceed an hourly rate greater than the rate charged by the Attorney
37 General at the time the award is made and shall not exceed an
38 aggregate amount of fifty thousand dollars (\$50,000). This
39 subdivision shall not apply if a public entity has provided for the

1 defense of the action pursuant to Section 995 of the Government
2 Code.

3 ~~(d) This section shall remain in effect only until January 1, 2013,~~
4 ~~and as of that date is repealed, unless a later enacted statute, that~~
5 ~~is enacted before January 1, 2013, deletes or extends that date.~~

6 SEC. 6. Section 15634 of the Welfare and Institutions Code,
7 as amended by Section 711 of Chapter 538 of the Statutes of 2006,
8 is repealed.

9 ~~15634. (a) No care custodian, clergy member, health~~
10 ~~practitioner, or employee of an adult protective services agency~~
11 ~~or a local law enforcement agency who reports a known or~~
12 ~~suspected instance of elder or dependent adult abuse shall be civilly~~
13 ~~or criminally liable for any report required or authorized by this~~
14 ~~article. Any other person reporting a known or suspected instance~~
15 ~~of elder or dependent adult abuse shall not incur civil or criminal~~
16 ~~liability as a result of any report authorized by this article, unless~~
17 ~~it can be proven that a false report was made and the person knew~~
18 ~~that the report was false. No person required to make a report~~
19 ~~pursuant to this article, or any person taking photographs at his or~~
20 ~~her discretion, shall incur any civil or criminal liability for taking~~
21 ~~photographs of a suspected victim of elder or dependent adult~~
22 ~~abuse or causing photographs to be taken of the suspected victim~~
23 ~~or for disseminating the photographs with the reports required by~~
24 ~~this article. However, this section shall not be construed to grant~~
25 ~~immunity from this liability with respect to any other use of the~~
26 ~~photographs.~~

27 ~~(b) No care custodian, clergy member, health practitioner, or~~
28 ~~employee of an adult protective services agency or a local law~~
29 ~~enforcement agency who, pursuant to a request from an adult~~
30 ~~protective services agency or a local law enforcement agency~~
31 ~~investigating a report of known or suspected elder or dependent~~
32 ~~adult abuse, provides the requesting agency with access to the~~
33 ~~victim of a known or suspected instance of elder or dependent~~
34 ~~adult abuse, shall incur civil or criminal liability as a result of~~
35 ~~providing that access.~~

36 ~~(c) The Legislature finds that, even though it has provided~~
37 ~~immunity from liability to persons required to report elder or~~
38 ~~dependent adult abuse, immunity does not eliminate the possibility~~
39 ~~that actions may be brought against those persons based upon~~
40 ~~required reports of abuse. In order to further limit the financial~~

1 hardship that those persons may incur as a result of fulfilling their
2 legal responsibilities, it is necessary that they not be unfairly
3 burdened by legal fees incurred in defending those actions.
4 Therefore, a care custodian, clergy member, health practitioner,
5 or employee of an adult protective services agency or a local law
6 enforcement agency may present to the California Victim
7 Compensation and Government Claims Board a claim for
8 reasonable attorney's fees incurred in any action against that person
9 on the basis of making a report required or authorized by this article
10 if the court has dismissed the action upon a demurrer or motion
11 for summary judgment made by that person, or if he or she prevails
12 in the action. The California Victim Compensation and
13 Government Claims Board shall allow that claim if the
14 requirements of this subdivision are met, and the claim shall be
15 paid from an appropriation to be made for that purpose. Attorney's
16 fees awarded pursuant to this section shall not exceed an hourly
17 rate greater than the rate charged by the Attorney General at the
18 time the award is made and shall not exceed an aggregate amount
19 of fifty thousand dollars (\$50,000). This subdivision shall not apply
20 if a public entity has provided for the defense of the action pursuant
21 to Section 995 of the Government Code.

22 (d) This section shall become operative on January 1, 2013.

23 SEC. 7. Section 15640 of the Welfare and Institutions Code,
24 as amended by Section 9 of Chapter 140 of the Statutes of 2005,
25 is amended to read:

26 15640. (a) (1) An adult protective services agency shall
27 immediately, or as soon as practically possible, report by telephone
28 to the law enforcement agency having jurisdiction over the case
29 any known or suspected instance of criminal activity, and to any
30 public agency given responsibility for investigation in that
31 jurisdiction of cases of elder and dependent adult abuse, every
32 known or suspected instance of abuse pursuant to Section 15630
33 or 15630.1 of an elder or dependent adult. A county adult protective
34 services agency shall also send a written report thereof within two
35 working days of receiving the information concerning the incident
36 to each agency to which it is required to make a telephone report
37 under this subdivision. Prior to making any cross-report of
38 allegations of financial abuse to law enforcement agencies, an
39 adult protective services agency shall first determine whether there
40 is reasonable suspicion of any 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 Health Services
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 and 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 ~~(g) This section shall remain in effect only until January 1, 2013,~~
29 ~~and as of that date is repealed, unless a later enacted statute, that~~
30 ~~is enacted before January 1, 2013, deletes or extends that date.~~

31 SEC. 8. Section 15640 of the Welfare and Institutions Code,
32 as added by Section 10 of Chapter 140 of the Statutes of 2005, is
33 repealed.

