
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 386 **Hearing Date:** June 13, 2023
Author: Stephanie Nguyen
Version: April 27, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *California Right to Financial Privacy Act*

HISTORY

Source: County Welfare Directors Association

Prior Legislation: AB 3229 (Burke) Chapter 288, Stat. of 2018
SB 679 (Mello) Chapter 774, Stats. 1991

Support: AARP; California Alliance for Retired Americans; California Bankers Association; California Credit Union League; California Elder Justice Coalition (CEJC); California Senior Legislature; CA State Association of Counties (CSAC); City and County of San Francisco; County of Riverside; County of Santa Clara; County of Santa Cruz Human Services Department; Rural County Representatives of California (RCRC); County of Sacramento; San Francisco Human Services Agency; Sonoma County Human Services Department; Urban Counties of California (UCC)

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to expand the type and amount of financial records that must be provided during investigations of suspected financial elder abuse.

Existing law establishes the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code § 15600 et seq.)

Existing law 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).)

Existing law 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.)

Existing law 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)

Existing law 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).)

Existing law 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.)

Existing law 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)

Existing law provides, under the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const. art. I, § 1.)

Existing law 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.)

Existing law 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).)

This bill expands the requesting period to 90 days before, and up to 60 days after the date of the alleged illegal activity.

This bill 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.

COMMENTS

1. Need for This Bill

According to the author:

Financial attacks and scams against California's seniors are rampant and on the rise. Existing law limits state and local agencies' ability to effectively protect our older and dependent adults, because investigators have limited access to financial records, and cannot obtain the necessary documents to stop or prevent further harm.

AB 386 improves financial abuse investigations by extending the time frame of accessible records from 30 days prior and 30 days following the alleged illegal act to 90 days prior and 60 after, which allows a thorough investigation to identify normal spending habits of the alleged victim. This bill also expands the information APS can receive to identify potentially critical evidence to uncover financial abuse. This includes: (1) new bank cards issued, (2) change of address requests, (3) and power of attorney. This bill goes a long way to prevent financial abuse ensuring the financial safety of some of the most vulnerable in our community.

2. 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 60 days after the incident.

This bill also expands the types of personal financial records that can be provided to law enforcement during an investigation. The information released will also include: new bank cards issued; change of address requests received; and, power of attorney or trust documents submitted or executed.

3. Argument in Support

The California Elder Justice Coalition supports this bill stating:

Access to bank customer records is a top priority for Adult Protective Services investigators during fraud and exploitation inquiries. Although authorization for records sharing exists in both state and federal law, a lack of clarity and confusion from duplicative code provisions leaves many bank officials unclear on their obligations under the law. AB 386 helps address this problem by adding clear parameters for APS investigators' records requests in California's Financial Privacy Act, as well as eliminating the requirement for a criminal case number to be included with the request.

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