

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 477 (Chau) – As Amended: April 15, 2013

SUBJECT: Elder and dependent adult abuse: mandated reporting

SUMMARY: Elder and Dependent Adult Abuse: Mandated Reporting. Specifically, this bill: Includes notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult, and would require notaries to report known, or suspected, instances of financial abuse of an elder or dependent adult if the notary public has observed or has knowledge of suspected financial abuse in connection with providing notary services.

EXISTING LAW:

- 1) Grants the Secretary of State authority over notaries public.
- 2) Establishes the Elder and Dependent Adult Abuse Civil Protection Act (EADACPA) to protect the state's elder and dependent adult population from abuse and exploitation (Welfare and Institutions Code Sec. 15600 et seq.) EADACPA recognizes that elders and dependent adults may have developmental disabilities and cognitive impairments, such as Alzheimer's disease and other dementia disorders, which often leave them incapable of seeking help and protection from others; and that elders and dependent adults suffer physical impairments and poor health, conditions that place them in a dependent and vulnerable position. Further, legislative findings codified in EADACPA state that cases of elder and dependent adult abuse are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.
- 3) Establishes the Financial abuse reporting Act of 2005 which defines who 'mandated reporters' of known financial abuse are, the settings in which their legal obligation to report reside, and the activities which constitute a reportable offense. The Act further details exceptions which would preclude a mandated reporter from reporting, penalties for failure to report, and conditions under which suspected instances of financial abuse may be reported.
- 4) Establishes immunity from criminal and civil liability for mandated reporters who make reports of financial abuse in good faith.
- 5) Directs county adult protective services (APS) on cross-reporting obligations for reports of financial abuse which occur in the community, versus those that occur in a long-term care facility.
- 6) Requires APS to provide financial abuse reporting instructional materials to mandated reporters.

THIS BILL:

- 1) Would establish an affirmative obligation for a notary public who, in connection with providing notary services, has observed or has knowledge of suspected financial abuse of an elder or dependent adult, to report that abuse to APS or local law enforcement within two working days.
- 2) Subject notaries to the same liabilities, limitations, and definitions as those imposed upon reporters within financial institutions.

FISCAL EFFECT: Unknown

Author's Statement: According to the author, AB 477 will help protect California seniors (and other, younger adults living with disabilities) by making notaries public mandated reporters of financial abuse of an elder or dependent adult. Specifically, this bill includes notaries public within the definition of mandated reporters of suspected financial abuse of an elder or dependent adult for purposes of the EADACPA. In turn, AB 477 will provide an additional layer of protection in the fight against elder or dependent adult abuse by making notaries public mandated reporters of financial abuse.

Arguments in Support: The Consumer Federation of California writes that California's seniors are a vulnerable population who can often fall prey not only to manipulation and abuse not only of strangers but of those who are in the senior's life. The existing mandated reporters designated by the EADACPA are able to report known or suspected financial abuse of an elder, and that AB 477 simply extends the existing requirements to apply to notaries public. Because of their routine involvement in the processing of legal documents, notaries public are often in a position to note potential abuse, and report it.

Arguments in Opposition: The California Escrow Association writes that due to their limited exposure to principals or signatories and often on only one occasion during the course of a transaction. Notaries public are not trained to recognize elder abuse and their roles are ministerial in nature; the notary verifies the identification of the signer and either observes the signing of the document, or accepts the affirmation that a signature had occurred. Notaries are not required to know the content of the documents, nor how to detect elder or dependent adult financial abuse. Given that California's elder and dependent adult abuse reporting system is designed for over reporting, the arguments put forth about a notary's lack of knowledge of document content, or lack of knowledge on how to detect elder abuse does not necessarily respond to the intent of the measure.

California Land Title Association writes that the escrow process, unlike ongoing banking relationships, does not offer any appreciable time for any title company employee/notary to ascertain if financial abuse of an elder is taking place. Creating liability for title company personnel who are notaries is unwarranted, poor public policy, and assumes that the exposure to the subject is satisfactory to provide them with all information necessary to evaluate the signer's mental capacity, and whether or not the transaction is considered abuse. Title companies are supposed to be objective parties to the transaction that do not have any vested interest in the outcome, and AB 477 will create a conflict when they act in that capacity. Like the arguments put forth in opposition from the California Escrow Association, California Land Title Association misunderstands the purpose of California's elder and dependent adult reporting

system. AB 477 is not requiring notaries to evaluate mental capacity, or abuse. AB 477 is placing an affirmative responsibility upon notaries to report abuse if they know or suspect that it may be present. Using a reasonable standard to protect the life savings, resources that prevent dependency upon public social services, and property of older or dependent adults is clearly within the framework.

