Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Ash Kalra, Chair
AB 2159 (Chu) – As Amended March 21, 2018

SUBJECT: Elder and dependent adult financial abuse.

SUMMARY: Includes money transmitters as mandated reporters of suspected elder and dependent financial abuse. Specifically, **this bill**:

1) Adds "money transmitter" to the definition of a mandated reporter of suspected elder and dependent adult financial abuse, and requires them to report known or suspected elder or dependent adult financial abuse to county adult protective services (APS) agencies or local law enforcement.

2) Defines money transmitter as a person or entity engaged in selling or issuing payment instruments, or receiving money for transmission.

3) Makes a money transmitter, and the employer of a money transmitter, subject to civil penalties for failure to report suspected financial abuse of an elder or dependent adult.

EXISTING LAW:

1) The Elder and Dependent Adult Civil Protection Act, was enacted to prevent elder and dependent adult abuse and neglect, and to prosecute those that inflict that abuse or neglect on elders and dependent adults.

2) Defines "financial abuse" of an elder or dependent adult as the taking, secreting, appropriation or retention of real or personal property of the elder or dependent adult to a wrongful use or with intent to defraud, or both, or assisting another person in the above activities, and deems the taking, secreting, appropriating, or retaining of property for a wrongful use, if it is done in bad faith.

3) Requires mandated reporters who observe or have knowledge of elder or dependent adult physical or financial abuse or neglect, or is told by the elder or dependent adult that he/she has experienced abuse, to immediately report the known or suspected abuse.

4) Defines "mandated reporter" as any person who is a provider of care to the elder or dependent adult, a health practitioner, clergy member, employee of county adult protective services or a member of local law enforcement.

5) Defines "mandated reporter of suspected financial abuse of an elder or dependent adult" as all officers and employees of financial institutions, and defines "financial institution" as a depository institution, an institution-affiliated party, or a federal, state, or institution-affiliated party credit union.

6) Provides that a mandated reporter of suspected financial abuse of an elder or dependent adult who fails to report financial abuse shall be subject to a civil penalty not exceeding $1,000. If the failure to report is willful, the civil penalty may be up to $5,000.

7) Specifies that the civil penalty shall be paid by the financial institution who is the employer of the mandated reporter to the party bringing the action.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

Author's Statement: "This bill is a sound approach to protect seniors from falling victim to financial fraud by requiring money transmitters to report suspicious activity to law enforcement or an adult protective services agency.

"Current law requires financial institutions to act as mandated reporters. However, money transmitters are not required to provide information related to suspected fraud targeting seniors.

"By filling this gap in law, AB 2159 adds a layer of protection for seniors during the occasions in which business transactions are conducted through money wiring services.

"With California's senior population set to increase by four million by the year 2030, it is imperative to take legislative action and strengthen law to protect this growing segment in the state."

Note: The author intends to clarify that the money transmitter, or the employer of the money transmitter shall be subject to any civil penalties and not an employee.

BACKGROUND:

The Elder and Dependent Adult Civil Protection Act was enacted to prevent elder and dependent adult abuse and neglect – both physical and financial – and to prosecute those who commit abuse or neglect on elders and dependent adults. Existing law defines "financial abuse" of an elder or dependent adult as appropriating the real or personal property of the elder or dependent adult for a wrongful use or with intent to defraud, or both, or assisting another person to do the same. In order to combat this problem, existing law designates certain persons as "mandated reporters" who are required to report suspected cases of elder and dependent adult abuse to an adult protective services agency or law enforcement. Mandated reporters are generally those whose occupations place them in a position to observe, or otherwise have knowledge of, elder or dependent adult abuse, including health care providers, clergy, employees of county adult protective services, or members of local law enforcement.

Elder Financial Abuse: The California Department of Social Services reports that for fiscal year 2015/16 Adult Protective Services received 12,177 reports of financial abuse from financial institutions. This represented 7% of all reports of abuse and neglect and an average of 1,014 reports from financial institutions per month. There was an average of 756 reports of abuse confirmed each month in fiscal year 2015/16. There were an additional 1,556 inconclusive financial abuses cases each month. Inconclusive means that the Department had reason to believe that the abuse occurred but, no proof. Bank officers and employees are regularly presented with situations that require them to honor a power of attorney despite having knowledge that a financial elder abuse report has been filed on the holder of the power of attorney. According to the True Link Report on Elder Financial Abuse 2015, $16.99 billion is lost to financial exploitation annually, $12.76 billion is lost to criminal fraud or identity theft annually, and $6.67 billion is lost to deceit or theft enabled by a trusting relationship annually.

