

Date of Hearing: June 27, 2011

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 586 (Pavley) – As Amended: May 27, 2011

SENATE VOTE: 25-14

SUBJECT: Banks and credit unions: signature stamps.

SUMMARY: Restricts the issuance of signature stamps by state chartered banks and credit unions and increases the fines associated with certain elder abuse violations. Specifically, this bill:

- 1) Defines "signature stamp" as a rubber or other synthetic stamp or device that is used to accurately imitate the signature of an individual.
- 2) Provides that a bank or credit union shall only issue a signature stamp to an existing accountholder if either:
 - a) The accountholder is present to request the stamp and an employee of the bank or credit union witnesses and acknowledges in writing that the signature stamp was requested by the stamp holder; or,
 - b) The account holder is physically unable to come into the bank or credit union due to disability, the accountholder provides a letter from a physician attesting to the physical limitations and the accountholders signature has been notarized on a form approved and issued by the bank.
- 3) Requires a bank or credit union that issues a signature stamp to an account holder to inform the account holder of the risks associated with the loss, theft, or misuse of the signature stamp, and his or her rights and responsibilities as a stamp holder, including, but not limited to, the responsibility to review the account frequently and report unauthorized transactions, or report lost or stolen signature stamps as quickly as possible.

EXISTING LAW

- 1) Allows a mark to be affixed as a signature for a person who cannot write, as long as it is witnessed and signed by the witness(es) to the mark (Civil Code Section 14, Code of Civil Procedure Section 17, Corporations Code Section 17, Elections Code Section 354.5, Financial Code Section 17, Fish and Game Code Section 81, Government Code Section 16, Harbors and Navigation Code Section 18, Labor Code Section 17, Military and Veterans Code Section 17, Penal Code Section 7, Public Resources Code Section 17, Public Utilities Code Section 16, Revenue and Taxation Code Section 18, Streets and Highways Code Section 18, Unemployment Insurance Code Section 17, Vehicle Code Section 17, Water Code Section 17, and Welfare and Institutions Code Section 17).
- 2) Any person, who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, or any elder or

dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter. Any one of these individuals, who observes or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or who is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse or neglect, or who reasonably suspects that abuse, must report the known or suspected instance of abuse by telephone immediately or as soon as reasonably practicable, and in writing within two working days, as specified (Welfare and Institutions Code Section 15630).

- 3) In addition to the provision described above, until January 1, 2013, California's Elder and Dependent Adult Financial Abuse Reporting Act requires all officers and employees of financial institutions to act as mandated reporters of elder and dependent adult financial abuse, as specified (Welfare and Institutions Code Sections 15630.1, 15633, 15634, 15640, and 15655.5).

FISCAL EFFECT: According to the Senate Appropriations Committee analysis, The Department of Financial Institutions indicates minor, absorbable costs.

COMMENTS:

According to the author,

This bill is needed to help prevent elder and dependent adult abuse in all of its forms. The financial and physical abuse of elder and dependent adults is an insidious and growing problem in California and across the United States. Unfortunately, with the explosion of online, telephonic and other non-traditional forms of banking and financial activity, financial fraud and other abuse schemes against elders and disabled individuals who need assistance with the maintenance of their financial concerns has become easier.

For example, as has happened in Senator Pavley's district, a caretaker or family member could steal or otherwise fraudulently use a rubber signature stamp to withdraw or transfer funds from an elder or dependent adult's bank account. This is just one example of the myriad ways in which a signature stamp, in the wrong hands, can be fraudulently used to rob elder and dependent adults of their hard earned assets.

In light of the growing need to protect our aging population, this measure is focused on providing consumers with information and establishing basic protections against the fraudulent use of signature stamps which are often used for banking purposes by individuals with physical limitations. This is one type of fraud among many; however it is part of an epidemic of financial abuse that will be facing our aging and dependent adult population in the years to come. Additionally, this bill seeks to deter all elder and dependent adult abuse by increasing fines associated with these crimes. Finally, in light of the structural budget deficit in California and the accompanying budget cuts of the last several years, it is equally crucial that funding be maintained for those agencies that investigate and prevent elder and disabled abuse wherever possible. This bill seeks to allocate the increase in fine monies to County Adult Protective Services agencies for prevention and investigation.

Though it is difficult to determine exact rates of elder and dependent abuse since it is a highly underreported crime, the National Center on Elder Abuse (NCEA) indicates that a large percentage of substantiated reports of mistreatment of older adults are financial exploitation, a percentage that is expected to grow as the baby boomer generation grows older and our society ages in the years and decades to come. It is therefore incumbent upon the Legislature to act wherever possible to establish basic safeguards, and to thwart specific avenues of potential abuse wherever it is reasonable to do so in a manner that is least restrictive on individuals.

Committee staff is unable to determine the statistical usage of signature stamps via empirical data. Anecdotal information reveals that few banks or credit unions offer this service, nor do customers use them often for personal accounts. As revealed in the Senate Banking and Financial Institutions Committee analysis, "Disability Rights CA estimates that approximately 30,000 disabled persons in California (1% of the disabled population) possess signature stamps." Most often, signature stamps are used by business account holders.

This bill seeks to regulate the use of these stamps by ensuring that a bank employee witnesses and acknowledges in writing that the stamp was requested by the physically present account holder. If the account holder cannot be present, then they would need to provide the institutions with a physician signed letter attesting to any physical limitations and that the account holder's signature is notarized. Furthermore, if an institution issues a signature stamp they must also inform the account holder of the risk associated with the loss, theft, or misuse of the stamp.

This bill also increases the monetary penalties for various crimes against elders or dependent adults. Since this bill is double referred to Assembly Public Safety, the need for increasing these penalties will not be discussed.

Signature stamps can be acquired from numerous sources other than financial institutions. This bill would not address the interaction between a customer and a financial institutions if the customer used a signature stamp acquired from somewhere other than the bank or credit union. Additionally, the requirements on banks and credit unions do not address the actual usage of the stamp, only its issuance.

Finally, the restrictions on the issuance of these signature stamps would only apply to California chartered banks and credit unions, meaning that customers banking with national banks (Wells Fargo, Bank of America, Chase, etc) would not have the same protections.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP – **sponsor**

AFSCME

Area Agency on Aging Advisory Council

Alzheimer's Association

California Alliance for Retired Americans (CARA)

California School Employees Association, AFL-CIO

California Senior Legislature (CSL)

Congress of California Seniors (CCS)

Consumer Attorneys of California
County Welfare Directors Association (CWDA)
Disability Rights California
Los Angeles County Board of Supervisors
San Francisco Aging & Adult Services Commission
San Francisco Department of Aging & Adult Services Advisory Council
San Joaquin County Commission on Aging
Ventura County Board of Supervisors

Opposition

California Bankers Association (CBA)
California Independent bankers (CIB)

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081