

Assembly Bill No. 2149

CHAPTER 644

An act to add Section 15657.8 to the Welfare and Institutions Code, relating to elder and dependent adults.

[Approved by Governor September 27, 2012. Filed with
Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2149, Butler. Elder and dependent adult abuse: settlement: gag order.

The Elder Abuse and Dependent Adult Civil Protection Act proscribes crimes against elder and dependent adults involving physical and financial abuse. The act provides for the award of attorney's fees and costs, and damages to a plaintiff, when it is proven that a defendant is liable for physical abuse, neglect, or financial abuse, and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

The Civil Discovery Act provides that it is the policy of the state that confidential settlement agreements are disfavored in any civil action the factual foundation for which establishes a cause of action for violation of the Elder Abuse and Dependent Adult Civil Protection Act. The Civil Discovery Act prohibits the court from recognizing or enforcing provisions of such a confidential settlement agreement in the absence of specified conditions.

This bill would provide that an agreement, entered on or after January 1, 2013, to settle a civil action for physical abuse, neglect, or financial abuse of an elder or dependent adult shall not include any provision that, among other things, prohibits contact or cooperation with the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, or the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of State Hospitals, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children, as specified. The bill would provide that any such provision is void as against public policy.

The people of the State of California do enact as follows:

SECTION 1. Section 15657.8 is added to the Welfare and Institutions Code, to read:

15657.8. (a) An agreement to settle a civil action for physical abuse, as defined in Section 15610.63, neglect, as defined in Section 15610.57, or financial abuse, as defined in Section 15610.30, of an elder or dependent adult shall not include any of the following provisions, whether the agreement is made before or after filing the action:

(1) A provision that prohibits any party to the dispute from contacting or cooperating with the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of Mental Health, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined in Section 4900, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children, provided that the party contacting or cooperating with one of these entities had a good faith belief that the information he or she provided is relevant to the concerns, duties, or obligations of that entity.

(2) A provision that prohibits any party to the dispute from filing a complaint with, or reporting any violation of law to, the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of Mental Health, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined in Section 4900, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children.

(3) A provision that requires any party to the dispute to withdraw a complaint he or she has filed with, or a violation he or she has reported to, the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of Mental Health, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined in Section 4900, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children.

(b) A provision described in subdivision (a) is void as against public policy.

(c) This section shall apply only to an agreement entered on or after January 1, 2013.

O