

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations  
Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst August 21, 2018  
Assignment No. 18-04-0291

SUBJECT: Resolution to SUPPORT AB 2159 (Chu) relative to Elder Abuse.

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2017-2018 State Legislative Program SUPPORT for AB 2159 (Chu), which protects seniors from falling victim to financial fraud by requiring money transmitters to report suspicious activity to law enforcement or an adult protective service agency.

## SUMMARY:

The Department of Aging has submitted a transmittal recommending that the City of Los Angeles take a position in support of AB 2159 (Chu). The attached Resolution notes the following:

- In 2017, the United States Senate Committee on Aging released a report identifying the top 10 senior scams which ranged from Internal Revenue Service (IRS) impersonators, computer scams, and confidence fraud;
- Wire transfer was cited as a commonly used tool to victimize seniors;
- According to True Link Financial in San Francisco, seniors lose more than \$36 billion a year to elder abuse and financial fraud accounts for \$13 billion;
- With California's senior population set to increase by four million by the year 2030, it is imperative to take legislative action to protect this growing population;
- AB 2159 adds a layer of protection for seniors during the occasions in which business transactions are conducted through money wiring services; and
- The City's Department of Aging recommends support of this legislation in that it seeks to strengthen financial abuse protection for older elderly adults by expanding the definition for mandated reporters of suspected financial abuse to include money transmitters and also establishes a civil penalty of \$1,000 for failure to comply and a civil penalty of \$5,000 for willful failure to comply.

AB 2159 died in the Committee of Appropriations.

## BACKGROUND:

The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures for the reporting, investigation and prosecution of elder and dependent adult abuse. Under this statute, all officers and employees of financial institutions are considered mandated reporters. Existing law also requires persons designated as mandated reports of suspected financial abuse to report known or suspected instances of elder or dependent adult financial abuse.

AB 2159 would make money transmitters mandatory reporters of elder and dependent adult financial abuse. This bill provides the following:

- 1) A mandated reporter of suspected financial abuse of an elder or dependent adult” includes a “money transmitter,” as defined.
- 2) A “money transmitter” is defined as a person or entity engaged in either the selling or issuing of payment instruments or the receiving of money for transmission, as those activities are defined in Section 2003 of the Financial Code.
- 3) Specifies that a willful failure to report financial abuse by a money transmitter under this section shall result in a civil penalty not exceeding \$5,000 and full reimbursement to the victim for the financial loss suffered as a result of the financial abuse. Requires the civil penalty and full reimbursement, if applicable, to be paid by the employer of the money transmitter to the party bringing action.
- 4) Specifies that the provisions of this bill do not apply to business entities in which money transmission is not a primary function.

The Department of Aging supports AB 2159.

BILL STATUS:

04/26/18 Re-referred to Com. on APPR.

04/18/18 Do pass and re-refer to Com. on JUD

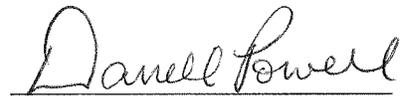
03/22/18 Re-referred to Com. on Aging & L.T.C.

03/21/18 Amend, and re-referred to Com. on Aging & L.T.C.

03/19/18 Referred to Com. on Aging & L.T.C. and Jud.

02/13/18 from printer.

02/12/18 Read first time. To print.



Darrell Powell  
Analyst

ST:MF:PS:DP

Attachment: 1. Resolution  
2. AB 2159 (Chu)

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal government body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in 2017, the United States Senate Committee on Aging released a report identifying the top 10 senior scams which ranged from Internal Revenue Service (IRS) impersonations, computer scams, and confidence fraud; and

WHEREAS, wire transfer was cited as a commonly used tool to victimize seniors; and

WHEREAS, according to True Link Financial of San Francisco, seniors lose more than \$36 billion dollars a year to elder abuse and financial fraud accounts for \$13 billion dollars; and

WHEREAS, with California's senior population set to increase by four million by the year 2030, it is imperative to take legislative action to protect this growing population; and

WHEREAS, AB 2159 (Chu) adds a layer of protection for seniors during the occasions in which business transactions are conducted through money wiring practices; and

WHEREAS, the legislation states that in the event of suspected or known fraud, the money transmitter is required to contact a local adult protective services agency or law enforcement within two working days; and

WHEREAS, according to the bill, failure to follow through on reporting requirements results in a fine up to \$1,000, and in the cases where the failure to report is willful, the fine may reach \$5,000, including full reimbursement to the victim; and

WHEREAS, this legislation seeks to strengthen financial abuse protection for elderly adults by expanding the definition for mandated reporters of suspected financial abuse to include money transmitters and also establishes civil penalties for failure to comply;

NOW, THEREFORE, BE IT RESOLVED, that by the adoption of this Resolution, with the concurrence of the Mayor, the City of Los Angeles hereby, includes in its 2017-2018 State Legislative Program SUPPORT for AB 2159 (Chu), which protects seniors from falling victim to financial fraud by requiring money transmitters to report suspicious activity to law enforcement or an adult protective services agency.