Background and Discussion: The Secretary of State is charged with the responsibility of appointing and commissioning notaries public in the State of California. The Secretary of State strives to ensure that applicants and commissioned notaries public possess the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. Character is germane to the qualifications of the office of a notary public, given the nature of the duties and responsibilities. Government, business, and the public depend on the integrity of notaries public to take the required steps in authenticating signatures and properly completing transactions. The issue of good character is the foundation of all notarial acts. Reporting known or suspected abuse of elderly or dependent adults, arguably, falls within the framework of "good character." To be eligible for appointment, a person must be a California resident at the time of appointment (unless appointed to serve on a military or naval reservation); be at least 18 years of age; complete a course of study approved by the California Secretary of State; pass a written, proctored, closed-book examination; and pass a background check. About 160,362 notaries public are commissioned and operate in California.

Elder and Dependent Abuse Reporting: Under California's elder and dependent adult abuse reporting laws, certain individuals are mandated to report elder abuse and neglect. Although multiple agencies are involved, the primary three responders are APS, Ombudsmen, and law enforcement.

Though nobody knows precisely the extent of elder and dependent adult abuse, estimates from national studies suggest that only 1 in 14 incidences of elder and dependent adult abuse or neglect are reported. Even fewer cases of financial abuse - only 1 in 100 - are reported. As the elderly population increases, and as more disabilities arise within communities, so will abuse. Currently, the state has roughly 4.5 million people over the age of 65 - the largest older adult population in the nation. This figure is projected to climb to about 6.2 million by 2020, and by 2035, 19.8% of the population will be 65+<sup>1</sup>. With the increase in life spans of the elder population comes increased risk of financial abuse to seniors as well as other dependent adults.

Each year, thousands of elderly and dependent adults are targeted for financial exploitation because they are socially isolated, dependent on others for assistance, or easily intimidated. Notaries are well positioned, to report concerns that there may be a risk of swift and devastating depletion of an elderly victim's lifetime savings, property, or securities. AB 477 reinforces an existing responsibility that banks and other institutions have to their customers - to report potentially fraudulent activities and serve in their customers' best interests. Under AB 477, notaries would join many others who are required to report suspected elder and dependent adult abuse, including financial abuse. Existing law requires mandated reports from social workers, home health care workers, various state and county employees, law enforcement, health care professionals, long-term care industry and nursing home workers, employees of financial institutions, clergy and more. This ensures that those who are likely to witness *or suspect* abuse in the course of their work will make reports to law enforcement or APS, *who in turn are trained*

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<sup>1</sup> California Department of Finance Demographic Research Unit

*to investigate and intervene as appropriate.* Again, the focus is on reporting—even over reporting. AB 477 does not require notaries public to intervene, investigate and/or detect abuse—simply report if and when they suspect, or know, that abuse may be occurring.

COMMENTS: The author has amended AB 477 in an important way. Previously, AB 477 added notaries public to a code section designed to address the affirmative reporting obligations of employees of financial institutions. WIC 15630.1 creates a framework for a comprehensive mandate that includes defining who "mandated reporters" of suspected elder or dependent adult financial abuse are, what they must report, how to resolve a single report when two mandated reporters witness the same event, whom to report to, exempts reporting when no corroborating evidence exists or professional judgment indicates otherwise, and limits penalties for not reporting to \$1000 or \$5000 depending upon circumstances, to be paid by the employer, but only if the State Attorney General, district attorney, or county counsel seeks it. 15630.1 (d)(1) is the heart of the financial abuse reporting mandate. However, the mandate is for those with direct contact with an elder or dependent adult, or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services, and who, within the scope of their employment or professional practice has observed or has knowledge of what reasonably appears to be financial abuse. Though many notaries public are employees of, or associated with financial institutions, notaries operating outside the scope of a financial institution would not be included. The amendments of April 15 address this distinction.

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature – **Sponsor**

California Association for Health Services at Home (CAHSAH)

California Police Chiefs Association Inc.

Consumer Federation of California

Center of Excellence on Elder Abuse and Neglect

1 individual

Opposition

California Advocates, Inc.

California Land Title Association

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