



PATRICK TESTIN

STATE SENATOR

DATE: November 14, 2019

RE: **Testimony on 2019 Assembly Bills 480, 481, and 482**

TO: The Assembly Committee on Criminal Justice and Public Safety

FROM: Senator Patrick Testin

Thank you members of the Assembly Committee on Criminal Justice and Public Safety for accepting my testimony on Assembly Bills 480, 481, and 482.

Unfortunately, elder abuse is becoming all too common in our society, and reports of elder abuse continue to grow. This abuse can take multiple forms including physical, emotional, and financial. Additionally, this abuse can hit close to home; my great uncle was the target of a scam. He received a call from a scammer claiming that I needed bail money to get out of jail. Now let's be clear – I was not in jail – but the scammer behind that call should be.

According to the Bureau of Aging & Disability Resources, there has been a 160% increase in reported elder abuse in Wisconsin since 2001. Research shows that for every reported case of elder abuse, 24 cases go unreported. These numbers are likely to grow as Wisconsin's senior population is set to increase by 72% in the coming decade.

Last session, I had the opportunity to be a member of the Attorney General's Task Force on Elder Abuse, where we recommended the legislative proposals listed below. That task force was made up of representatives from state agencies, law enforcement, the Court System, long-term care agencies, financial service groups, victim services, and citizen advocacy organizations.

Assembly Bill 480

Assembly Bill 480 makes a number of criminal law changes to signify crimes against elder populations. This bill does all of the following:

- Modifies the law to require a sexual assault of a person over the age of 60 to be Class B Felony. Currently, there is no enhanced penalty for a forcible sexual assault of an elderly person.
- Brings the physical abuse of an elder person in line with the age definition of other statutes.
- Creates a mechanism in criminal law for freezing assets in elder financial abuse cases for the purpose of preserving the assets for restitution for the victim.
- Creates a system that allows a term of imprisonment that is imposed for a criminal conviction to be increased in length if the crime victim was elderly.

- Removes barriers for an individual to seek a restraining order by allowing them to appear in court by telephone or audiovisual means.

Assembly Bill 481

- Assembly Bill 481 allows financial institutions, mortgage bankers and brokers, check cashing services, and other types of lenders to delay financial transactions when exploitation of an adult ages 60 and older is suspected.
- A financial service provider may also refuse or delay a financial transaction if an elder-adult-at-risk agency, such as a county social services agency or law enforcement, provides information to the financial service provider that financial exploitation of a vulnerable adult may have occurred or has been attempted.
- The bill requires certain notice if a financial service provider refuses or delays a financial transaction under these circumstances and establishes certain time limits related to the refusal or delay of a financial transaction.
- There is also the opportunity for financial service providers to create a list of individuals that a vulnerable adult authorizes to be contacted if financial exploitation is suspected.

Assembly Bill 482

- Whereas Assembly Bill 481 deals with banks and other financial institutions, AB 482 focuses on securities industry professionals such as brokers or investment advisers. The bill will allow broker-dealers and investment advisers to temporarily delay transactions when financial exploitation is suspected.
- Again, this legislation requires certain notification if a transaction is delayed and establishes time limits on a delay.
- Assembly Bill 482 also allows securities professionals to provide to the Department of Financial Institutions, adult protective service agencies, and other individuals notice of suspected financial exploitation of individuals ages 60 and older.
- Lastly, current law includes a penalty enhancer for securities law violations committed against a person who is at least 65 years of age and older. Under this bill, these enhanced penalties also apply to vulnerable adults (age 60+).

Thank you again for listening to my testimony and I hope that you will join me in supporting this bill.



JOHN J. MACCO

STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

Chairman Spiros and Criminal Justice Committee Members –

Thank you for hearing testimony on this elder abuse package. It is my hope that, by passing these bills, we will provide more certainty and security for our vulnerable adults and their families.

As you may know, older Americans hold 70% of the nation's wealth when compared to the general population. As these Americans reach retirement age, it often becomes more difficult for them to manage their financial and physical well-being. It is not uncommon for seniors to rely on friends, family, or hired help to assist them with their day-to-day life. However, with their reliance on others, comes the risk of financial exploitation and other forms of abuse and neglect.

Anyone can be a victim of fraud, identity theft, and embezzlement, but our elderly are especially vulnerable. To compound the issue, elder abuse is severely under-reported, with only one in 44 cases being reported each year. This paints a bleak picture for our seniors who are starting to consider retirement.

Understandably, those who are reaching retirement age are worried about their personal and financial security as they exit the workforce. Between 2001 and 2007, reported allegations of elder abuse, neglect, and exploitation nearly doubled in our state. As did requests for more information. That is why this bill package to combat elder abuse is so essential. The number of retirees will only increase as more "baby boomers" exit the workforce at a rate of 10,000 individuals per day. Our seniors deserve physical and financial security, and this bill package is an essential first step in achieving that.

First, this package will empower financial institutions to act as an additional line of defense for our seniors. This includes banks, financial planners, credit unions, and other qualified entities that help the elderly plan for their "golden years". These financial professionals know their clients, interact with them on a regular basis, and have a deep working knowledge of their financial history.

