

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

***Introduced December 6, 2010, Amended June 15, 2011***

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.

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.

### ***July 2011 Summary:***

In 2006, the Legislature enacted the Financial Elder Abuse Reporting Act of 2005 (the Act). (SB 1018 (Simitian, Ch. 140, Stats. 2005) The Act, which sunsets January 1, 2013, was enacted so that individuals in a position of witnessing elder or dependent adult financial abuse would make timely reports to law enforcement or adult protective services in order to protect elderly and dependent adults from financial predators. Under the Act, all officials and employees of specified financial institutions are considered mandated reporters of financial elder abuse. The Act immunizes these mandated reporters from civil or criminal liability for making these reports but provides civil penalties for failing to report financial abuse and the failure to report resulted in death or great bodily injury.

The Act became operative on January 1, 2007. In April 2007, Adult Protective Services of the California Department of Social Services began tracking reports of financial abuse of elder and dependent adults. Between April 2007 and 2010, financial institutions submitted 26,402 reports of elder financial abuse. These reports can be found at <http://www.dss.cahwnet.gov/research/PG345.htm>.

This bill would remove the January 1, 2013 sunset provisions of the Financial Elder Abuse Reporting Act of 2005 in order to make this Act permanent.

### **CHANGES TO EXISTING LAW**

Existing law requires mandated reporting of elder and dependent adult financial abuse by certain financial institutions, as specified, and provides civil and criminal penalties for

failing to report elder and dependent adult financial abuse, as specified. (Welf. & Inst. Code Sec. 15630.1.)

Existing law provides immunity from civil and criminal prosecution to mandated reporters of financial elder or dependent adult abuse. (Welf. & Inst. Code Sec. 15634.)

Existing law requires county adult protective services to report, as specified, instances of reported elder and dependent adult financial abuse. (Welf. & Inst. Code Sec. 15640.)

Existing law requires the county adult protective services to provide financial abuse instructional materials to mandated reporters. (Welf. & Inst. Code Sec. 15655.5.)

Existing law requires financial institutions to release information, as specified, requested by a county adult protective services office or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult. (Gov. Code Sec. 7480(e)(1).)

Existing law provides that the above provisions sunset on January 1, 2013.

This bill would delete the January 1, 2013 sunset date, thereby extending the operation of these provisions indefinitely, and makes technical, nonsubstantive changes. The bill does NOT substantively alter existing law, but merely deletes the 2013 sunset that was included in SB 1018.

The author believes it is important to delete the 2013 sunset date because mandated reporting for financial institutions has increased the number of confirmed reports of elder financial abuse. According to data collected by Adult Protective Services, the number of confirmed cases of elder and dependent adult financial abuse rose over 16% from 4,784 in 2006 to 5,568 in 2007 (the law was implemented in 2007). The number of confirmed cases in 2010 was 5,602.

AMENDED IN ASSEMBLY JUNE 15, 2011

**SENATE BILL**

**No. 33**

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**Introduced by Senators Simitian and Wolk**  
*(Principal coauthor: Assembly Member Wagner)*

December 6, 2010

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~~An act to repeal Section 7480 of the Government Code, and to amend~~  
*An act 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 amended, 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~~

*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     ~~SEC. 2:~~

5     ~~SECTION 1.~~ Section 15630.1 of the Welfare and Institutions  
6     Code is amended to read:

7     15630.1. (a) As used in this section, “mandated reporter of  
8     suspected financial abuse of an elder or dependent adult” means  
9     all officers and employees of financial institutions.

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

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

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

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

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

23    (d) (1) Any mandated reporter of suspected financial abuse of  
24    an elder or dependent adult who has direct contact with the elder  
25    or dependent adult or who reviews or approves the elder or  
26    dependent adult’s financial documents, records, or transactions,

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

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

24 (3) If the mandated reporter knows that the elder or dependent  
25 adult resides in a long-term care facility, as defined in Section  
26 15610.47, the report shall be made to the local ombudsman or local  
27 law enforcement agency.

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

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

38 (2) In the exercise of his or her professional judgment, the  
39 mandated reporter of suspected financial abuse of an elder or

1 dependent adult reasonably believes that financial abuse of an  
2 elder or dependent adult did not occur.

3 (f) Failure to report financial abuse under this section shall be  
4 subject to a civil penalty not exceeding one thousand dollars  
5 (\$1,000) or if the failure to report is willful, a civil penalty not  
6 exceeding five thousand dollars (\$5,000), which shall be paid by  
7 the financial institution that is the employer of the mandated  
8 reporter to the party bringing the action. Subdivision (h) of Section  
9 15630 shall not apply to violations of this section.

