

Date of Hearing: June 17, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 278 (Dodd) – As Amended June 4, 2024

**SENATE VOTE:** 33-5

**SUBJECT:** Elder abuse: emergency financial contact program

**SUMMARY:** Requires, starting on January 1, 2026, a financial institution to create an emergency financial contact program, as defined, and to delay by three days a specified transaction that the financial institution reasonably suspects is the result of elder financial abuse.

Specifically, **this bill:**

- 1) Makes the following definitions:
  - a) “Covered person or entity” means an officer or employee of a bank, credit union, and other depository institution, or that person’s employer.
  - b) “Covered accountholder” means an accountholder who is an elder or dependent adult, if the covered person or entity has actual knowledge that the accountholder is a dependent adult.
  - c) “Covered transaction” means a transaction initiated by a covered accountholder of a covered person or entity that is at least \$5,000 and that involves the accountholder interacting with one or more employees of the financial institution during the process of initiating the transaction.
  - d) “Emergency financial contact” means an individual who is at least 18 years old and who, once authorized by an accountholder, may be contacted by a covered person or entity for the purpose of disclosing information about the account or the accountholder regarding suspected financial abuse.
- 2) Requires a covered person or entity to establish an emergency financial contact program for covered accountholders, which must include specified outreach and maintenance of records.
- 3) Requires a covered person or entity to notify a joint accountholder or an emergency financial contact, if one has been provided, if the covered person or entity should reasonably suspect the transaction is the result of financial abuse, unless the covered person or entity reasonably believes that the joint accountholder or emergency financial contact is participating in the financial abuse.
- 4) Requires a covered person or entity to delay, by three business days, a covered transaction if the covered person or entity should reasonably suspect the transaction is the result of financial abuse.

- 5) States that a covered person or entity that delays or refuses a transaction based on suspected financial abuse shall be immune from administrative, civil, or other liability that might arise from that delay or refusal.
- 6) Makes the provisions of this legislation operative on January 1, 2026.

**EXISTING LAW:**

- 1) Provides the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) that generally provides civil protections and remedies for victims of elder and dependent adult abuse and neglect. (Welfare and Institutions Code Section 15600 et seq.)
- 2) Provides that “financial abuse” of an elder or dependent adults occurs when a person or entity does any of the following:
  - a) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for wrongful use or with intent to defraud, or both.
  - b) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
  - c) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined. (Welfare and Institutions Code Section 15610.30(a))
- 3) Provides that a person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult. (Welfare and Institutions Code Section 15610.30(b))
- 4) Defines a “mandated reporter” as any person who has assumed the care or custody of an elder or dependent adult, including administrators, supervisors, or licensed staff of a public or private facility that provides care to elder or dependent adults, 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. (Welfare and Institutions Code Section 15630(a))
- 5) Requires a mandated reporter who, within the scope of his/her employment, observes or has knowledge of physical abuse, financial abuse, or neglect, or is told by an elder or dependent adult that he/she has experienced abuse, or reasonably suspects abuse, to immediately report the known or suspected abuse, as specified. (Welfare and Institutions Code Section 15630(b))
- 6) Provides the following related to mandated reporting of suspected financial abuse of an elder or dependent adult:

- a) Defines “mandated reporter of suspected financial abuse of an elder or dependent adult” as all officers and employees of financial institutions, including banks, credit unions, and other depository institutions, a broker-dealer, or an investment adviser.
- b) Requires a person described in (a) to report known or suspected financial abuse to an adult protective services agency or local law enforcement agency as soon as practicably possible if the person has direct contact with the elder or dependent adult or reviews or approves the elder or dependent adult’s financial documents, records, or transactions, or who has observed or has knowledge of an incident that reasonably appears to be financial abuse, or who reasonably suspects that abuse.
- c) Provides that a mandated reporter of financial abuse who fails to make a report, as required, is subject to a civil penalty not to exceed \$1,000, unless the failure is deemed willful, then a civil penalty not to exceed \$5,000, which shall be paid by the employer of the mandated reporter, as specified. (Welfare and Institutions Code Section 15630.1 and 15630.2)