These frontline workers are more than capable of recognizing signs of financial exploitation and this package will allow them to delay suspicious activity in order to protect our seniors and even deny power of attorney if they suspect a vulnerable adult is being exploited. Additionally, these financial institutions will rest easy knowing that financial service providers are immune from criminal, civil and administrative liability for taking (or not taking) any actions under this bill.

This package will also improve upon our reporting practices by allowing securities agents or other persons in a supervisory, compliance or legal capacity, who suspects financial exploitation of a vulnerable adult to notify DFI, a county adult protective services agency, law enforcement, a legal guardian, a family member or a person identified on a contact list provided by the vulnerable adult. Again, this package will protect these agents and other qualified individuals from legal liability related to the actions taken pursuant to this bill, further encouraging them to look for tell-tale signs of abuse.

Finally, this package will strengthen our existing criminal statutes for those that seek to abuse and exploit our elderly and disabled. This includes increased fines, sentences, and the freezing of funds, assets, or properties at the request of a prosecutor.

Colleagues, as many of you know, these issues hit close to home for me and my family. My mother-in-law was exploited by a relative and my wife and her siblings had little recourse once the damage had been done. It is my hope that this package of legislation will help prevent families across Wisconsin from going through what my family, and so many others, have gone through. While it will not prevent every case of abuse, fraud, and exploitation, this package will be an important step in the right direction.

I want to thank you once again, Mr. Chairman, for holding this hearing, and I urge you and the rest of the committee to vote for recommendation of passage.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John J. Macco', with a long horizontal flourish extending to the right.

John J. Macco
Representative 88th District

Assembly Committee on Criminal Justice and Public Safety

November 14, 2019

Madison WI

Helen Marks Dicks

Good Morning. I am Helen Marks Dicks, State Issues Advocacy Director for AARP Wisconsin, which has over 840,000 members here in Wisconsin. We advocate on behalf of Wisconsin's 50 and older population. The issue of elder abuse and neglect is of grave concern to us and we greatly appreciate the attention being paid to this critical issue. I am going to address all three bills together.

AARP supports all three bills, AB 480, AB 481 and AB 482 as needed steps to help curb abuse, neglect, and financial exploitation of Wisconsin's elders. There has been a 160% increase in reported elder abuse from 2001 to 2017. Even with this startling statistic we know most elder abuse goes unreported. It is estimated that 47% of adults with dementia suffer from some form of abuse. Elder abuse and neglect triple the likelihood of a victim being hospitalized or dying prematurely.

Financial exploitation is one of the most common forms of elder abuse and has a life-altering effect on Wisconsin residents' livelihoods with untold millions of dollars exploited, extorted, or stolen from older adults each year in Wisconsin. While nearly \$3 billion was reported lost to financial elder abuse in the USA, a study in New York State found that only 2% of elder financial exploitation cases were reported to law enforcement, suggesting that the actual number impact on older adult's financial wellbeing is far higher than official counts.

AB 480 increases penalties on those who abuse elders and would make it easier for older adults to file a restraining order, thus removing a major barrier to access for victims. The bill would also increase the likelihood of victims receiving financial restitution in cases of financial exploitation as alleged perpetrators could have their

assets frozen. Often victims of elder abuse have little or no chance of financial recovery and the rest of their lives might be spent in a compromised financial position or even in poverty.

AB 481 and AB 482 would allow and encourage banks, credit unions, and other financial service providers to proactively protect the finances of elderly clients by refusing or delaying suspicious transactions for a limited time and increasing communication and cooperation with law enforcement, social service providers, and trusted advisors.

I personally have one concern about all three of these bills. That is the assumption of vulnerability and decreased judgement at age 60. No one should be the victim of financial exploitation regardless of age and I object to the ageist assumption of cognitive decline and judgement at the age of 60. Mere age should never be used as a measure of capacity.

However I am attributing good intentions and an attempt to conform to other statutes which deal with elder abuse to the authors and drafters of these bills so my concerns will in no way diminish AARP's support of these bills. I believe this ageist assumption can be dealt with a case-to-case review.

AARP Wisconsin strongly encourages the committee to vote in favor of AB 480, AB 481 and AB 482 to protect Wisconsin's victims of financial exploitation. Thank you for your time and attention. As always I would be glad to answer any questions.

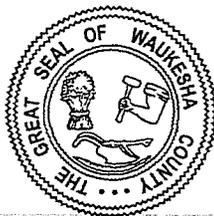
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Waukesha County *Office of the District Attorney*

November 14, 2019

Wisconsin State Legislature
Wisconsin State Capitol
2 East Main Street
Madison, Wisconsin 53702

Re: Assembly Bill 480 / Senate Bill 427
Assembly Bill 481 / Senate Bill 429
Assembly Bill 482 / Senate Bill 428



Good morning everyone. My name is April DeValkenaere. I am a White Collar Crime Paralegal with the Waukesha County District Attorney's Office and I am the Wisconsin chapter President of the International Association of Financial Crimes Investigators (IAFCI). The IAFCI is a global non-profit organization comprised of nearly 6000 members. We provide services and an environment where information regarding financial fraud, financial investigations and fraud prevention methods can be collected, exchanged, and taught for the common good of the financial payment industry and our global society. Our membership brings together law enforcement, financial institutions, and the retail industry in an effort to safeguard the world's economy through collaborative teamwork. IAFCI has been fighting financial transaction crimes for more than 50 years.

