

Date of Hearing: April 24, 2012

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 1525 (Allen) – As Amended: March 22, 2012

SUBJECT: Elder or dependent adult financial abuse: mandated reporters.

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 subjects them to the same standards for reporting known or suspected elder and dependent adult financial abuse, as those standards that currently apply to employees and officers of banking institutions in California.
- 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) Establishes the "Money Transmission Act" which provides for licensure of money transmission entities to protect the interests of persons in California who use money transmission services, to provide for the safe and sound conduct of money transmissions, and maintain public confidence in money transmission services.
- 2) Defines "agent" within the Money Transmission Act as a person that provides money transmission in California on behalf of a licensee.
- 3) Defines "money transmission" as the act of selling, issuing, or receiving money for transmission.
- 4) Requires mandated reporting of suspected elder and dependent adult financial abuse by all officers and employees of certain financial institutions, when they observe or have knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead to a reasonable belief that an elder or dependent adult is the victim of financial abuse, and provides civil penalties for failing to report elder and dependent adult financial abuse.
- 5) Provides immunity from civil and criminal prosecution of mandated reporters of suspected elder or dependent adult financial abuse, when reporting in good faith.
- 6) Requires county adult protective services to report instances of reported elder and dependent adult financial abuse.

- 7) Requires county adult protective services agencies to provide financial abuse instructional materials to mandated reporters.
- 8) 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.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: "The intent of this bill is to strengthen existing law in a way that promotes greater oversight and monitoring of financial institutions so that elderly and dependent adults are not victimized. By folding money transmitters into the Elder Abuse Act, this bill provides greater protections against financial abuses of vulnerable elders and their families that are desperately needed, especially in such dire economic times. AB 1525 is a step in the right direction towards protecting one of California's most vulnerable populations."

Background supplied by author: According to the author, this bill is necessary because mass marketing and e-mail or telephone scams are difficult to track.

Arguments in Support: The AARP states that "...elder financial abuse is a growing issue that is impacting more and more people as our population ages." They describe demographic changes that could mean a dramatic increase of vulnerable adults over the next 20 years. They also state that additional strategies are necessary to combat abuse of this vulnerable population, such as including money transmitters as mandated reporters of suspected elder and dependent adult financial abuse.

The California Advocates for Nursing Home Reform (CANHR) states that the impact of wire scams is staggering, and impacts an elder's ability to thrive and live independently. They consider AB 1525 a modest measure that will encourage employees to be on the look-out for elders who seem apprehensive or confused while attempting to wire thousands of dollars. According to CANHR, the value of the law will be that employees who are engaged in wiring away a senior's money will know that the state and society expect them to look out for the well-being of those customers.

Arguments in Opposition: The Money Services Roundtable, "TMSRT" is an organization composed of non-bank money transmitters that engage in funds transmission, issuance of payment instruments, and stored value. TMSRT asserts that money transmitters do not deal directly with retail customers, do not have customer accounts, and that TMSRT members employ effective techniques to identify, interdict and prevent fraud.

TMSRT argues that including wire transmitters in the statutes that guide banking employees on their mandated reporting responsibilities fails to recognize that wire transmitters do not have relationships with their customers and do not review or approve customer financial records. TMSRT further states that unlike wire transmitters, banks employ trained financial services personnel who should be expected to know when suspicious activity occurs.

TMSRT states that their members deploy effective techniques to identify, interdict and prevent fraud through web-site warnings, wire transmission point-of-sale warnings, customer education, fraud prevention tools, agent training and law enforcement cooperation.

Background and Discussion: According to the Federal Bureau of Investigation (FBI), seniors become targets of elaborate fraud schemes because they are likely to have savings, own their home, and have good credit. Con artists know that older persons' depression era value systems, optimistic natures, and altruism make it difficult for them to say "no" or just hang up the telephone. Con artists know that older people are less likely to report fraud because of shame, and fear that relatives may think they are losing mental capacity. Furthermore, older people often make poor witnesses. Con artists exploit the effects of age on memory. Victims often fail to realize they have been swindled until weeks or months after the event.

The Federal Trade Commission (FTC) considers money transfers risky, and inappropriate for anything other than exchanges of money between people who know each other. Material submitted by the author's office states that scammers capitalize on the nature of wire transfers because it is similar to sending cash: recipients obtain the money quickly, and typically, there is no way to reverse or trace a transfer. Con artists and scammers use a range of techniques to lure older people into sending money via wire transfer services: "lottery and sweepstakes scams" where "lucky winners" are asked to wire cash to cover taxes and fees; "mystery shopper scams" which request unsuspecting consumers to deposit a fraudulent check into their bank account and to wire the amount to someone measuring "customer service" criteria; "online purchase scams" demand wire transfer of funds for goods that never arrive; "advance fee loans" promising loans and credit regardless of one's credit history, for a wire-transferred fee. Typically, fraud starts by enticing individuals through e-mail, mass marketing or telephone solicitations.

In certain circumstances, the wire transfer "agents" were found to be complicit in the fraud. According to a 2009 settlement with the FTC, MoneyGram International, Inc., paid \$18 million in consumer redress after charges were filed that assert the company allowed its money transfer system to be used by fraudulent telemarketers. Between 2004 and 2008, MoneyGram agents assisted con artists who tricked U.S. consumers into transferring over \$84 million after consumers were told they had won a lottery, or were hired for a secret shopper program, or were guaranteed loans.

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. Money Transmission Act licensees, such as Money Gram and Western Union, typically do not have direct contact with customers at point of sale. Money Transmission Act licensees consider those who have direct customer contact at point of sale "agents," and include employees of outlets, as well as the outlets themselves.

Recent Amendments: The author recently amended AB 1525 to exempt retailers of "stored value" from the provisions of AB 1525. "Stored value" is a way to describe the sale of gift cards or pre-paid credit cards.

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature – **Co-Sponsor**
San Diego County District Attorney – **Co-Sponsor**
Aging Services of California
Area Agency on Aging – San Luis Obispo/Santa Barbara
AARP
AFSCME
California Advocates for Nursing Home Reform (CANHR)
California Association of Area Agencies on Aging (C4A)
Crime Victims Action Alliance
Los Angeles County District Attorney's Office
Older Women's League (OWL)

Opposition

The Money Services Roundtable (TMSRT)

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