**FISCAL EFFECT:** Unknown. This bill is keyed Nonfiscal by Legislative Counsel.

**COMMENTS:**

1) Purpose

According to the author:

Elder financial abuse is an epidemic. Losses equal \$28 billion dollars annually, across the U.S. The breadth of predatory practices is staggering. According to the U.S. Treasury, older adults are targets for financial exploitation due to their income and accumulated life-long savings, in addition to the possibility that they may face declining cognitive abilities, isolation, and lack of familiarity with technology. As mandated reporters, care custodians, investment advisers, banks, credit unions, and other financial institutions are well positioned to detect when an elder might be the victim of a scam or other financial abuse – and take action to protect elders from the devastating loss of their life savings. SB 278 makes clear what are the prudent actions financial institutions should take when they reasonably suspect financial abuse against and elderly customer is happening.

2) Elder financial abuse

Elder financial abuse can take on many forms and can be committed by strangers or by friends and family. Forms of financial abuse include taking money or property from an elder or dependent adult, borrowing money and not paying it back, or selling their possessions without permission. The impact of financial abuse on a senior can be severe. In some cases, they are unable to rebuild their financial independence.

Not only is elder financial abuse harmful to the victims, it also appears to be a growing problem. According to the American Association of Retired Persons, the rate of elder

financial exploitation more than doubled during the COVID-19 pandemic.<sup>1</sup> Moreover, new scams and strategies increasingly target seniors, including “smishing” efforts in which perpetrators text potential victims posing as legitimate business to gain access to their money.

New technology and faster payments make fraud and financial abuse more difficult to prevent. Peer-to-peer payment apps, crypto assets, and other financial technology services allow scammers to move cash quickly once it leaves a victim’s bank. The availability of private data and artificial intelligence software allow scammers to easily develop new and complex strategies to rob victims of their money. Many of the scams perpetuated against seniors could fool an intelligent person of any age, but seniors are often targeted for a number of reasons. First, the elderly are more likely to have diminished capacities as a result of their advanced age, which makes them more vulnerable. Second, seniors tend to hold more wealth and have more access to liquid assets like cash, making them a lucrative target.

### 3) Elder Abuse and Dependent Adult Civil Protection Act (EADACPA)

The EADACPA creates criminal and civil causes of action that may be brought against a person who engages in abusive and neglectful acts, including financial abuse, against an elder or dependent adult. Financial abuse of an elder or dependent adult occurs when someone takes, or “assists in taking,” the property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. A “wrongful use” is defined as an instance where the offender knew or should have known that the conduct was likely to be harmful to the elder or dependent adult. The EADACPA provides that a person who has committed financial abuse of an elder or dependent adult is liable in a civil action for compensatory damages, reasonable attorney fees and costs, and punitive damages.

While the EADACPA has gone through a number of significant changes over the years, some of its provisions remain a source of conflict. For instance, the courts have inconsistently interpreted when and how a person “assists in taking” the property of an elder or dependent adult for wrongful use and whether such an action constitutes financial abuse. Specifically, there is ambiguity about whether a person can be liable for assisting in abuse if they are not part of the scam but play an essential part in the scam’s success, such as when a bank employee allows a transaction to be completed even if they knew it were likely the result of fraud.

The EADACPA also requires certain employees of health care facilities, residential facilities, hospitals, or entities that counsel, care for, or handle the finances of seniors and dependent adults to report suspected abuse to the authorities. This “mandated reporter” requirement applies to a wide range of people with full or occasional responsibility for an elder or dependent adult or their finances.

Mandated reporters who are employees or officers of financial institutions face various penalties for failure to report. Importantly, failing to make a mandated report is not considered “financial abuse” and thus is not subject to EADACPA’s other civil causes of action. A mandated reporter who fails to report financial abuse is subject to a civil penalty not exceeding \$1,000. Individuals who willfully fail to report financial abuse of an elder or dependent adult are subject to a civil penalty not exceeding \$5,000. These civil penalties

---

<sup>1</sup> [https://www.aarp.org/content/dam/aarp/money/scams\\_fraud/2022/10/aarp-banksafe-pandemic-report-10-3-22.pdf](https://www.aarp.org/content/dam/aarp/money/scams_fraud/2022/10/aarp-banksafe-pandemic-report-10-3-22.pdf)

must be paid by the financial institution that employs the mandated reporter, rather than the individual employee, to the party bringing the action.