I also had the privilege of serving on the Elder Abuse Task Force that developed the bills we are discussing today. I believe that these bills, if enacted, will provide an effective tool to halt and/or prevent financial exploitation in our State.

I constantly teach people what type of scams are being perpetrated by unknown suspects and then I have to educate them that studies have shown that approximately 90% of the elder financial exploitation is being perpetrated, is by someone that they know and trust.

I work with several organizations that investigate and collaborate to combat financial crimes and I have firsthand knowledge that these bills will assist in the collaboration between financial institutions, law enforcement and Adult Protective Services (Aging and Disability Resource Centers, Department of Aging, etc.).

We need Assembly Bills 480/481/482 and Senate Bills 427/429/428 here in Wisconsin. As they provide a number of benefits in the fight against criminals who engage in scams making victims of our Wisconsin residents. This includes; allowing for a consistent age throughout the statutes, whether it is a regular account or a security account and provides

the financial institutions to delay a transaction if they reasonably believe that the owner of the account is being financially exploited.

In my role with the District Attorney's Office I work on many cases involving elder financial exploitation. I have assisted in the prosecution of cases where Power of Attorney (POA) documents were utilized by a trusted individual, whether that be a family member, friend or caregiver, who took advantage of their fiduciary duty. I have also assisted in the prosecution of cases where caregivers who were hired to assist older adults with personal hygiene and/or daily routine duties have gained access to financial accounts and stolen identities as well as finances. I have also had cases where family and/or caregivers have taken advantage of the frail nature of older adults and used it against them. Some cases we have handled have multiple POA documents as they were changed several times and/or by different individuals. POA documents can vary greatly from someone who prints off the state form and fills it out themselves to someone who hires an attorney to draft such a document either of their own free will or because of a crisis. The provisions to allow a financial institution to accept or not accept a POA document are necessary to these bills. Especially because the financial institutions can see the patterns of financial behavior before any investigative agency. They can see when an elderly couple typically spends \$150 a month on groceries and after the POA is enacted they grocery bills have now gone up to between \$600-\$1,000 per month. They can also see the demeanor of the older adult and the POA dropping off the document, most times it is a normal transaction, other times, they see fear, concern and/or hesitation on behalf of their account holder, it is imperative to allow the financial institutions to make a decision based on their reasonable belief.

Financial institutions train their frontline tellers at least annually to recognize financial scams and to talk with their customers about them as required by federal regulations. They also have policies in place regarding how to respond to a possible financial exploitation. Typically at least two or more people are reviewing these transactions before a decision to delay a transaction would occur. The ability to collaborate and allow our financial institutions to delay a transaction that they reasonably believe is fraudulent and get law enforcement and/or Adult Protective Services involved is imperative if we want to have a significant impact on protecting our Wisconsin's most vulnerable citizens, our seniors.

Some of these older adult victims have multiple medical and/or physical issues that make it extremely difficult to appear in court and to allow them to appear via phone and/or video is essential to moving the case forward without having it dismissed because of non-appearances of our victim.

I am here to wholeheartedly support these Bills as a representative of the IAFCI along with the Waukesha County District Attorney's Office.

Respectfully Submitted,

April DeValkenaere, SBWCP, CFCI



Greater Wisconsin
Agency on Aging Resources, Inc.

Date: November 14, 2019

To: Chair Spiros, Vice-Chair Sortwell, and Members of the Assembly Committee on Criminal Justice and Public Safety

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **Support for AB 480** – increased penalties for crimes against elder person; restraining orders for elder persons; freezing assets of a defendant charged with financial exploitation of an elder person; sexual assault of an elder person; physical abuse of an elder person; and providing a penalty

AB 481 – financial exploitation of vulnerable adults – **For Information Only**

AB 482 – financial exploitation of vulnerable adults with securities accounts, violations of the Wisconsin Uniform Securities Law, granting rule-making authority and providing a penalty – **For Information Only**

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. We provide lead aging agencies in our service area with training, technical assistance, and advocacy to ensure the availability and quality of programs and services to meet the changing needs of older people in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults age 60 and older residing in our service area.

Thank you for this opportunity to share testimony on this package of bills aimed at combatting elder abuse. Though the number of reported elder abuse cases in the state continues to rise, increasing by 52 percent from 2010 to 2018 when there were 8,803 reported cases, elder abuse remains dramatically underreported. Fear and embarrassment are common reasons for underreporting, especially since family members are the most common perpetrators. It has been estimated that roughly two-thirds of all elder abuse perpetrators are family members. According to the American Bar Association approximately 10% of older adults experience some form of elder abuse (2017).

AB 480: The consequences of elder abuse can be devastating; placing abused elders at increased risk of hospitalization, nursing home admission, and even death. Given the significant negative impacts of elder abuse, we support AB 480 which increases the penalties for crimes against older people and freezes or seizes assets from a defendant who has been charged with a financial exploitation crime against an older adult. Additionally, we support changes made in this bill to allow an older adult seeking a domestic violence, individual-at-risk, or harassment restraining order to

appear in court by phone or live-video, thereby minimizing any further negative impacts on the victim's health, independence, and dignity.

