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Testimony Submitted by Edward Lang on March 10, 2022
to the Committee on Banking
on behalf of the Connecticut Chapter of the National Academy of Elder Law Attorneys

**In OPPOSITION of
Senate Bill 269**

**An Act Concerning Protection of the Elderly from
Financial Exploitation and Requiring Bank Statements.**

I am an elder law attorney practicing in Middlefield, Connecticut and the past president of the Connecticut Chapter of the National Academy of Elder law Attorneys (CTNAELA). The Connecticut Chapter of the Connecticut Academy of Elder law Attorneys shares the concerns raised by the Connecticut Bankers Association and supports efforts to prevent elder financial exploitation and abuse. However, we believe that SB 269, An Act Concerning Protection of the Elderly from Financial Exploitation and Requiring Bank Statements, is not only a poor solution to the existing problem but SB 269, as written, creates numerous legal and practical problems that are detrimental to the interests of the community that this Bill purportedly protects.

Allowing a bank to place a hold on an account for up to thirty days has numerous potential adverse consequences. Some examples are as follows:

○ 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.

○ The proposed language permits a bank to decline, delay or return a transaction, or suspend an account if the bank suspects fraud or exploitation of an elderly person. As presented, the Bill is unclear about the applicability of this power to the following:

- Accounts held jointly with spouses
- Accounts held jointly with children
- Checks written, but not cleared
- Automatic payments and withdrawals
- Court ordered payments
- Execution on liens and judgments
- Automatic deductions for bank fees

The language in the proposed Bill should be clarified to address issues including the impact of conservatorships and other matters subject to court jurisdiction. The language in the proposed Bill also conflicts with existing laws applicable to Powers of Attorney. The current laws addressing powers of attorney in Connecticut (Section 1-350s) permit a financial institution to place a five day hold on an account pending verification of the validity of the power of attorney. The existing law imposes penalties and sanctions on financial institutions that fail to accept a valid power of attorney. *Section 1 of SB 269 grants the financial institution immunity for its actions and appears to eliminate the protections granted to the public under the existing statutes.*

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 litigation in which financial abuse, fraud, or exploitation is alleged.

Many of us are disappointed that some 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.

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.

It is frustrating to appear before this Committee to offer testimony in opposition to a Bill whose purpose is to protect seniors from financial exploitation. Unfortunately, SB 269 will create more issues for seniors in Connecticut than it will solve. There are many individuals and groups who are prepared to work together to make recommendations to protect seniors from such exploitation. The Connecticut Chapter of the National Academy of Elder Law Attorneys and the Elder Law Section of the Connecticut Bar Association specifically recognizes the importance of the Connecticut Bankers Association and the AARP, and we are ready and willing to work with this Committee and other interested parties to develop proposals to submit to the General Assembly in 2023.

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April 1, 2022

Commissioner Jorge Perez
State of Connecticut
Department of Banking
260 Constitution Plaza
Hartford, CT 06103

Dear Commissioner Perez:

The Elder Law Section of the Connecticut Bar Association and the Connecticut Chapter of the National Academy of Elder Law Attorneys (CTNAELA) appreciate the effort of the Connecticut Department of Banking to propose legislation to prevent elder financial exploitation and abuse. However, we believe that the language proposed by the Department as a Substitute SB 269 creates numerous legal and practical problems that are detrimental to the interests of the community that the Department is attempting to protect.

The proposed language permits a bank to decline, delay or return a transaction, or suspend an account if the bank suspects fraud or exploitation of an elderly person. However, as presented, the language is unclear about the applicability of this power to the following:

- Accounts held jointly with spouses
- Accounts held jointly with children
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The proposed language should be clarified to address issues including the impact of conservatorships and other matters subject to court jurisdiction. The language in the proposed Bill also conflicts with existing laws applicable to Powers of Attorney. The current laws addressing powers of attorney in Connecticut (Section 1-350s) permit a financial institution to place a five day hold on an account pending verification of the validity of the power of attorney. The existing law imposes penalties and sanctions on financial institutions that fail to accept a valid power of attorney. The proposed language grants the financial institution immunity for its actions and appears to eliminate the protections granted to the public under the existing statutes.

There are many individuals and groups who are prepared to work together to make recommendations to protect seniors from financial exploitation. The Connecticut Chapter of the National Academy of Elder Law Attorneys and the Elder Law Section of the Connecticut Bar Association specifically recognizes the importance of the Department of Banking, and we are ready and willing to work with the Banking Department, the Connecticut Bankers Association and the AARP to develop proposals to submit to the General Assembly in 2023.

Sincerely,

Edward G. Lang

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