Money transmitters operate in a variety of commercial retail settings. For instance, Money Gram operates out of 98 outlets in the City of Sacramento alone, including, among others, some Bel Air grocery outlets, Longs Drugs stores, 7-11s, Advance America outlets, and Ace Cash Express outlets. The Money Transmitter Division of the Department of Business Oversight licenses and regulates money transmitters, which includes issuers of payment instruments (money orders), traveler's checks and stored value. The California money transmission laws are found in the California Financial Code and are cited as the Money Transmission Act. The legislature finds and declares in the Money Transmission Act that to protect the interests of consumers of money transmission businesses in this state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of this state, it is necessary to regulate money transmission businesses in this state.

MoneyGram International, Inc., the second-largest money transfer service in the United States, will pay $18 million in consumer redress to settle FTC charges that the company allowed its money transfer system to be used by fraudulent telemarketers to bilk U.S. consumers out of tens of millions of dollars. MoneyGram also will be required to implement a comprehensive anti-fraud and agent-monitoring program.

The FTC charged that between 2004 and 2008, MoneyGram agents helped fraudulent telemarketers and other con artists who tricked U.S. consumers into wiring more than $84 million within the United States and to Canada – after these consumers were falsely told they had won a lottery, were hired for a secret shopper program, or were guaranteed loans. The $84 million in losses is based on consumer complaints to MoneyGram – actual consumer losses likely are much higher.

The FTC charged that MoneyGram knew that its system was being used to defraud people but did very little about it. According to the FTC's complaint, MoneyGram knew, or avoided knowing, that about 131 of its more than 1,200 agents accounted for more than 95 percent of the fraud complaints it received in 2008 regarding money transfers to Canada; a similarly small number of agents was responsible for more than 96 percent of all fraud complaints to the company in 2006.

The Western Union Company (Western Union), a global money services business headquartered in Englewood, Colorado, has agreed to forfeit $586 million and enter into agreements with the Justice Department, the Federal Trade Commission (FTC), and the U.S. Attorney's Offices for the Middle District of Pennsylvania, the Central District of California, the Eastern District of Pennsylvania and the Southern District of Florida. In its agreement with the Justice Department, Western Union admits to criminal violations including willfully failing to maintain an effective anti-money laundering (AML) program and aiding and abetting wire fraud.

According to admissions contained in the deferred prosecution agreement (DPA) and the accompanying statement of facts, between 2004 and 2012, Western Union violated U.S. laws—

the Bank Secrecy Act (BSA) and anti-fraud statutes—by processing hundreds of thousands of transactions for Western Union agents and others involved in an international consumer fraud scheme.
As part of the scheme, fraudsters contacted victims in the U.S. and falsely posed as family members in need or promised prizes or job opportunities. The fraudsters directed the victims to send money through Western Union to help their relative or claim their prize. Various Western Union agents were complicit in these fraud schemes, often processing the fraud payments for the fraudsters in return for a cut of the fraud proceeds.

Western Union knew of but failed to take corrective action against Western Union agents involved in or facilitating fraud-related transactions. Beginning in at least 2004, Western Union recorded customer complaints about fraudulently induced payments in what are known as consumer fraud reports (CFRs). In 2004, Western Union's Corporate Security Department proposed global guidelines for discipline and suspension of Western Union agents that processed a materially elevated number of fraud transactions. In these guidelines, the Corporate Security Department effectively recommended automatically suspending any agent that paid 15 CFRs within 120 days. Had Western Union implemented these proposed guidelines, it could have prevented significant fraud losses to victims and would have resulted in corrective action against more than 2,000 agents worldwide between 2004 and 2012.

Argument in Support: "On behalf of the Congress of California Seniors, I am writing to urge your support for AB 2159 (Chu). This bill expands the definition of abuse contained in California's Elder Abuse and Dependent Adult Civil Protection Act to include abusive actions made by a money transmitter. State law already criminalizes financial abuse committed by employees of financial institutions. Money transmitters are a specific category of independent actors who include issuers of payment instruments (money orders), traveler's checks and stored value. They are licensed by the Money Transmitter Division of the state Department of Business Oversight.

"Money transmitters often see elderly and dependent adults in intimate personal situations with their close family and associates. They may witness heartbreaking episodes of financial abuse, and, as such, should be required to report such abuse to authorities."

Argument in Opposition: The California Retailers Association states, "While we appreciate the author's desire to mitigate elder and dependent adult financial abuse, we do not believe that the mandatory reporting requirements applicable to financial institutions can reasonably be applied to money transmitters. The reporting scheme designed for traditional financial institutions is not congruous with the money transmitter business model. Financial institutions are depository entities that have ongoing relationships with their customers. Conversely, money transmissions are typically single transactions, lacking many of the customer details that exist in financial institution transactions. Without these details, like the age of the customer, a money transmitter may not know whether a customer is an elder or dependent adult, nor whether any type of abuse has occurred."

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature – Sponsor

California Long-Term Care Ombudsman Association
Congress of California Seniors

Opposition

California Bankers Association (CBA)
California Retailers Association
The Money Services Round Table

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