

Date of Hearing: March 21, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 386 (Stephanie Nguyen) – As Amended March 16, 2023

**SUBJECT:** California Right to Financial Privacy Act

**SYNOPSIS**

*In order to provide more information to Adult Protective Services (APS) investigators who are investigating reports of elder and dependent adult financial abuse, this bill would do two things. First, it would expand the amount of financial activity that can be requested from a financial institution from 30 days before and after the alleged incident to 90 days before and after. Second, it would expand the type of information that the financial institution must provide to include applications for bank cards, change of address requests, and powers of attorney and trust documents.*

*This bill represents a significant increase in the amount of personal financial information that could be turned over during an investigation of suspected elder financial fraud, especially the threefold increase in the number of days of transactions that can be requested for the initial investigation. However, with increasingly sophisticated efforts to defraud older adults and a 74 percent increase in reported victims nationwide between 2020 and 2021, providing both law enforcement and APS investigators with additional financial records during their investigation appears to be a reasonable trade off.*

*The bill is sponsored by the County Welfare Directors Association and is supported by a number of organizations representing older adults, including the American Association of Retired Persons and the California Elder Justice Coalition. The California Credit Union League (CCUL) is currently opposed to the bill, expressing concerns about expanding the scope of information that is provided to law enforcement for these investigations. Nevertheless, CCUL states that it is working with the author's office and remains confident that it will be able to resolve these concerns if the bill moves forward.*

**SUMMARY:** Expands the type and amount of financial records that must be provided during investigations of suspected financial elder abuse. Specifically, **this bill:**

- 1) Expands the requesting period to 90 days before, and up to 90 days after the date of the alleged illegal activity.
- 2) Expands the type of information the financial institution must provide to include, bank cards issued, change of address requests, and power of attorney or trust documents submitted.

**EXISTING LAW:**

- 1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code § 15600 et seq.)

- 2) Recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that California has a responsibility to protect those persons. (Welf. & Inst. Code § 15600(a).)
- 3) States that the purposes of the Act are to do the following:
  - a) Require health practitioners, care custodians, clergy members, and employees of county APS agencies and local law enforcement agencies to report known or suspected cases of abuse of elders and dependent adults and to encourage community members in general to make such reports.
  - b) Collect information on the numbers of abuse victims, circumstances surrounding the act of abuse, and other data that will aid the state in establishing adequate services to aid all victims of abuse in a timely, compassionate manner.
  - c) Provide for protection under the law for all those persons who report suspected cases of abuse, provided that the report is not made with malicious intent. (Welf. & Inst. Code § 15601.)
- 4) Defines elder and dependent abuse as any of the following:
  - a) Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
  - b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.
  - c) Financial abuse. (Welf. & Inst. Code § 15610.07)
- 5) Requires that when a law enforcement agency investigating financial abuse of an elder or dependent adult certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders, the bank, credit union, or savings association must furnish a statement setting forth specific information with respect to a customer account by the requesting party for a period 30 days before, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account. This information includes the dates and amounts of debits, a copy of the signature card, and the date the account opened and, if applicable, closed. (Gov. Code § 7480(b).)
- 6) Authorizes a financial institution, broker-dealer, or investment adviser to disclose any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution, broker-dealer, or investment adviser by otherwise applicable state or federal law or court order. (Welf. & Inst. Code § 15633(c).)
- 7) Requires information relevant to the incident of elder or dependent adult abuse to be given to an investigator from an adult protective services agency. (Welf. & Inst. Code § 15935.)
- 8) Identifies all officers and employees of financial institutions as mandated reporters of suspected financial abuse of an elder or dependent adult. (Welf. & Inst. Code § 15630.1)

- 9) Provides, under the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const. art. I, § 1.)
- 10) Establishes the California Right to Financial Privacy Act which generally provides for the confidentiality of, and restricts access to, the financial records of people who transact business with, or use the services of, financial institutions or for whom a financial institution has acted as a fiduciary. This Act establishes exceptions to those requirements by authorizing various state and local agencies to request information from financial institutions. (Gov. Code §§ 7460 et seq.)

**FISCAL EFFECT:** As currently drafted, this bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** This bill seeks to expand the type and amount of information that financial agencies must provide during investigations of suspected elder and dependent adult financial abuse. This bill is sponsored by the County Welfare Directors Association.
- 2) **Author's Statement.** According to the author:

Financial Abuse of seniors is rampant and on the rise. Existing Law limits Adult Protective Services (APS) ability to effectively and swiftly protect older and dependent adults when their investigators have limited access to financial records, and must file a police report even when APS has reasonable suspicion of abuse. The current statute prevents APS from obtaining the necessary documents to stop or prevent further harm.

AB 386 improves APS financial abuse investigations and better protects the assets of California's vulnerable community of older and dependent adults by: (1) simplifying criteria to access financial records, which enables a faster response to protect older and disabled adults in a timely manner. (2) Extending the time frame of accessible records from 30 days prior and 30 days following the alleged illegal act to 90 days prior and after, allows a thorough investigation to identify normal spending habits of the alleged victim. (3) Finally, it expands the information APS can receive to identify potentially critical evidence to uncover financial abuse. This bill goes a long way to prevent financial abuse ensuring the financial safety of some of the most vulnerable in our community.

