Date of Hearing: June 11, 2019

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Adrin Nazarian, Chair
SB 496 (Moorlach) – As Amended May 15, 2019

SENATE VOTE: 38-0

SUBJECT: Financial abuse of elder or dependent adults.

SUMMARY: This bill adds broker-dealers and investment advisors to the categories of persons who are mandated reporters of suspected abuse of an elder or dependent adult; allows mandated reporters who report suspected abuse to notify a trusted contact person previously designated by the elder or dependent adult for that purpose, as specified; and, allows mandated reporters to temporarily delay requested account transactions and disbursements of elder or dependent adults, as specified. Specifically, **this bill**:

1) Creates a new section of law, separate from but based on the section currently applicable to banks and credit unions, which makes broker-dealers, and investment advisors, mandated reporters of suspected financial abuse of an elder or dependent adult.

2) Requires broker-dealers and investment advisors to report suspected financial abuse to the local adult protective services agency (or the local ombudsperson, if the elder or dependent adult resides in a long-term care facility), the local law enforcement agency, and the Department of Business Oversight (DBO).

3) Authorizes a broker-dealer or investment advisor who reports suspected financial abuse to additionally notify any trusted contact person who had had previously been identified by the elder or dependent adult for that purpose, unless that third party is suspected of the abuse. Existing law contains no similar provision applicable to banks and credit unions.

4) Authorizes a broker-dealer or investment advisor to temporarily delay a requested disbursement from, or requested transaction involving, an account of an elder or dependent adult or an account to which an elder or dependent adult is a beneficiary, if the mandated reporter meets all of the following conditions:

   a) Has a reasonable belief, after initiating an internal review of the requested disbursement or transaction and the suspected financial abuse, that the requested disbursement or transaction may result in the financial abuse of an elder or dependent adult.

   b) Immediately, but no later than two business days after the disbursement or transaction is delayed, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless a party is reasonably believed to have engaged in suspected financial abuse of the elder or dependent adult.

   c) Immediately, but no later than two business days after the requested disbursement or transaction is delayed, notifies the local adult protective services agency, local law enforcement agency, and DBO about the delay, and subsequently provides these agencies with any updates relevant to the initial report.

5) Provides that any delay of a disbursement or a transaction expires the earlier of either of the following:

   a) A determination by the mandated reporter that the disbursement or transaction will not result in financial abuse of the elder or dependent adult, provided that the mandated reporter first consults with the local county adult protective services agency, local law enforcement agency, and DBO and receives no objection from those entities.

   b) Fifteen business days after the date on which the mandated reporter first delayed the disbursement or transaction, unless the local adult protective services agency, local law enforcement agency, or DBO requests that the mandated reporter extend the delay. An extended delay expires no more than 25 business days after the date of the original delay, unless terminated earlier by the entity requesting the extended delay or by a court of competent jurisdiction.

6) Authorizes a court of competent jurisdiction to enter an order extending any delay or to order other protective relief based on the petition of an adult protective services agency, the mandated reporter, or other interested party.

7) Provides broker-dealers and investment advisors with immunity from civil liability if they delay a disbursement or transaction in good faith and with reasonable care and in accordance with the aforementioned rules.

8) Authorizes a local adult protective services agency, local law enforcement agency, or DBO to disclose the general status or final disposition of any investigation arising from a report made by a mandated reporter, upon request from that mandated reporter. This authority is unique to broker-dealers and investment advisors; no similar authority allows banks and credit unions to request information regarding the general status or final disposition of reports they make.

9) Requires the provision of information relevant to an incident of elder or dependent adult abuse to specified persons who are investigating a known or suspected case of elder or dependent adult abuse and adds DBO to the list of organizations whose investigators may receive such information.

EXISTING LAW:

1) Makes all officers and employees of financial institutions, as defined, mandated reporters of suspected financial abuse of an elder or dependent adult..

2) Requires a mandated reporter of suspected elder or dependent adult financial abuse, who has direct contact with the elder or dependent adult, or who reviews or approves the elder or dependent adult's financial documents, records, or transactions in his or her role as a financial services provider, and who has observed or has knowledge of an incident that reasonably appears to be financial abuse, or who reasonably suspects such abuse, to report the known or suspected abuse as soon as practicably possible to the local adult protective services agency or the local law enforcement agency.

3) Provides that "suspected financial abuse of an elder or dependent adult" occurs when a mandated reporter 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.

4) Clarifies that an allegation by an elder or dependent adult or by any other person that financial abuse has occurred is not sufficient to trigger the requirement that a mandated reporter report such abuse, if both of the following conditions are met:

   a) The mandated reporter is aware of no other corroborating or independent evidence of the alleged financial abuse.

   b) In the exercise of his or her professional judgment, the mandated reporter reasonably believes that financial abuse of the elder or dependent adult did not occur.

5) Authorizes a mandated reporter of suspected elder or dependent adult financial abuse to refuse to honor a power of attorney, as defined, if that mandated reporter makes a report that the elder or dependent adult may be subject to financial abuse, as defined under California law or in similar laws of another state, by the person seeking to act under the authority of the power of attorney.