34 ~~15640. (a) (1) An adult protective services agency shall~~
35 ~~immediately, or as soon as practically possible, report by telephone~~
36 ~~to the law enforcement agency having jurisdiction over the case~~
37 ~~any known or suspected instance of criminal activity, and to any~~
38 ~~public agency given responsibility for investigation in that~~
39 ~~jurisdiction of cases of elder and dependent adult abuse, every~~
40 ~~known or suspected instance of abuse pursuant to Section 15630~~

1 of an elder or dependent adult. A county adult protective services
2 agency shall also send a written report thereof within two working
3 days of receiving the information concerning the incident to each
4 agency to which it is required to make a telephone report under
5 this subdivision. Prior to making any cross-report of allegations
6 of financial abuse to law enforcement agencies, an adult protective
7 services agency shall first determine whether there is reasonable
8 suspicion of any criminal activity.

9 (2) If an adult protective services agency receives a report of
10 abuse alleged to have occurred in a long-term care facility, that
11 adult protective services agency shall immediately inform the
12 person making the report that he or she is required to make the
13 report to the long-term care ombudsman program or to a local law
14 enforcement agency. The adult protective services agency shall
15 not accept the report by telephone but shall forward any written
16 report received to the long-term care ombudsman.

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

35 (c) A local law enforcement agency shall immediately, or as
36 soon as practically possible, report by telephone to the long-term
37 care ombudsman program when the abuse is alleged to have
38 occurred in a long-term care facility or to the county adult
39 protective services agency when it is alleged to have occurred
40 anywhere else, and to the agency given responsibility for the

1 investigation of cases of elder and dependent adult abuse every
2 known or suspected instance of abuse of an elder or dependent
3 adult. A local law enforcement agency shall also send a written
4 report thereof within two working days of receiving the information
5 concerning the incident to any agency to which it is required to
6 make a telephone report under this subdivision.

7 (d) A long-term care ombudsman coordinator may report the
8 instance of abuse to the county adult protective services agency
9 or to the local law enforcement agency for assistance in the
10 investigation of the abuse if the victim gives his or her consent. A
11 long-term care ombudsman program and the Licensing and
12 Certification Division of the State Department of Health Services
13 shall immediately report by telephone and in writing within two
14 working days to the bureau any instance of neglect occurring in a
15 health care facility, that has seriously harmed any patient or
16 reasonably appears to present a serious threat to the health or
17 physical well-being of a patient in that facility. If a victim or
18 potential victim of the neglect withholds consent to being identified
19 in that report, the report shall contain circumstantial information
20 about the neglect but shall not identify that victim or potential
21 victim and the bureau and the reporting agency shall maintain the
22 confidentiality of the report until the report becomes a matter of
23 public record.

24 (e) When a county adult protective services agency, a long-term
25 care ombudsman program, or a local law enforcement agency
26 receives a report of abuse, neglect, or abandonment of an elder or
27 dependent adult alleged to have occurred in a long-term care
28 facility, that county adult protective services agency, long-term
29 care ombudsman coordinator, or local law enforcement agency
30 shall report the incident to the licensing agency by telephone as
31 soon as possible.

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

36 (g) This section shall become operative on January 1, 2013.

37 SEC. 9. Section 15655.5 of the Welfare and Institutions Code,
38 as amended by Section 11 of Chapter 140 of the Statutes of 2005,
39 is amended to read:

1 15655.5. A county adult protective services agency shall
2 provide the organizations listed in paragraphs (v), (w), and (x) of
3 Section 15610.17, and mandated reporters of suspected financial
4 abuse of an elder or dependent adult pursuant to Section 15630.1,
5 with instructional materials regarding abuse and neglect of an elder
6 or dependent adult and their obligation to report under this chapter.
7 At a minimum, the instructional materials shall include the
8 following:

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

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

13 (c) Information on how the county adult protective services
14 agency investigates reports of known or suspected abuse and
15 neglect.

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

20 ~~(e) This section shall remain in effect only until January 1, 2013;~~
21 ~~and as of that date is repealed, unless a later enacted statute, that~~
22 ~~is enacted before January 1, 2013, deletes or extends that date.~~

23 SEC. 10. Section 15655.5 of the Welfare and Institutions Code,
24 as amended by Section 712 of Chapter 538 of the Statutes of 2006,
25 is repealed.

26 ~~15655.5. A county adult protective services agency shall~~
27 ~~provide the organizations listed in paragraphs (v), (w), and (x) of~~
28 ~~Section 15610.17 with instructional materials regarding elder and~~
29 ~~dependent adult abuse and neglect and their obligation to report~~
30 ~~under this chapter. At a minimum, the instructional materials shall~~
31 ~~include the following:~~

32 ~~(a) An explanation of elder and dependent adult abuse and~~
33 ~~neglect, as defined in this chapter.~~

34 ~~(b) Information on how to recognize potential elder and~~
35 ~~dependent adult abuse and neglect.~~

36 ~~(c) Information on how the county adult protective services~~
37 ~~agency investigates reports of known or suspected abuse and~~
38 ~~neglect.~~

39 ~~(d) Instructions on how to report known or suspected incidents~~
40 ~~of abuse and neglect, including the appropriate telephone numbers~~

- 1 to call and what types of information would assist the county adult
- 2 protective services agency with its investigation of the report.
- 3 (c) This section shall become operative on January 1, 2013.

O