The EADACPA's mandatory reporting requirement is one of the state's primary tools to combat elder abuse, but practitioners and advocates argue it has had limited benefit because of incomplete reporting and a weak response from local agencies and law enforcement. Perhaps due to a lack of resources, advocates note that these reports rarely generate responses or resolutions. One practitioner told committee staff the mandated reporting process felt akin to dropping a piece of paper into a well.

#### 4) Some recent history on SB 278

SB 278 was introduced to address cases that arise when a bank allows a fraudulent transaction initiated by a senior customer to be processed despite signs that the elder was being defrauded. These cases suggest that banks are either not paying enough attention or observing warning signs of abuse but deferring to the customer's wishes. Supporters of SB 278 contend that in either situation, banks enable or assist the fraud by not refusing the transaction or otherwise intervening to convince the customer to stop the transaction.

As originally introduced, SB 278 clarified the EADACPA's "assister" liability so that financial institutions could no longer avoid liability in cases where they ignored clear warnings that a transaction was likely fraudulent and processed the transaction anyway. Specifically, SB 278 included in the definition of "assists" instances when a bank employee executes a transaction on behalf of an elder or dependent adult and failed to act as a reasonable person in a like position would have acted, given the surrounding facts and circumstances. In other words, the definition made a bank civilly liable for processing a transaction when the bank should have known that it was elder financial abuse.

In Senate hearings, industry representatives expressed concerns that the "should have known" standard and the bill's unclear terms, combined with EADACPA's civil causes of action for those committing elder financial abuse, would force banks into a defensive posture vis-a-vis their senior customers. As their opposition letter stated, "This measure forces financial institutions to treat their seniors differently and requires heightened scrutiny of their financial decisions, injecting uncertainty into a process that is supposed to be quick, predictable, and final." One recurring theme in these discussions was that a bank, in the face of potential litigation, would opt to hold a transaction altogether rather than allow it to proceed if there was even a modicum of doubt about the transaction's validity. This would result in many seniors experiencing unnecessary disruption in their banking experience.

Financial institutions tend to take comfort in checklists and objective "to do" lists, and as the bill moved forward they continued to argue that SB 278's requirements were overly subjective and required employees to exercise too much discretion to determine whether a potentially fraudulent transaction must be reported. The stakeholder debate then turned to whether the bill needed to include an itemized list of actions a bank could take to avoid liability, commonly known as a "safe harbor" provision. Rather than a productive discussion about how a bank could protect seniors, the discussion devolved into how a bank could protect itself from the legal consequences of processing fraudulent transactions. In response to these concerns, the author amended SB 278 to include a safe harbor for a bank that takes certain steps when there is suspected financial abuse. These safe harbor interventions,

described in detail in Comment #5, became the basis for the current version of the bill being heard in committee on June 17, 2024.

5) What does this bill do?

SB 278 requires a depository institution to establish an Emergency Financial Contact Program, often referred to as a “trusted contact” program, and requires a financial institution or its employees to reach out to an emergency financial contact and delay a transaction by three days when the requested transaction is suspected financial abuse. These interventions, initially included in SB 278’s safe harbor language in prior iterations of the bill, are based on lessons learned from other areas of financial services or other states.

- Trusted contact programs

Banks often struggle to convince a customer that a requested transaction is the result of a scam or fraud. Often, this is because the customer does not trust the bank or they have been told by the scammer that the bank is the one committing the harm. In other cases, a customer will simply not pay attention to outreach from a bank employee. Moreover, a scammer will often manufacture a sense of urgency to pressure the victim to move quickly and disregard whatever warnings they receive from their bank.

In response to this distrust and an inability to reach or influence customers, some financial services companies have deployed so-called “trusted contact” programs to connect the customer to someone they know personally. Often, the customer’s trusted contact can break through with the customer and talk to them about pausing or foregoing the transaction. While a bank can notify a trusted contact of a suspected fraudulent transaction, the trusted contact has no official authority over the account. The Consumer Financial Protection Bureau describes the following scenario to help illustrate how a trusted contact program can help:

Imagine you have a friend named Lara. Lara listed her adult daughter as a trusted contact with her credit union. Lara provided her formal consent for the credit union to contact her daughter if the credit union has trouble reaching Lara or believes she is experiencing financial exploitation.

