



CONNECTICUT CHAPTER

Practice Update II | *PUBLIC POLICY*

by Attorney Edward Lang

Details of CT NAELA's Involvement with the Financial Exploitation Bill

By: Edward Lang, CT NAELA Public Policy Committee Member

On March 7, 2023, the General Assembly Banking Committee unanimously voted to bring Senate Bill 1088, titled "An Act Concerning Financial Exploitation of Senior Citizens" to the House and Senate for further action. Steve Rubin and I testified at the Banking Committee hearing held on March 2, indicating CT NAELA's support for the concept of allowing financial institutions to place a hold on transactions involving suspected elder financial fraud or abuse, but raising concerns and making recommendations for improving the proposed law. Joan Wilson submitted written testimony and Scott Rosenberg testified on behalf of the Elder Law Section of the Connecticut Bar Association. The co-chairs of the Banking Committee and representatives of the Banking Department have indicated a willingness to revise the Bill to address the issues that we have raised.

The topic of allowing financial institutions to freeze accounts and transactions has been in discussion for six years. In 2017, the Connecticut Bankers Association proposed a Bill that would permit a bank in Connecticut to freeze a customer's account if bank employees suspected fraud or financial abuse. CT NAELA and the Elder Law Section of the CT Bar Association opposed this Bill in meetings with legislators and staff of the State Banking Department. Our position was that the proposal was arbitrary, overly broad, and provided no meaningful remedy. At the suggestion of CT NAELA and the Elder Law Section, the Banking Department did not pursue the proposed legislation.

In January of 2022, the Connecticut Bankers Association presented a proposal to the General Assembly that provided, in part, that "If a financial institution, or any of its employees, has reasonable cause to believe that a transaction or disbursement involving an account of an elderly person may involve, facilitate, result in or contribute to the financial exploitation of such elderly person, the financial institution or its employees may, in the financial institution's or employee's discretion, decline or delay the execution of, or return, any transaction or disbursement to or from the elderly person's account or place a hold on some or all funds in the account, subject to the time limitations set forth in subsection (e) of this section".

In February of 2022, representatives of CT NAELA and the Elder Law Section met with representatives of the Connecticut Bankers Association to discuss our concerns with the proposed legislation. Among the issues that we raised at that meeting were the following:

- Is this bill intended to override the provisions in the power of attorney statutes?
- How does this bill apply to accounts that are jointly owned?
 - Spouses
 - Parent and child
 - Conservatorship accounts
- What happens to checks written, but not cleared?
- What happens to automatic payments?
- Are there standards to define “reasonable cause”?

We also raised the following legal issues:

- If a person is otherwise eligible for Medicaid benefits, the delay on the account could make the person ineligible for benefits because their assets exceed the maximum allowable.
- Does this bill deprive an individual of property without due process of law.
- The bill sets age 60 as “elder”. Is this age discrimination?
- Will the details of the bank’s investigation be available in civil litigation? This would be valuable in a civil suit against the abuser.

Following the meeting with the Connecticut Bankers Association, we also communicated with representatives of the Connecticut Banking Department. We recommended the following:

- Current law allows an account holder to designate a “trusted contact”. Some banks have no process to allow this. We suggested that banks be mandated to notify customers that they may designate a trusted contact.
- Additional state funding to Protective Services for the Elderly to investigate financial abuse
- Restore a position in the office of the Attorney General to investigate and prosecute elder financial abuse.

During the 2022 legislative session, the Banking Department, without first communicating with us, revised the original Bill to address some, but not enough of our concerns. We communicated our concerns to the Commissioner of the Banking Department and various key legislators. As a result of our efforts, the legislature took no action on the Banking Department’s proposal and suggested that interested parties try to resolve their differences.

The Banking Department revised their proposal, addressing many of the issues that we had raised and presented their Bill to the Banking Committee of the General Assembly in January of 2023. Scott Rosenberg prepared proposed modifications to the Bill drafted by the Banking Department. Representatives of CT NAELA and the Elder Law Section met with representatives of the Banking Department to discuss Scott’s proposal and to suggest revisions to the Bill. Although the Banking Department indicated a willingness to address some of our concerns, the Bill (SB 1088) presented to the Banking Committee did not include the items discussed in our meeting with the Banking Department. Because the Bill that was the subject of the public hearing did not address our reservations and objections, Steve Rubin, Joan Wilson, Scott Rosenberg and I testified at the public hearing. As indicated in the Banking Committee’s Joint Favorable Report dated March 7, 2023, the members of the Committee acknowledged our suggestions and concerns.

Members of the CT NAELA Policy Committee will be actively involved in the legislative process and we encourage CT NAELA members to monitor the status of this Bill and to communicate their thoughts to their senators and representatives.

See the following documents that are attached for reference:

Banking Committee Joint Favorable Report 3-2-23

Raised Bill 1088

Testimony submitted to the Banking Committee 2-28-23

Edward Lang

Steven Rubin

Scott Rosenberg

Joan Wilson

Letter to Banking Department Commissioner from Edward Lang 4-1-22

Testimony submitted to the Banking Committee 3-10-22

Edward Lang

Scott Rosenberg