Financial exploitation can occur at any stage of the lifespan; however, older adults are targeted disproportionately. Health related effects of aging, higher income levels, lower levels of connectedness to the community and a reduced probability of reporting financial exploitation can all make older adults more susceptible to financial exploitation. Prevalence of elder financial exploitation ranges from 2.7 percent to 6.6 percent. The true numbers are likely much higher, as like other types of abuse, most incidents of elder financial exploitation go unreported. Despite the high number of suspected incidents of elder financial exploitation, the majority of adults age 60 and older are in relatively good health, function independently, and are not in need of additional oversight from their financial institutions. While we wholeheartedly support financial institutions efforts to provide information and services to consumers (of all ages) to enhance protections against financial exploitation, we feel it is imperative for these efforts to strike the right balance between autonomy and protection.

AB 481 & AB 482:

Both AB 481 and AB 482 pertain to the role of financial service providers in protecting vulnerable adults against financial exploitation. GWAAR believes that financial institutions can provide enhanced protection against the risk of elder financial exploitation while still maintaining the balance between autonomy and protection. GWAAR has several concerns related to AB 481 and AB 482 and we recommend the following changes be made to the bills to ensure this balance is maintained:

Regarding authority for financial institutions (AB 481) and securities agents/ investment advisors (AB 482) to delay transactions and refuse to honor Durable Powers of Attorney (DPOA) -

- **The term “reasonably suspects” is ambiguous and needs clearly defined standards:** We recommend the bill language be changed to include specific standards defining the circumstances that constitute reasonable cause. These circumstances should be documented in the client's account record. Staff training should be provided related to identification of these “red flags” that may prompt a provider to refuse or delay a financial transaction.
- **Individual who is 60 years of age or older:** Age alone is not an indicator of incapacity. We recommend the sentence “*or an individual who is at least 60 years of age*” be deleted from the definition of “vulnerable adult” in the bill and the “adult at risk” definition in § 55.01(1e) be used in its place.
- **Preventive measures:** Financial institutions can provide enhanced protection against the risk of elder financial exploitation (or the financial exploitation of someone at any age) by offering consumers the *option* to select account protections such as restrictions, third party alerts, and other features. We recommend consumers be offered the ability to “opt-in” to these additional protections, if desired.
- **Refusal of power of attorney:** Taking the necessary steps to plan for one's future is encouraged. DPOAs are often part of that planning process. Allowing financial institutions to refuse to honor a power of attorney is a disservice to all who have taken the necessary steps to be prepared for

their future needs. Wis. Stat. § 244.20 was intended to offer protections against the practice of refusing to accept a power of attorney for inappropriate reasons and should not be changed.

- **Protect consumers from significant financial harm resulting from a delayed transaction:**

We recommend the following additional protections be added -

- All late fees or service charges should be waived.
- A person attempting to spend down for Medicaid could be found ineligible if funds are still in their account due to the delay. Funds frozen or delayed should be considered unavailable for Medicaid as long as the freeze is in place.
- Customer shall be able to recover all costs and damages resulting from an inappropriate delay, including attorney fees.

We appreciate the interest in and efforts of policy makers to protect older adults against elder abuse, neglect and exploitation and to address this growing problem. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Thank you for your consideration of these comments supporting AB 480 and recommended changes to improve AB 481 and AB 482.

Contact: Janet Zander, Advocacy & Public Policy Coordinator
Greater Wisconsin Agency on Aging Resources
janet.zander@gwaar.org
(715) 677-6723 or (608) 228-7253 (cell)

ELDER LAW AND SPECIAL NEEDS SECTION

To: Assembly Committee on Criminal Justice and Public Safety
Date: November 12, 2019
Subject: Financial exploitation proposals AB 481 and AB 482 –regarding concerns of the Elder Law Section of the State Bar of Wisconsin

The Elder Law Section of the State Bar of Wisconsin currently opposes AB 481 and AB 482 as drafted. The Elder Law Section is extremely supportive of appropriate measures to address the grave concern of elder abuse. At the same time, the current bills have certain provisions of significant concern to the Bar because of their ability to cause significant and irreparable harm to the people they are intended to help. Our concerns, and proposals for change, are summarized in brief below.

AB 481 REGARDING FINANCIAL INSTITUTIONS

Authority for financial institutions to delay transactions and refuse to honor Durable Powers of Attorney (DPOA).