Today, the credit union notices a large withdrawal from Lara’s account. Lara does not usually make large withdrawals, so the credit union suspects the transaction may be fraudulent. The credit union calls Lara and sends her an email alert, but Lara doesn’t respond.

A credit union staff member then reaches out to Lara’s daughter, the trusted contact, about their concerns. Lara’s daughter informs the staff member that Lara has had a recent health crisis and is not able to use her cell phone.

Once she knows about the situation, Lara’s daughter might help Lara by:

- Stopping by to see Lara in person to ask Lara if she knows about the withdrawal and to encourage Lara to contact her credit union to address the situation

- Coming into a local branch in person with Lara, so Lara can confirm that the withdrawal was fraudulent and talk to staff about next steps
- Helping Lara find out whether anyone else has accessed Lara's financial information

Trusted contact programs are often used by brokers and investment advisors. The Financial Institution Regulatory Authority (FINRA) Rule 4512(a)(1)(F) requires firms, for each of their non-institutional accounts, to make a reasonable effort to obtain trusted person information.<sup>2</sup> As FINRA notes, the trusted contact is intended to be a resource for brokers in administering a customer's account, protecting their assets, and responding to possible financial exploitation.

SB 278 requires each employer of certain mandated reporters – effectively, banks and credit unions and associated depository institutions – to build out a trusted contact programs over the next year. By January 1, 2026, these institutions must reach out to a trusted contact, if one has been provided when they should reasonably suspect a transaction from a senior or dependent adult is the result of financial abuse.

- Transaction delays

As noted above, a common feature in financial fraud or scams is to create a false sense of urgency so the victim moves quickly and disregards the warning signs that they are being scammed. For example, one identified scam is when a person pretending to be a bank employee calls and informs the victim that a criminal is attempting to drain their bank account online and that the victim must immediately go to their local branch to transfer their funds to an outside account. In such a case, the victim feels they must move immediately or else their life savings will disappear.

In a scenario like this, advocates believe one of the most effective interventions is time. Now that financial technology allows money to move faster than ever, there is an acknowledgment that increased transaction speed introduces new risks for customers. Slowing down a transaction gives the victim more time to calm down and adds new friction for the scammer.

Other states have passed laws encouraging or requiring banks to delay transactions when they suspect financial abuse. For example, Connecticut law authorizes a bank to temporarily suspend or hold transactions if they think a senior is being financially exploited and grants liability protection for institutions that do so in good faith. In Minnesota, a financial institution must refer a suspicious transaction to the state financial services regulator, which reviews it and alerts the bank if it agrees the transaction is fraudulent. The bank must then delay the transaction by up to 15 days.

SB 278 requires a depository institution or its employees to delay by three days a transaction that they should reasonably suspect is the result of financial abuse. Unlike the Connecticut law, SB 278 requires this step rather than encourages it through a liability

---

<sup>2</sup> <https://www.finra.org/rules-guidance/rulebooks/finra-rules/4512>

shield. And unlike Minnesota, there is no outside review of such a transaction by a state agency.

## 6) Policy considerations

Members of the committee may wish to consider the following unresolved issues in this area:

- Enforcement

SB 278 is currently silent on how the new requirements will be enforced. Because the enforcement mechanisms in the EADACPA involve civil causes of action or civil penalties, this issue will be resolved in the Assembly Judiciary Committee.

The topic of enforcement remains challenging. These institutions need to do more to protect their customers, as evidenced by the cases that have inspired this bill, including those who have lost significant portions of their life savings in transactions that any reasonable person would flag as fraudulent. If the penalty for noncompliance is too small, it is unclear if banks would carry out their duties as aggressively as SB 278 envisions.

At the same time, when faced with significant consequences for not treating certain customers' accounts in a certain way, banks have already demonstrated a willingness to worsen those customers' banking experience or to walk away from those customers altogether.<sup>3</sup> For example, a recent CBS News story explained that banks move quickly to close down accounts when they suspect some form of fraud because the threat of being penalized by federal regulators for doing nothing is greater than taking action against the accountholder, even if that action was in error or poorly justified.<sup>4</sup> This bill presents genuine trade-offs between safety and the customer service experience, and enforcement will play a key role in how these trade-offs play out.