6) Provides that failure of a mandated reporter to report financial abuse is subject to a civil penalty not exceeding $1,000 ($5,000 if the failure to report is willful), which must be paid by the financial institution that employs the mandated reporter.

7) Authorizes the provision of information relevant to an incident of elder or dependent adult abuse to specified persons who are investigating a known or suspected case of elder or dependent adult abuse.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, this bill was not heard in the Senate Appropriations Committee, so a fiscal committee has not yet analyzed it.

COMMENTS:

According to the author, "Financial exploitation is one of the fastest growing categories of elder abuse in the United States. As the baby boom generation ages, California's senior population is predicted to nearly double over the next two decades – an increase of over 4 million seniors. The National Adult Protective Services Association notes that one in nine seniors reports being abused, neglected, or exploited in the past twelve months, with one in twenty reporting some form of financial mistreatment. Yet, available evidence suggests that only one in 44 cases of financial abuse is ever reported. This bill attempts to address the problem by proposing to codify a modified version of a Model Act developed by the North American Securities Administrators Association (NASAA)."

The regulatory term "broker-dealer" refers to a natural person (an individual) or a firm (a general partnership, limited partnership, limited liability company, corporation, or other entity) that is in the business of buying and selling securities. A broker-dealer conducts the business of buying and selling securities.

Requiring broker-dealers and investment advisors to become mandated reporters is consistent with the duties these securities professionals already have to their clients. The Federal

Investment Advisers Act of 1940 already imposes a fiduciary duty on investment advisors in their dealings with their clients. Case law and DBO regulations already impose a suitability standard on broker-dealers. For these reasons, this bill can be viewed as a reasonable next step, which builds on the responsibilities broker-dealers and investment advisors already have to their clients.

This bill has five substantive provisions, two of which are virtually identical to those that currently apply to bank and credit union employees, and three of which are new to California law but have been adopted by several other states.

Making broker-dealers and investment advisors mandated reporters of financial abuse (similar to the rules applicable to banks and credit unions). With one exception, the mandated reporting requirements of this bill are identical to those which have applied to banks and credit union officers and employees since 2007, and which have been credited with identifying and preventing financial fraud that could have been devastating to the intended victims. The unique aspect of this bill is its requirement that broker-dealers and investment advisors make reports to three entities (adult protective services/local ombudsperson, local law enforcement agency, *and* DBO). Bank and credit union employees may choose to report *either* to local adult protective services/the local ombudsperson *or* to the local law enforcement agency.

Allowing broker-dealers and investment advisors to refuse to honor a power of attorney in instances of suspected financial abuse (identical to the rules applicable to banks and credit unions). This provision is identical to authority that was given to bank and credit union officers and employees, effective January 1, 2018. Because of the relatively short period of time this provision has been in effect for banks and credit unions, information is unavailable regarding its impact.

Allowing broker-dealers and investment advisors to notify trusted third parties regarding suspected abuse (not applicable to banks and credit unions). This bill allows broker-dealers and investment advisors who make a report of suspected financial abuse to additionally notify a trusted third party identified by the elder or dependent adult for that purpose. This provision is intended to help ensure that someone known to and trusted by the elder or dependent adult is aware that a report has been made.

Provisions similar to the one in this bill have already been adopted by 19 other states and are based on rules that already apply to securities professionals. Financial Industry Regulatory Authority Rule 4512.06 requires securities professionals to disclose to each customer that the customer may identify a trusted contact person, who can be contacted by the securities professional for a variety of different purposes, including reports of possible financial exploitation. Thus, the concept of a trusted third party is already in use by securities professionals; this bill simply codifies the ability of securities professionals to notify those trusted third parties after they have reported suspected financial abuse.

Allowing broker-dealers and investment advisors to temporarily delay disbursements or transactions (not applicable to banks and credit unions). Provisions of this bill that allow securities professionals to temporarily delay disbursements or other account transactions when they suspect financial abuse likely have the greatest potential to cross the line between abuse prevention and intrusive over-protection. For that reason, this bill imposes a higher standard on securities professionals, before they may delay transactions or disbursements, relative to the standards that apply to the other provisions of this bill. Specifically, before delaying a disbursement or transaction, a mandated reporter must initiate an internal review of the requested disbursement or transaction and the suspected financial abuse and must have a reasonable belief, following that review, that the requested transaction or disbursement may result in financial abuse. The requirement to conduct an internal review goes beyond what is necessary to substantiate an initial report of suspected financial abuse.

Authorizing the disclosure of information to mandated reporters (not applicable to banks and credit unions). Finally, this bill authorizes broker-dealers and investment advisors who have reported suspected financial abuse to check back in with the organizations they notified to check on the general status or final disposition of an investigation that followed the report. Absent this authority, securities professionals will have no way of knowing whether their reports helped identify financial abuse or were false alarms

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (CDAA)
Financial Services Institute
Security Industry and Financial Markets Association

Opposition

None on file.

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