# California

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### AB-2159 Elder and dependent adult financial abuse. (2017-2018)

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Date Published: 04/25/2018 09:00 PM

AMENDED IN ASSEMBLY APRIL 25, 2018

AMENDED IN ASSEMBLY MARCH 21, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

## ASSEMBLY BILL

## No. 2159

Introduced by Assembly Member Chu

February 12, 2018

An act to amend Section 15630.1 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2159, as amended, Chu. Elder and dependent adult financial abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. Existing law requires persons designated as mandated reporters of suspected financial ~~abuse~~, *abuse of an elder or dependent adult*, as defined, to report known or suspected instances of elder or dependent adult financial abuse and makes failure to comply with these requirements subject to a civil penalty not exceeding ~~one thousand dollars (\$1,000)~~ \$1,000 or if the failure to report is willful, a civil penalty not exceeding ~~five thousand dollars (\$5,000)~~ \$5,000. Existing law defines "mandated reporters" for purposes of these requirements as all officers and employees of financial institutions.

This bill would also include within the definition of mandated reporters for these purposes, a money transmitter. The bill would define money transmitter as a person ~~who or entity that~~ sells or issues payment instruments, or ~~who that~~ receives money for transmission, ~~as specified. Under the bill, a willful~~ *specified, but would exclude from the definition a business entity in which money transmission is not a primary function. The bill would make a violation of the reporting requirements described above ~~would result in~~ by a money transmitter subject to a penalty only if the violation is willful, with a civil penalty not exceeding ~~five thousand dollars (\$5,000)~~ \$5,000 and full reimbursement to the victim for the financial loss suffered as a result of the financial ~~abuse~~. *abuse, to be paid by the employer of the money transmitter.**

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

**15630.1.** (a) For purposes of this section, the following definitions apply:

(1) "Financial abuse" means financial abuse as defined in Section 15610.30.

(2) "Financial institution" means any of the following:

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

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

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

(3) "Mandated reporter of suspected financial abuse of an elder or dependent adult" means either of the following:

(A) An officer or employee of a financial institution.

(B) A money transmitter.

(4) (A) "Money transmitter" means a person or entity engaged in either of the following:

~~(A)~~

(i) Selling or issuing payment instruments, as defined in subdivision (s) of Section 2003 of the Financial Code.

~~(B)~~

(ii) Receiving money for transmission, as defined in subdivision (u) of Section 2003 of the Financial Code.

(B) "Money transmitter" does not include a business entity in which money transmission is not a primary function.

(b) (1) A mandated reporter of suspected financial abuse of an elder or dependent adult 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 connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone or through a confidential Internet reporting tool, as authorized pursuant to Section 15658, immediately, or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. A member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

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

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

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

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

(d) ~~(1) Failure to report financial abuse by an officer or employee of a financial institution under this section shall be subject to a civil penalty not exceeding one thousand dollars (\$1,000) or if the failure to report is willful, both a civil penalty not exceeding five thousand dollars (\$5,000) and full reimbursement to the victim for the financial loss suffered as a result of the financial abuse. The civil penalty and full reimbursement, if applicable, (\$5,000), which shall be paid by the financial institution that is the employer of the mandated reporter, by the money transmitter, or, as applicable, by the employer of the money transmitter, reporter to the party bringing the action. Subdivision (h) of Section 15630 does not apply to violations of this section.~~

*(2) Willful failure to report financial abuse by a money transmitter under this section shall be subject to a civil penalty not exceeding five thousand dollars (\$5,000) and full reimbursement to the victim for the financial loss suffered as a result of the financial abuse. The civil penalty and full reimbursement shall be paid by the employer of the money transmitter to the party bringing the action.*

*(3) Subdivision (h) of Section 15630 does not apply to a violation of this section.*

(e) (1) The civil penalty provided for in subdivision (d) shall be recovered only in a civil action brought against the financial institution, ~~the money transmitter,~~ institution or the employer of the money transmitter, by the Attorney General, district attorney, or county counsel. An action shall not be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty shall not be brought for the same violation.

(2) The Financial Elder Abuse Reporting Act of 2005 shall not be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(f) As used in this section, "suspected financial abuse of an elder or dependent adult" occurs when a person who is required to report under paragraph (1) of subdivision (b) 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.

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

(h) (1) A mandated reporter of suspected financial abuse of an elder or dependent adult is authorized to not honor a power of attorney described in Division 4.5 (commencing with Section 4000) of the Probate Code as to an attorney-in-fact, if the mandated reporter of suspected financial abuse of an elder or dependent adult makes a report to an adult protective services agency or a local law enforcement agency of any state that the principal may be subject to financial abuse, as described in this chapter or as defined in similar laws of another state, by that attorney-in-fact or person acting for or with that attorney-in-fact.

(2) If a mandated reporter of suspected financial abuse of an elder or dependent adult does not honor a power of attorney as to an attorney-in-fact pursuant to paragraph (1), the power of attorney shall remain enforceable as to every other attorney-in-fact also designated in the power of attorney about whom a report has not been made.

(3) For purposes of this subdivision, the terms "principal" and "attorney-in-fact" have the same meanings as those terms are used in Division 4.5 (commencing with Section 4000) of the Probate Code.

*(i) This section does not apply to a business entity in which money transmission is not a primary function, unless that business entity is a financial institution as defined in paragraph (2) of subdivision (a).*