- Online transactions.

SB 278 requires a three-day delay or outreach to an emergency financial contact for transactions involving some type of interaction with a financial institution employee. While nothing prevents the bank or credit union from intervening with transactions initiated entirely online or over a mobile application, stakeholders expressed concerns about requiring an institution to deploy SB 278's interventions, which require some judgment from the institution, in the absence of a trained professional evaluating the situation. This, combined with the general tendency of seniors to go to physical branches, resulted in the bill's requirements applying to a portion of transactions.

In future years, the Legislature will need to revisit this issue. Online transactions will eventually become the vast majority of bank and credit union transactions, even for seniors, and appropriate interventions will need to be taken. Because of this, SB 278 can best be read as laying the foundation for

## 7) Support

---

<sup>3</sup> <https://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html>

<sup>4</sup> <https://www.cbsnews.com/losangeles/news/on-your-side-bank-customers-report-unexpected-account-closures/>

The Consumer Attorneys of California, the California Low-income Consumer Coalition, and Elder Law & Advocacy are co-sponsors of SB 278 and write the following in support:

SB 278 will enact key recommendations by the CFPB and the FBI including enabling senior account holders to consent to information sharing with trusted third parties. It will help establish procedures so consumers can provide advanced consent to sharing account information with a designated trusted third party when the financial institution reasonably believes that the consumer may be at risk of financial abuse. Another key recommendation enacted by SB 278 is to enable financial institutions delay or refuse a transaction, by up to three days, where there is suspected abuse. This bill strikes an important balance by ensuring that banks and credit unions have guidance on what to do when they suspect elder financial exploitation is occurring and that they feel empowered to take necessary steps to prevent the loss of a senior's money.

8) Other

The California Bankers Association (CBA) has submitted a letter removing their opposition to SB 278, though CBA does express possible drawbacks from the bill's proposed interventions. CBA argues:

We believe that the author amendments on June 4th help address the significant challenges presented by the previous version of the measure, which was focused exclusively on litigation. The prior measure fundamentally changed how financial institutions engage in commerce with seniors by establishing a de facto fiduciary or conservator relationship, with ensuing legal liability if a bank or credit union fails to identify fraudulent transactions. The current version, however, is focused on prevention and helps ensure appropriate intervention before vital funds are lost to fraudsters.

We do wish to point out the unintended consequence of the amended measure, however. The new amendments require banks to hold transactions of \$5,000 or more when there is a reasonable suspicion of fraud. While this new requirement will stop some fraud, it is likely that many time-sensitive transactions will also be held, even if they are not the result of a scam. This overcorrection is likely to frustrate some senior account holders.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Low-income Consumer Coalition (Co-Sponsor)  
Consumer Attorneys of California (Co-Sponsor)  
Elder Law & Advocacy (Co-Sponsor)  
Bet Tzedek Legal Services  
California Advocates for Nursing Home Reform  
California Alliance for Retired Americans  
California Long Term Care Ombudsman Association (CLTCOA)  
Choice in Aging  
Community Legal Services in East Palo Alto

Consumers for Auto Reliability and Safety  
Contra Costa Senior Legal Services  
Disability Rights Advocates  
East Bay Community Law Center  
Elderly Care Everywhere  
Empowered Aging  
Faith Action for All  
Institute on Aging  
Justice in Aging  
LA Raza Centro Legal  
Legal Aid Association of California  
Legal Aid of Marin  
Legal Aid Society of San Bernardino  
Legal Assistance for Seniors  
Legal Assistance for The Elderly  
Meals on Wheels Diablo Valley Region  
National Consumer Law Center, INC.  
Open Door Legal  
Peace Officers Research Association of California (PORAC)  
Public Counsel  
Public Law Center  
Riverside Legal Aid  
Watsonville Law Center

**Other**

California Bankers Association

**Opposition**

None on file.

**Analysis Prepared by:** Luke Reidenbach / B. & F. / (916) 319-3081