Concerns and recommendations:

- **Age:** Age 60, by itself, is not appropriate in this situation. Most people age 60 are working, in decent health, and do not need potentially damaging “oversight” by the financial institution merely because of their age. Use of this age alone is “ageist.” The language “*or an individual who is at least 60 years of age*” should be deleted from the definition of “vulnerable adult.” The definition in § 55.01(1e) should be used exclusively.
- **“Opt-In” should be the standard to apply the statute:** There should be an **opt-in provision**, so this entire protective setup is voluntary, or an **opt-out provision**. “Opt-in” language would be added to proposed §224.46(2)(a).
- **“Reasonable cause” needs clear standards:** “Reasonable Cause” is an extremely vague term and difficult for laypeople to understand. Amended language to include *specific* standards defining the circumstances that constitute reasonable cause. Also, require that the circumstances be documented in notations in the individual’s account record.
- **Notice:** The notice requirement should be stronger to minimize the damage that will be created by inappropriate use of the statute. There should be mandatory and immediate notice to the customer, and to appropriate parties in specific cases like guardianship etc., in writing. The notice should also include the information on how the individual demands a release.
- **Length of HOLD / Transaction Delay:** the “indeterminate: extension has the potential to cause grave and irreparable financial damage to an individual by tying up his or her finances indefinitely. It should not be allowed. Proposed §224.46(2)(f) should be deleted. Also, language should be added requiring a transaction to be immediately released upon receipt of correspondence from the customer’s attorney explaining that the transaction is the basis of the informed decision of the client or the client’s duly appointed agent, or is done upon direction of or in consultation by the client or their duly appointed agent with the attorney.



STATE BAR OF WISCONSIN

- **Refusal of power of attorney:** Proposed § 224.46(4), the language allowing the financial institutions to refuse to honor a power of attorney, is of grave concern. The ability of banks to refuse DPOAs is exactly what Wis. Stat. § 244.20 was intended to remedy after a long history of financial institutions refusing to accept powers of attorney for inappropriate reasons. Proposed § 224.46(4) does an end run around the protections of this section and should be deleted.
- **Waiver of Liability/ Lack of Training:** The lack of a training requirement means that individuals at financial institutions will wield considerable power over a person's financial independence, with no requirement to complete training regarding financial abuse. The concern is compounded by the fact that the statute waives an institution's liability for errors in executing this statute. Waiver of liability provisions at §224.46(2)(h)(3)(f) and (4)(b) should be deleted. If retained at all, should be modified to apply only to a provider who had completed training.
- **Additional protections needed:** There is potential for significant financial harm to the client as a result of the imposition of the delay.
 - All late fees or service charges should be waived.
 - A person attempting to spend down for Medicaid could be found ineligible if funds are still in their account due to the delay. Funds frozen or delayed should be unavailable for Medicaid as long as the freeze is in place.
 - It should be clarified that a customer may recover all costs and damages resulting from an inappropriate delay, including attorney fees.
 - Where the institution can be held liable, for example by unreasonably delaying a transaction, the question of liability should be excluded from any mandatory arbitration provisions that are otherwise part of the financial institution's account agreement.

AB 482 REGARDING FINANCIAL ADVISORS

AB 482 would allow financial advisors and brokers to be voluntary reporters of suspected exploitation and would also allow them to delay transactions and refuse to accept DPOAs. Many of the concerns expressed with AB 481 also apply here.

Concerns and recommendations are:

- The same or similar concerns about age, notice, lack of training and immunity, and reasonable cause (in this bill "reasonably suspects,") apply to this bill. Similar changes to address these concerns are recommended.
- **Release on demand of owner:** Unlike AB 481, there is no provision in this bill for release upon request of the account owner. Add language requiring immediate release upon demand of customer, customer's POA agent, or attorney for customer.

- **Additional protections needed:** There is potential for significant financial harm to the client as a result of the imposition of the delay.
 - Late fees or service charges should be waived.
 - Funds frozen or delayed should be considered unavailable for Medicaid.
 - Liability of the qualified individual should be excluded from any mandatory arbitration provisions that are otherwise part of the financial institution's account agreement.
 - Should prohibit qualified individual from charging or passing along any charges for suspended transaction (i.e. stopped check, NSF etc.)
- **“Opt-In” should be the standard to apply the statute:** There should be an **opt-in provision**, so this entire protective setup is voluntary, or an **opt-out provision**.

If you have any additional questions please contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or cbattles@wisbar.org.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



Testimony of the Wisconsin Bankers Association

**Assembly Committee on Criminal Justice and Public Safety
Assembly Bill 481 & 482**

November 14, 2019

Chair Spiros and members of the committee, thank you for the opportunity to testify at this hearing. My name is Jon Turke and I am the Director of Government Relations at the Wisconsin Bankers Association. WBA represents approximately 225 commercial banks and savings institutions, their nearly 2,300 branch offices and more than 30,000 employees. With me today I have Ken Thompson, President & CEO of Capitol Bank in Madison.

WBA is asking for your support on AB 481 & 482 that will help financial institutions tackle the increasing problem of elder abuse.

Over the next two decades, Wisconsin's 65 and older population will increase by 72% and one in nine seniors have reported being abused, neglected, or exploited in 2017. According to the Wisconsin Department of Justice, elder financial abuse increased 17.5% from 2016-2017 in Wisconsin.

A recent CFPB report shows the rise of suspicious activities involving financial abuse targeting older adults. Reports are up 19% from a year ago and nearly three times the level reported in 2014. The financial damage related to suspected activities in 2017 totaled \$1.7 billion. When a monetary loss occurred, seniors lost \$34,200 on average. In 7% of the cases, the losses exceeded \$100,000.