- 3) **Abuse of Older Americans.** According to the National Council on Aging, up to five million older Americans are abused every year and it takes many forms, including physical abuse, emotional abuse, neglect, and financial abuse. Most of the victims of abuse are women, but some are men. The most likely targets are older adults who have no family or friends nearby and people with disabilities, memory problems, and dementia. Elder abuse is a problem that robs older Americans of their dignity, security, and in some extreme cases, potentially their lives. (For more information, see National Institute on Aging, *Elder Abuse*, available at <https://www.nia.nih.gov/health/elder-abuse>.)

The National Center on Elder Abuse (NCEA) notes that studies have found that at least one in 10 community-dwelling older adults experienced some form of abuse in the prior year. Prevalence rates by type of abuse differ across studies. One study, relying on self-reports of abuse, assigned the following percentages by type of abuse: psychological (11.6%), physical (2.6%), financial

(6.8%), neglect (4.2%), and sexual (0.9%) abuse. (NCEA collected statistics and data can be found at <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx> along with citations for the studies the statistics are gleaned from.)

According to the U.S. Department of Justice 2021 Elder Fraud Report, in 2021 over 92,000 victims over the age of 60 reported losses of \$1.7 billion. This represented a 74 percent increase over 2020. On average, each victim lost just over \$18,000, and 3,133 victims lost more than \$100,000. Of those 92,000 victims, 12,951 lived in California and accounted for over \$425 million in reported losses. (U.S. Dept. of Justice, *2021 Elder Fraud Report*, available at <https://www.justice.gov/file/1523276/download>.)

Similar to county child welfare services, county welfare agencies are responsible for adult protective services (APS). “Adult protective services” are those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action as a result of ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of an entitlement. (Welf. & Inst. Code § 15610.10.) Under state law, each county must establish an emergency APS program that provides in-person response to reports of abuse or neglect of an elder or dependent adult for the purpose of providing immediate intake or intervention, or both, to new reports involving immediate life threats and to crises in existing cases. (Welf. & Inst. Code § 15763(a).) County APS programs must include policies and procedures to accomplish specified requirements, including establishment of multidisciplinary teams to develop interagency treatment strategies, ensure maximum coordination with existing community resources, ensure maximum access on behalf of elders and dependent adults, and avoid duplication of efforts. (Id. at (a)(3).) APS include investigations, needs assessments, remedial and preventive social work activities; the necessary tangible resources such as food, transportation, emergency shelter, and in-home protective care; the use of multidisciplinary teams; and a system in which reporting of abuse can occur on a 24-hour basis. (Welf. & Inst. Code § 15760.)

4) **The California Right to Financial Privacy Act.** In 1970, Congress enacted the Bank Secrecy Act, which required banking institutions to maintain records of their customers’ financial transactions. Congress enacted these recordkeeping requirements because it recognized that records of the financial transactions of bank customers “have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.” (Bank Secrecy Act, 12 U.S.C. § 1829b(a)(2); 31 U.S.C. § 5311.) Congress would also soon realize that, due to its expansion of bank recordkeeping requirements and precisely because of the usefulness of the records in the prosecution of individuals for the violation of numerous federal laws and regulations, taxpayers were becoming increasingly vulnerable to the Internal Revenue Service (IRS) prying into their records. Unfortunately, in 1976, the United States Supreme Court determined that a bank customer does not have a constitutionally protected privacy interest in bank records since the records are the property of the bank. As a result, customers have no standing under the Federal Constitution to contest government access to their bank records. (*United States v. Miller* (1976) 425 U.S. 435.)

After *Miller*, there was great concern that government agencies would have unfettered access to the bank records of individuals. In order to restrict the free flow of such information, California (acting more swiftly than the federal government, which would not enact its own Right to

Financial Privacy Act until two years later) enacted the Right to Financial Privacy Act (hereinafter “ Privacy Act”) found at Gov. Code § 7460 et seq. The Privacy Act was enacted to establish procedures and policies to govern the relationship between financial institutions and government agencies in a way that ensures citizens’ constitutional rights, specifically to clarify and protect the confidential relationship between financial institutions and their customers and to balance a citizen’s right of privacy with the governmental interest in obtaining information for specific purposes. (Gov. Code § 7461.)