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

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

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

28 (i) Reports of suspected financial abuse of an elder or dependent  
29 adult made by an employee or officer of a financial institution  
30 pursuant to this section are covered under subdivision (b) of Section  
31 47 of the Civil Code.

32 ~~SEC. 3.~~

33 *SEC. 2.* Section 15633 of the Welfare and Institutions Code,  
34 as amended by Section 5 of Chapter 140 of the Statutes of 2005,  
35 is amended to read:

36 15633. (a) The reports made pursuant to Sections 15630,  
37 15630.1, and 15631 shall be confidential and may be disclosed  
38 only as provided in subdivision (b). Any violation of the  
39 confidentiality required by this chapter is a misdemeanor  
40 punishable by not more than six months in the county jail, by a



1 fine of five hundred dollars (\$500), or by both that fine and  
2 imprisonment.

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

6 (1) Persons or agencies to whom disclosure of information or  
7 the identity of the reporting party is permitted under Section  
8 15633.5.

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

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

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

30 ~~SEC. 4.~~

31 *SEC. 3.* Section 15633 of the Welfare and Institutions Code,  
32 as added by Section 6 of Chapter 140 of the Statutes of 2005, is  
33 repealed.

34 ~~SEC. 5.~~

35 *SEC. 4.* Section 15634 of the Welfare and Institutions Code,  
36 as amended by Section 7 of Chapter 140 of the Statutes of 2005,  
37 is amended to read:

38 15634. (a) No care custodian, clergy member, health  
39 practitioner, mandated reporter of suspected financial abuse of an  
40 elder or dependent adult, or employee of an adult protective

1 services agency or a local law enforcement agency who reports a  
2 known or suspected instance of abuse of an elder or dependent  
3 adult shall be civilly or criminally liable for any report required  
4 or authorized by this article. Any other person reporting a known  
5 or suspected instance of abuse of an elder or dependent adult shall  
6 not incur civil or criminal liability as a result of any report  
7 authorized by this article, unless it can be proven that a false report  
8 was made and the person knew that the report was false. No person  
9 required to make a report pursuant to this article, or any person  
10 taking photographs at his or her discretion, shall incur any civil or  
11 criminal liability for taking photographs of a suspected victim of  
12 abuse of an elder or dependent adult or causing photographs to be  
13 taken of such a suspected victim or for disseminating the  
14 photographs with the reports required by this article. However,  
15 this section shall not be construed to grant immunity from this  
16 liability with respect to any other use of the photographs.

17 (b) No care custodian, clergy member, health practitioner,  
18 mandated reporter of suspected financial abuse of an elder or  
19 dependent adult, or employee of an adult protective services agency  
20 or a local law enforcement agency who, pursuant to a request from  
21 an adult protective services agency or a local law enforcement  
22 agency investigating a report of known or suspected abuse of an  
23 elder or dependent adult, provides the requesting agency with  
24 access to the victim of a known or suspected instance of abuse of  
25 an elder or dependent adult, shall incur civil or criminal liability  
26 as a result of providing that access.

27 (c) The Legislature finds that, even though it has provided  
28 immunity from liability to persons required to report abuse of an  
29 elder or dependent adult, immunity does not eliminate the  
30 possibility that actions may be brought against those persons based  
31 upon required reports of abuse. In order to further limit the financial  
32 hardship that those persons may incur as a result of fulfilling their  
33 legal responsibilities, it is necessary that they not be unfairly  
34 burdened by legal fees incurred in defending those actions.  
35 Therefore, a care custodian, clergy member, health practitioner,  
36 or an employee of an adult protective services agency or a local  
37 law enforcement agency may present to the ~~State Board of Control~~  
38 *California Victim Compensation and Government Claims Board*  
39 a claim for reasonable attorneys' fees incurred in any action against  
40 that person on the basis of making a report required or authorized



1 by this article if the court has dismissed the action upon a demurrer  
2 or motion for summary judgment made by that person, or if he or  
3 she prevails in the action. ~~The State Board of Control~~ *California*  
4 *Victim Compensation and Government Claims Board* shall allow  
5 that claim if the requirements of this subdivision are met, and the  
6 claim shall be paid from an appropriation to be made for that  
7 purpose. Attorneys' fees awarded pursuant to this section shall not  
8 exceed an hourly rate greater than the rate charged by the Attorney  
9 General at the time the award is made and shall not exceed an  
10 aggregate amount of fifty thousand dollars (\$50,000). This  
11 subdivision shall not apply if a public entity has provided for the  
12 defense of the action pursuant to Section 995 of the Government  
13 Code.

14 ~~SEC. 6:~~

15 *SEC. 5.* Section 15634 of the Welfare and Institutions Code,  
16 as amended by Section 711 of Chapter 538 of the Statutes of 2006,  
17 is repealed.