This is a growing issue for Wisconsin and the nation. Attorney General Brad Schimel created a task force in September 2017 to find ways to protect Wisconsin's senior citizens and our association had several members serve in that group. WBA continues assisting with this effort under Attorney General Josh Kaul. There is no doubt that elder financial abuse is on the rise. Bankers are in a unique position to be able to identify this abuse. Any tool or effort that helps our staff save abuse victims is something we support.

One of the projects from this group was an awareness video designed to engage front line staff and other financial institution employees on the issue of elder financial abuse. WBA coordinated input from a variety of Wisconsin bankers for the video script and the video draft. The DOJ working group and task force also provided input and guidance throughout the creation of this video.

The free Elder Financial Abuse and Exploitation video is now available for use by Wisconsin's financial institutions as well as the public.

To clear up inconsistencies between the two bills, we are asking that language from Section 4 of AB 481 that deals with powers of attorney be included in AB 482. WBA members have branches in states across the country, and keeping language consistent helps in combating elder abuse.

I want to again thank Chair Spiros and members for taking the time to hear our testimony today. We would be happy to answer any questions you may have.

Chairman, Members of the Committee:

I had the privilege of serving on the Elder Abuse Task Force that developed the bills introduced as 2019 AB 481 and 2019 AB 482. Our group spent many hours collectively and individually discussing, considering, drafting, and revising the language. What you have before you today is the culmination of that effort. I believe that these bills, if enacted, will provide an effective tool to prevent and remedy financial exploitation in our State. Others will provide oral and written statements detailing the challenges facing law enforcement and County Adult Protective Services, as well as financial service providers and brokers, in investigate, reporting, and preventing financial exploitation. The purpose of my written statement is to provide a response to what I anticipate to be objections made against the bills. The Elder Law and Special Needs Section of the State Bar of Wisconsin has voted to oppose these bills. Based on verbal and written statements made by some of Section members, my written statement identifies the likely objections, along with the Section's reasons for the objections and proposed solutions. Following that, I provide my response to those objections. I trust that after you have heard and read all the statements made today, you will have a fuller understanding of these bills, recognize the important need for these bills, and vote to recommend for passage.

While this statement recognizes that the pair of bills cover separate spheres of financial transactions, this statement will discuss the objections and provide responses as it relates to 2019 AB 481. This is done for the purpose of simplifying the comments. As a general matter, the objections, stated reasons for the objections, stated proposed solutions, and the responses to the objections can be applied to both bills.

Objection 1: "Vulnerable adult" is defined as anyone over 60. Age alone is not a sufficient indication that the person is vulnerable.

Stated Reasoning for Objection 1: Most who are over 60 are capable of making decisions about their finances and do not need the threat of oversight by financial institutions. Using an age alone without objective evidence that the person is unable to manage their finances or is vulnerable to exploitation is ageist.

Stated Proposed Solution to Objection 1: Use the definition in Wisconsin's protective services law of "any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation." Delete "or an individual who is at least 60 years of age" language.

Response to Objection 1: This objection fails to consider how the term "vulnerable adult" is used in the context of the bill itself and fails to realize how this bill would fit into the broader statutory protections for vulnerable adults.

First, the Objection presumes that because a "vulnerable adult" includes everyone over 60, then financial service providers will be able to block transactions merely because the individual is

over 60. This is a faulty presumption. The bill requires not merely a transaction involving a vulnerable adult, but also that the transaction involves the financial exploitation of that vulnerable adult. AB 481 at Page 4, L13-15. (The requirement of reasonable cause to suspect will be covered later).

Second, the Objection does not recognize that “age 60” is an age demarcation used throughout Wisconsin Statutes in vulnerable adult law contexts. It is necessary for that laws that protect individuals in our society are consistent so that gaps in protection can be minimized and confusion about a law's applicability are removed. Wisconsin has a strong system for protecting vulnerable adults. A system that divides vulnerable adults into two categories: (1) adults, regardless of age, who have a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who have experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation and (2) adults, aged 60 or more, who have experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. Wis. Stat. §§ 46.90, 55.043, 813.123. If a financial service provider wanted to refuse or delay a transaction, it must involve either an adult at risk, which is the first category, or an adult, aged 60 or more, and that financial exploitation of that adult, either occurred, attempting, or being attempted, which falls under the second category.

If the Stated Proposed Solution is adopted, it will be unclear how this law fits in the broader system in Wisconsin for protecting vulnerable adults. If this law were to only protect “adults at risk,” as proposed, then a 62 year old, who did not have physical or mental disability that impairs his or her ability to care for his or her needs, would not be protected. If there were financial exploitation of that individual, the financial service provider would not be authorized to refuse or delay the transaction and would have no obligation to report that to the elder adult at risk agency. As drafted, the law would allow, but not require, the financial service provide to refuse or delay the transaction and would require it to report the financial exploitation to the elder adult at risk agency.

In the context of the broader vulnerable adult systems, maintaining the term “vulnerable adult” is appropriate. Moreover, defining the term to include the two categories of vulnerable adults used in other, related statutes, allows for consistency in application and understanding.

Objection 2A: Reasonable Cause is not defined.

Stated Reasoning for Objection 2: Reasonable cause is an extremely vague term that could mean whatever the financial service provider says it is.

