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Advocates Praise Law Aimed at Senior Abuse

■ Backers say it will encourage lawyers to pursue cases against people who cheat the elderly.

By Linda Rapattoni
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SACRAMENTO — Advocates for the elderly hailed a bill Thursday signed by the governor they hope will encourage lawyers to pursue those who cheat senior citizens out of their homes and savings.

Gov. Arnold Schwarzenegger late Wednesday signed AB2611 by Assemblyman Joe Simitian, D-Palo Alto, which eases the burden of proof for seeking costs and attorney fees in financial abuse cases.

Under existing law, a plaintiff needs to prove recklessness, oppression, fraud or malice to seek damages for financial abuse by a preponderance of evidence. But, to seek costs and attorney fees, the plaintiff has a higher standard — clear and convincing evidence. The new law, which takes effect in January, changes that to a preponderance of evidence.

"I think the bill will be helpful in two significant ways," Simitian said Thursday. "It should help ensure both on a criminal and civil basis that people are held accountable for their actions — that there's greater accountability. I would hope it would serve as a deterrent as well."

Katie Zoglin, deputy county counsel in Santa Clara County's public guardian office, said prosecutors see many cases where life savings and homes are taken from people.

"Since homes are worth so much here, that's what financial abusers target," she said. "Even the smallest homes here are worth $500,000. So they orchestrate loans on homes and it goes into foreclosure."

Zoglin said she was unaware of any other statute that imposed a different standard of proof for attorney fees and costs.

"Private attorneys had to consider whether to take the case," she said. "There's the thought that more cases would be brought if you could increase financial incentives for attorneys."

The bill was opposed by the California Association of Professional Liability Insurers, which complained that making it easier to get attorney fees would further encourage lawyers to add an elder abuse claim in medical malpractice cases.

Prescott Cole, a lawyer for California Advocates for Nursing Home Reform, said he does not expect the new law to open a floodgate for elder financial abuse litigation.

He said Schwarzenegger, who supports tort reform, would not have signed the bill if it would.

"It means attorneys will have an easier time getting fees they would have gotten, but they still have to prove recklessness, oppression, fraud or malice," Cole said. "Litigators are involved with physical abuse or neglect. Estate planners, who understand this, don't like to litigate."

The idea for the bill came from one of two public hearings Simitian held on elder abuse in San Jose and Santa Cruz last year. He insisted that people who voiced complaints at the hearings also propose solutions.

Zoglin said she and a recently retired colleague proposed the legislation at the San Jose hearing.

"Ultimately the goal is to protect seniors," she said. "I think it will go a long way to protect them from being bilked out of their life savings and help keep abusers from profiting and taking advantage of this very vulnerable population."

The bill increases criminal penalties and no longer requires prosecutors to prove that the perpetrator knew the victim's age. The prosecutor merely must show the abuser could have deduced that the abused was elderly.

Originally, the bill also would have simplified the definition of financial abuse and clarified a statute of limitations for mandatory reporting of elder abuse, but those were stricken from the bill to ease its passage.

Simitian wanted to make clear that if someone saw an incident of elder abuse but did not report it and someone else learned of it, the statute for bringing charges against the witness would not toll for one year from the time law enforcement was informed. Currently the law is unsettled, he said.

The bill also would have made it mandatory for various employees in financial industries to report financial abuse of the elderly, but that was dropped from the bill because of opposition by the banking industry, Simitian said.

"It's disappointing the banking communities are reluctant to take a modicum of responsibility," Simitian said. "I intend to introduce legislation next year revisiting this issue."

Simitian said the financial industry should have no fears about their exposure to liability by the mandatory reporting.

The state Supreme Court this year made it clear that people who report suspected criminal activity to law enforcement cannot be liable for false reporting unless they did it maliciously, *Hagberg v. California Federal Bank,* 32 Cal.App4th 350 (2004)