



CBA Regulatory Compliance Bulletin

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Financial Elder Abuse Law Modified

The California Legislature passed a bill, AB 611, sponsored by the California Bankers Association allowing mandated reporters of suspected financial abuse of elders to refuse to honor a power of attorney in specified circumstances. Bank employees are mandated reporters under state law¹ if they observe or have knowledge of financial abuse.

This bill addresses the situation where the potential abuser of an elder person or dependent adult is armed with a power of attorney to act on behalf of the person suspected of being abused. The mandated reporter may, but is not required to, refuse to honor a power of attorney if the reporter makes a report to an adult protective services agency or a local law enforcement agency of any state that the elder or dependent adult may be subject to financial abuse by that holder of the power (the agent).

The legislative analysis to AB 611 notes that, in the absence of the authority provided by this bill, a mandated reporter is in the untenable position of having to comply with the duty to report abuse but at the same time having to comply with a suspected abuser's demands.

¹ The Financial Elder Abuse Reporting Act was enacted in 2005 and is codified at Welfare and Institutions Code Section 15630.1.

Where a reporter refuses to honor a power of attorney as to the agent pursuant to this bill, the power of attorney remains enforceable as to any other attorney-in-fact also designated about whom no report of suspected abuse has been made.

Addressing the concern that mandated reporters might unreasonably refuse to honor powers of attorney, the legislative analysis points out that under existing law² the agent may bring an action to compel the third party to honor the agent's exercise of authority. The court is required to award attorney's fees to the agent if it finds that the third party acted unreasonably in refusing to accept the agent's authority. This provision of law, the analysis notes, acts as a deterrent against a reporter's potential abuse of authority under this bill.

AB 611 goes into effect as of January 1, 2018. Jason Lane is CBA's lead lobbyist on the bill.

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² Probate Code Section 4406.