Stated Proposed Solution to Objection 2: Add clear definitions of reasonable cause and require that the facts be documented in writing. Specific standards should include: the transaction is a payment to a known scam; the customer is accompanied by an unknown individual or group who appear to be exerting undue influence based on observations of the financial service provider; there is a series of transactions by the customer that are inconsistent with the pattern of spending and have not been explained by the individual and the financial records support that pattern and inconsistency; the individual appears to be in distressed at the time of the transaction and the financial service provider concludes after inquiry that the individual is subject to financial exploitation or undue influence; or if the suspected abuser is an agent under a power of attorney, the agent has failed to respond to a request for information. Minimum standards for documenting in writing include: dates, times, observations, and the names of all individuals involved in the transaction. These notations should be provided to the individual or individual's attorney at no charge immediately upon request.

Response to Objection 2: This objection fails to understand that “reasonable cause” as a standard for acting is well-established in Wisconsin law and that reasonable cause, by its very nature, cannot be captured as a list of examples. Beginning in Terry v. Ohio, 392 U.S. 1 (1968) and continuing through countless cases, reasonable cause is an objective test that requires that a reasonable person, knowing the same facts as known to the actor, and under the totality of the circumstances, would reasonably conclude the same thing as the actor. *See State v. Post*, 2007 WI 60, ¶26, 301 Wis. 2d 1 (“[W]e maintain the well-established principle that . . . whether there was reasonable suspicion . . . [is] based on the totality of the circumstances.”).

While the Stated Proposed Solution does provide examples of when a financial service provider may have reasonable cause sufficient to refuse or delay a transaction, it fails to encompass the variety or the complexity of financial exploitation. The first two proposed standards demonstrate a lack of familiarity with financial exploitation. Most scams are not known until after they happen. While “sweetheart scams” exist as a type of financial exploitation, any individual that has had to investigate, prosecute, or attempt to remedy sweetheart scams can tell you that no two sweetheart scams are the same. Some use Facebook, other use email. Some involve supposed foreign individuals, some involve supposed locals. Some ask for large amounts of money, some small amounts; others ask for vehicles, electronics, or other personal property. Likewise, most in person financial exploitation is done not by an “unknown individual or group,” but by family and close friends that are often known to the financial service provider. These proposed standards are extremely limited and reflect that it is impossible to capture every situation that may raise to “reasonable cause.”

Objection 2B: The bill does not require Financial Service Providers to receive any training on financial abuse or elder abuse.

Stated Reasoning for Objection 2B: Untrained individuals are making judgment calls on an undefined standard and exercising control over the customer's money.

Stated Proposed Solution to Objection 2B: Make waiver of liability provisions only available to those financial service providers who have availed themselves of training programs approved by DFI.

Response to Objection 2B: Setting aside whether mandatory training for financial service providers should be done by legislation or by administrative rule and also setting aside what any approved training would consist of, this objection appears to be based on an assumption that financial service providers would not voluntarily train their employees on financial exploitation. The Wisconsin Bankers Association already is taking a proactive approach to preventing financial exploitation.

Before these bills were even introduced, the Wisconsin Bankers Association had prepared training videos for its members to use in training their employees for free. Elder Financial Abuse Awareness Video for Wisconsin Banks, Wisconsin Bankers Association, <https://www.wisbank.com/elder-financial-abuse/> (last accessed November 12, 2019); Elder Financial Abuse Awareness, uploaded August 15, 2018, Wisconsin Bankers Association, <https://www.youtube.com/watch?v=nwcHkIhLSf4> (last accessed November 12, 2019).

Objection 3: Transactions can be frozen for long periods of time. While the initial period is 5 days, it can be extended indefinitely.

Stated Reasoning for Objection 3: Unilateral extensions by the financial service provider may result in bounced check fees, late fees, or other penalties. The investigation should not be handled by the financial service provider, but by law enforcement and County Adult Protective Services. 5 days is sufficient for a report to be made and an investigation by those entities to commence.

Stated Proposed Solution to Objection 3: 5 days should be the absolute maximum, unless extended by a court based on a petition by APS or law enforcement.

Response to Objection 3: Setting aside whether APS or law enforcement would have standing to bring such a petition (there is no clear statutory authority to do so), this Objection fails to understand the totality of the provisions regarding the length of the refusal or delay of the transaction.

The bill specifies that the refusal or delay expires upon the earliest of any of the following: (1) 5 business days after the initial refusal or delay, unless a court orders it terminated earlier; (2) when the financial service provider no longer has reasonable cause that financial exploitation will result from the transaction; or (3) when the customer requesting the transaction requests that the transaction continue after being informed about the potential risk, unless the custom is the suspected perpetrator of financial exploitation. AB 481 at Page 6, L. 2-12. Clearly, the bill structures the length of the delay to be as short as possible. The delay may be extended if the financial service provider has a reasonable suspicion that additional time is needed to investigate or if a court orders the delay to continue. AB 481 at Page 6, L. 13-20.