18 ~~SEC. 7:~~

19 *SEC. 6.* Section 15640 of the Welfare and Institutions Code,  
20 as amended by Section 9 of Chapter 140 of the Statutes of 2005,  
21 is amended to read:

22 15640. (a) (1) An adult protective services agency shall  
23 immediately, or as soon as practically possible, report by telephone  
24 to the law enforcement agency having jurisdiction over the case  
25 any known or suspected instance of criminal activity, and to any  
26 public agency given responsibility for investigation in that  
27 jurisdiction of cases of elder and dependent adult abuse, every  
28 known or suspected instance of abuse pursuant to Section 15630  
29 or 15630.1 of an elder or dependent adult. A county adult protective  
30 services agency shall also send a written report thereof within two  
31 working days of receiving the information concerning the incident  
32 to each agency to which it is required to make a telephone report  
33 under this subdivision. Prior to making any cross-report of  
34 allegations of financial abuse to law enforcement agencies, an  
35 adult protective services agency shall first determine whether there  
36 is reasonable suspicion of any criminal activity.

37 (2) If an adult protective services agency receives a report of  
38 abuse alleged to have occurred in a long-term care facility, that  
39 adult protective services agency shall immediately inform the  
40 person making the report that he or she is required to make the

1 report to the long-term care ombudsman program or to a local law  
2 enforcement agency. The adult protective services agency shall  
3 not accept the report by telephone but shall forward any written  
4 report received to the long-term care ombudsman.

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

23 (c) A local law enforcement agency shall immediately, or as  
24 soon as practically possible, report by telephone to the long-term  
25 care ombudsman program when the abuse is alleged to have  
26 occurred in a long-term care facility or to the county adult  
27 protective services agency when it is alleged to have occurred  
28 anywhere else, and to the agency given responsibility for the  
29 investigation of cases of elder and dependent adult abuse every  
30 known or suspected instance of abuse of an elder or dependent  
31 adult. A local law enforcement agency shall also send a written  
32 report thereof within two working days of receiving the information  
33 concerning the incident to any agency to which it is required to  
34 make a telephone report under this subdivision.

35 (d) A long-term care ombudsman coordinator may report the  
36 instance of abuse to the county adult protective services agency  
37 or to the local law enforcement agency for assistance in the  
38 investigation of the abuse if the victim gives his or her consent. A  
39 long-term care ombudsman program and the Licensing and  
40 Certification Division of the State Department of Health Services

1 *Public Health* shall immediately report by telephone and in writing  
2 within two working days to the bureau any instance of neglect  
3 occurring in a health care facility, that has seriously harmed any  
4 patient or reasonably appears to present a serious threat to the  
5 health or physical well-being of a patient in that facility. If a victim  
6 or potential victim of the neglect withholds consent to being  
7 identified in that report, the report shall contain circumstantial  
8 information about the neglect but shall not identify that victim or  
9 potential victim and the bureau and the reporting agency shall  
10 maintain the confidentiality of the report until the report becomes  
11 a matter of public record.

12 (e) When a county adult protective services agency, a long-term  
13 care ombudsman program, or a local law enforcement agency  
14 receives a report of abuse, neglect, or abandonment of an elder or  
15 dependent adult alleged to have occurred in a long-term care  
16 facility, that county adult protective services agency, long-term  
17 care ombudsman coordinator, or local law enforcement agency  
18 shall report the incident to the licensing agency by telephone as  
19 soon as possible.

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

24 ~~SEC. 8:~~

25 *SEC. 7.* Section 15640 of the Welfare and Institutions Code,  
26 as added by Section 10 of Chapter 140 of the Statutes of 2005, is  
27 repealed.

28 ~~SEC. 9:~~

29 *SEC. 8.* Section 15655.5 of the Welfare and Institutions Code,  
30 as amended by Section 11 of Chapter 140 of the Statutes of 2005,  
31 is amended to read:

32 15655.5. A county adult protective services agency shall  
33 provide the organizations listed in paragraphs (v), (w), and (x) of  
34 Section 15610.17, and mandated reporters of suspected financial  
35 abuse of an elder or dependent adult pursuant to Section 15630.1,  
36 with instructional materials regarding abuse and neglect of an elder  
37 or dependent adult and their obligation to report under this chapter.  
38 At a minimum, the instructional materials shall include the  
39 following:

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

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

5 (c) Information on how the county adult protective services  
6 agency investigates reports of known or suspected abuse and  
7 neglect.

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

12 ~~SEC. 10.~~

13 *SEC. 9.* Section 15655.5 of the Welfare and Institutions Code,  
14 as amended by Section 712 of Chapter 538 of the Statutes of 2006,  
15 is repealed.