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Testimony Submitted by Edward Lang on February 28, 2023
to the Committee on Banking
on behalf of the Connecticut Chapter of the National Academy of Elder Law Attorneys
in connection with

Senate Bill 1088
An Act Concerning Financial Exploitation of Senior Citizens

I am an elder law attorney practicing in Middlefield, Connecticut, the past president of the Connecticut Chapter of the National Academy of Elder Law Attorneys (CTNAELA), and a member of the Executive Committee of the Elder Law Section of the Connecticut Bar Association.

Reports from the AARP, MetLife and The Consumer Financial Protection Bureau estimate that the annual losses to older Americans from fraud, exploitation and cybercrime exceed \$3 billion annually. From my own practice, I am familiar with instances of older individuals who were victimized by family, by caregivers, and online scams.

The Connecticut Chapter of the National Academy of Elder Law Attorneys supports efforts to prevent elder financial exploitation and abuse. We share the concerns raised by the Banking Department, the AARP, and the Connecticut Bankers Association. In particular, we would like to thank the Banking Department for working with all of the interested parties to bring this Bill to the Banking Committee.

We believe that SB 1088, An Act Concerning Financial Exploitation of Senior Citizens, is a significant beginning. Granting financial institutions the power to place a hold on suspicious transactions is an important step in limiting the impact of fraud and abuse on Connecticut's elder residents. However, granting this power to financial institutions is not enough. We strongly urge the committee to require that financial institutions

- Report all cases of suspected elder financial exploitation to the office of Protective Services for the Elderly as well as to state and local law enforcement agencies.
- Report all cases of suspected elder financial exploitation when a financial institution places a hold on an account or a transaction to the Connecticut Banking Department.
- Inform elder individuals that they may designate a Trusted Contract.
- Preserve records for use in attempts to recover stolen assets.
- Adopt formal policies that define what constitutes reasonable belief that financial exploitation has occurred, is occurring, has been attempted or will be attempted.

TREAT HELD FUNDS AS AN INACCESSIBLE ASSET FOR MEANS TESTED PROGRAMS

As Elder Law attorneys we recognize that allowing a bank to place a hold on an account has potential adverse consequences. If an individual is otherwise eligible for Medicaid benefits, the inability to transfer funds out of the individual's account could make the individual ineligible for benefits because their assets exceed the maximum allowable. Today, that could result in a cost to the applicant in excess of \$650 per day for convalescent home costs. This cost may be avoided if language is added to the statute to specify that a delay attributable to the action of a financial institution causes the frozen assets to be an "inaccessible asset" for purposes of Medicaid eligibility.

As an example, if an individual has \$10,000 in a bank account and a person acting on behalf of that individual attempts to remove \$8,500 from the account, and a financial institution places a hold on the account, the individual will be denied Medicaid benefits because their assets exceed \$1,600. If the amount subject to a hold is treated as an inaccessible asset, the individual will be eligible for Medicaid benefits.

The State of Connecticut recognized this problem for individuals who are attempting to liquidate insurance policies and remedied the situation by adopting CGS 17b-261 which provides "to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided the individual is pursuing the surrender of the policy".

CTNAELA specifically requests that the following language be added to this Bill:

Where an elderly person or co-owner of an account of an elderly person is an applicant for, or recipient of, means-tested benefits under Chapters 319s through 319oo of the general statutes, inclusive, the Commissioner of Social Services shall consider an account subject to any hold under this section to be an inaccessible asset for all owners or co-owners of the account, during all periods during which a hold is in effect.

MANDATORY REPORTING

We recommend that financial institutions be required to report cases of suspected elder financial abuse, fraud, or exploitation. A report published by the Consumer Financial Protection Bureau in 2019 indicated that seventeen states currently mandate reporting of elder financial exploitation. In addition, ten states mandate that any individual who is aware of elder financial exploitation is required to report elder financial exploitation. So that the Banking Department is aware of the number of holds placed on accounts as a result of suspicious activity involving elders, we specifically suggest that financial institutions must report accounts or transactions that are subject to a hold authorized under this law to the Banking Department.

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DESIGNATE TRUSTED CONTACTS

In conversations with family members of individuals who have been the victims of financial exploitation, I have learned that the abuse continued over an extended period of time because the financial institution was restrained by privacy rules from sharing information about the victim's account. Many insurance companies and financial management firms now offer clients the ability to designate a Trusted Contact who may be contacted in the event of suspicious activity. Unfortunately, Connecticut financial institutions are not required to offer this protection and many Connecticut banks have failed to establish procedures that would enable individuals to designate a Trusted Contact when the individual creates an account so that the bank would be authorized to communicate with the Trusted Contact if the bank suspects financial abuse, fraud, or exploitation. We suggest that Banks and other Financial Institutions in Connecticut be required to permit an elderly person to designate a Trusted Contact.

A substantial number of my clients have informed me that staff at Connecticut banks have suggested that the individual add a family member as a joint owner on the individual's bank account in order to facilitate the family member's ability to assist with financial transactions and to avoid probate upon the death of the individual. This practice leads to family disputes concerning the ownership of the funds at the time of the death of the individual and, in some cases, has enabled the family member to make unauthorized withdrawals and disbursements from the account. Having a Trusted Contact on the account instead of adding a family member as a joint owner is another step in protecting older individuals from financial abuse.

PRESERVE RECORDS

Those of us who represent seniors are aware of instances of fraud and exploitation. There are a number of attorneys who have filed suits against the perpetrators of financial exploitation. If this Bill becomes law, we recommend that financial institutions be required to preserve their records of their investigations, and that such records be made available in any civil or criminal litigation in which financial abuse, fraud, or exploitation is alleged.

EXPAND STATE RESOURCES TO INVESTIGATE REPORTED CASES.

I understand that the banking community desires to take action to protect seniors from financial abuse. Bank employees who believe that they are observing customers being abused are often frustrated because they are unable to communicate their concerns to other parties. I have heard from a number of bank employees that they have reached out to Protective Services for the Elderly and either have seen no action or have been told that Protective Services for the Elderly does not have adequate staff to investigate financial matters. It may be appropriate to inquire whether Protective Services for the Elderly or another State Agency has the staff and funding to address financial exploitation.

CTNAELA AND THE CONNECTICUT BAR ASSOCIATION WOULD LIKE TO SUPPORT AND WORK WITH THE COMMITTEE AND THE DEPARTMENT IN AN ONGOING EFFORT TO CURB FINANCIAL FRAUD, EXPLOITATION AND ABUSE.

As with most legislation, we recognize that there are potential problems. However, we believe that this Bill represents a first step and we look forward to working with this Committee, the Banking Department and other interested parties to monitor the impact of this Bill and to propose enhancements and modifications in upcoming years.

Thank you for your consideration.

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