Taken together, the provisions regarding the length of the delay are intended to keep the length of the delay as short as possible. Any extension cannot be from the financial service provider wanting to control the money, rather any extension must be from a reasonable belief that the transaction is financial exploitation and more time is needed to investigate. To clarify, the statute does not require the financial service provider to investigate the transaction, although they may. Rather, the language is written to accommodate an investigation by County APS or law enforcement, which, as the Objection points out, are better equipped to conduct those investigations. Again, once that investigation reveals that no financial exploitation is involved, the delay terminates.

Objection 4: This bill would allow financial service providers to refuse to honor a valid financial power of attorney if they believe the agent is perpetrating the financial exploitation. The language allowing financial service providers to refuse to honor financial powers of attorney will lead to financial service providers refusing to honor valid financial powers of attorney for inappropriate reasons, as they did prior to Wis. Stat. §244.20.

Stated Reasoning for Objection 4: Prior to Wis. Stat. § 244.20, financial services providers refused to honor financial powers of attorney for inappropriate reasons, like not using the bank's form or having a document that was more than 6 months old. Wis. Stat. § 244.20 corrected that and the proposed language in the bill will provide an end-around of those protections in Wis. Stat. § 244.20.

Stated Proposed Solution to Objection 4: Delete that provision entirely.

Response to Objection 4: This objection fails to realize that financial services providers already may refuse to honor a financial power of attorney under Wis. Stat. § 244.20 and that the provision in this bill is substantially similar to Wis. Stat. § 244.20.

First, Wis. Stat. § 244.20 allows a person to refuse to accept an acknowledged financial power of attorney if any of several listed circumstances exist. In this context, a refusal to accept may be based on a requested transaction with the agent that would be inconsistent with federal or state law, a belief that the agent does not have the authority to perform the act requested, or the person has made or has actual knowledge that another person has made a report of County APS stating a good faith belief that the principal may be subject to financial exploitation by the agent or a person acting for or with the agent. Wis. Stat. § 244.20(1)(b), (e), (f). If the financial service provider has reasonable cause to suspect that the transaction by the agent involves financial exploitation, which is theft and illegal, then that transaction would be inconsistent with federal or state law. Likewise, an agent does not have the authority to commit financial exploitation because that action cannot be permitted by a financial power of attorney document. Such an action would violate the agent's duties to act in good faith and in accordance with the principal's reasonable expectations and best interests. Finally, the bill would require the financial service provider to make a report of the suspected financial exploitation, which would then give the financial service provider the authority to refuse to accept the document.

Second, the provision in the bill is substantially similar to the language in Wis. Stat. § 244.20. The bill authorizes, but does not require, a financial service provider to refuse to accept an acknowledged financial power of attorney if the principal is a vulnerable adult and there is reasonable cause to suspect that the agent or a person acting for or with the agent is engaged in or may engage in the financial exploitation of the vulnerable adult. AB 481 at Page 8, L. 8-13. The purpose of the provisions in Wis. Stat. § 244.20 and this bill regarding refusal of the financial power of attorney are the same: a person should be able to refuse to accept a power of attorney if the agent is attempting to use that document or authority to financially exploit the principal. From that perspective, it is clear that the language of the bill will not create an end-around of the protections in Wis. Stat. § 244.20, but rather add to them.

In fact, the requirements in this bill for refusing a financial power of attorney are more stringent

than those in Wis. Stat. § 244.20. Wis. Stat. § 244.20 does not require any particular facts about the principal to be present, only the type of transaction matters. This bill not only requires a transaction involving financial exploitation of the principal, but also that the principal be a vulnerable adult. In other words, Wis. Stat. § 244.20 would allow the financial service provider to refuse to accept a financial power of attorney for a 58 year old principal that has no mental or physical disability, but the agent is stealing the money without the principal knowing. This bill would not allow the financial service provider to refuse to accept the power of attorney under those circumstances because the principal is not a vulnerable adult, as defined.

Objection 5: There is no provision that allows the customer to opt-in to the program or to opt-out.

Stated Reasoning for Objection 5: People have a right to control their finances and make decisions about what to do with their money. A person should be able to consider the risks and to knowingly accept the risk that a questionable transaction may go through.

Stated Proposed Solution to Objection 5: “If a customer has elected to have this section apply with respect to the customer's account, then . . .”

Response to Objection 5: The premise for the Objection is faulty. There are many examples of where a person does not have an absolute right to control their finances and make decisions about what to do with their money. Government, whether, federal, state, or local, imposes various obligations on persons' finances, including income tax, licensing fees, and laws against money laundering and financial exploitation. What this bill says is that if there is a transaction that, under the totality of the circumstances, looks like financial exploitation, then the financial service provider may refuse or delay that transaction only as long as necessary to determine if it is financial exploitation.

As to the idea that an opt-in or an opt-out provision advances an individual's autonomy, consider that if the individual has a financial power of attorney, the agent almost certainly will have the authority to decide whether to not opt-in or to opt-out of the protections for the principal. In other words, the agent would have the authority to decide to prevent the financial service provider from having the ability to delay the agent's transactions of the principal's money.

In sum, this bill is not designed to be a blank check for financial service providers to refuse and delay transactions arbitrarily. This bill is drafted to provide financial service providers with a tool to help prevent financial exploitation before it happens. This help fits well with existing statutes regarding vulnerable adults and financial exploitation investigations and prevention.

Respectfully submitted,
Peter M. Navis