Currently, all financial institutions operating in California are covered under the Privacy Act, including: state and national banks, state and federal savings associations, trust companies, industrial loan companies, and state and federal credit unions. (Gov. Code § 7465(a).) The Privacy Act applies to “state agencies,” which means state offices, officers, departments, divisions, bureaus, boards, commissions, and other state agencies, including the Legislature (Gov. Code § 7465(e).) The Privacy Act also applies to “local agencies” such as counties; cities, whether general law or chartered; cities and counties; school districts; municipal corporations; districts; political subdivisions or boards, commissions, or agencies thereof; or other local public agencies. (Gov. Code § 7465(f).) When an agency is conducting an investigation and seeks the disclosure of a customer’s financial records, the Privacy Act prohibits any officer, employee, or agent of a state or local agency or department from requesting or receiving copies of, or the information contained in, a customer’s financial records from a financial institution unless the financial records are described with particularity and are consistent with the scope and requirements of the investigation giving rise to the request. (Gov. Code § 7470(a).) Further, the information may only be disclosed if one of the following additional requirements is met:

- The customer authorized disclosure to the officer, employee, or agent of the state or local agency or department of the agency.
- The disclosure is in response to an administrative subpoena or summons, as specified.
- The disclosure is in response to a search warrant.
- The disclosure is in response to a subpoena.

With regard to law enforcement investigations, the Privacy Act *requires* that financial institutions furnish a customer’s financial information when “any police, sheriff’s department, district attorney or special agent with the Department of Justice in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association in this state” or “doing business in this state.” (Gov. Code § 7480.) The financial institution is required to turn over all of the following information:

- The number of items dishonored.
- The number of items paid that created overdrafts.
- The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the financial institution and customer to pay overdrafts.
- The dates and amounts of deposits and debits and the account balance on these dates.
- A copy of the signature card, including the signature and any addresses appearing on a customer’s signature card.
- The date the account opened and, if applicable, the date the account closed.
- Any surveillance photographs and video recordings of persons accessing the victim’s financial account.

Also with regard to law enforcement investigations, the Privacy Act allows the investigator to request records for up to 30 days prior to the alleged incident and 30 days after (for a total of 60 days). (Gov. Code § 7480(a))

This bill proposes to expand both the type of information that can be requested to include new bank cards issued, change of address requests, and all power of attorney or trust documents submitted or executed, and the time frame for the request to include all records 90 days prior to the incident and 90 days after (for a total of 180 days).

This bill allows for a significant expansion in the number of personal financial records that can be provided to law enforcement during an investigation, particularly the threefold increase in the number of days of banking activity that can be requested. As the CCUL notes in their opposition letter, the purpose of the 60-day statutory timeframe has always been used to determine whether there is sufficient evidence to suggest that a crime has occurred in order to request additional personal banking information. However, the 74 percent increase in reported financial fraud claims among adults over 60 between 2020 and 2021 suggests that there is an urgent need to insure that officials are able to collect enough evidence to apprehend and prosecute perpetrators of these crimes in order to reduce the number of victims over time. Given the data on the financial abuse of older and dependent adults, the trade-offs in terms of providing a greater number of personal financial documents appear to be outweighed by the need to protect vulnerable adults and their assets.

5) **Related Legislation.** AB 3229 (Burke, Ch. 288, Stat. of 2018) added the Department of Justice to the list of agencies that may receive financial records from a financial institution, provided that a crime report involving fraud has been filed.

SB 679 (Mello, Ch. 774, Stats. 1991), established the Elder Abuse and Dependent Adult Civil Protection Act.

**ARGUMENTS IN SUPPORT:** In support of the bill, the California Alliance for Retired Americans writes:

County APS Departments are responsible for investigating alleged incidents of abuse of older and dependent adults, including financial abuse. This role is expanding with the population that APS serves, which has grown and changed significantly since the program's inception. By 2030, one in five Californians will be age 65 or older— double what the over-65 population is today. Many of these individuals will also be disabled, cognitively impaired, or facing housing instability. County APS programs struggle to address an evolving landscape of abuse and neglect, including an increase of financial abuse and scams targeting this growing population.

Existing Law limits Adult Protective Services ability to effectively and swiftly protect older and dependent adults when their investigators have limited access to financial records, and must file a police report even when APS has reasonable suspicion of abuse. The current statute prevents APS from obtaining the necessary documents to stop or prevent further harm. AB 386 ensures the financial safety of our vulnerable adults by simplifying criteria to access financial records, extending the time frame of accessible records, and expanding the information APS can receive. AB 386 improves Adult Protective Services (APS) financial

abuse investigations and better protects the assets of California's growing population of older and dependent adults.

**ARGUMENTS IN OPPOSITION:** In opposition to the bill, the California Credit Union League writes:

AB 386 would expand the scope of documents that a credit union must turn over from a 60 day period up to a 180 day period. The purpose of this statutory timeframe has always been used to determine whether there is sufficient basis to request further information. This expansion would not only increase the burden on a responding credit union but also would be another infringement on personal financial privacy.

Finally, CCUL is concerned with the inclusion of specific types of documentation that can be requested as they go beyond mere transactional record.

Despite our numerous concerns with AB 386, CCUL does remain committed to working with the author and sponsor on this important piece of legislation.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

County Welfare Directors Association (Sponsor)  
AARP  
California Alliance for Retired Americans  
California Elder Justice Coalition (CEJC)  
County of Riverside  
CSAC  
RCRC  
Sacramento; County of  
Urban Counties of California (UCC)

### **Opposition**

California Credit Union League

**Analysis Prepared by:** Julie Salley / P. & C.P. / (916) 319-2200