RN1521826 **SP 11**

**INTRODUCED BY SENIOR SENATOR HOWK**

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Legislative Counsel’s Digest

SP 11: UNDUE INFLUENCE.

EXISTING LAW PROHIBITS THE USE OF UNDUE INFLUENCE AND ESTABLISHES PROTECTIONS FOR INDIVIDUALS UNABLE TO RESIST UNDUE INFLUENCE IN VARIOUS AREAS OF THE LAW, INCLUDING WILLS, TRUSTS, AND CONSERVATORSHIPS. EXISTING LAW PROVIDES THAT A PROVISION OF AN INSTRUMENT MAKING A DONATIVE TRANSFER TO SPECIFIED PERSONS, INCLUDING THE PERSON WHO DRAFTED THE INSTRUMENT, IS PRESUMED TO BE THE PRODUCT OF FRAUD OR UNDUE INFLUENCE, BUT THE PRESUMPTION MAY BE REBUTTED BY PROVING, BY CLEAR AND CONVINCING EVIDENCE, THAT THE DONATIVE TRANSFER WAS NOT THE PRODUCT OF FRAUD OR UNDUE INFLUENCE.

THIS MEASURE WOULD MEMORIALIZE THE LEGISLATURE AND THE GOVERNOR TO ENACT LEGISLATION THAT WOULD CREATE A REBUTTABLE PRESUMPTION THAT THE CREATION OF, OR CHANGES TO, A PERSON’S ESTATE PLAN, INCLUDING, BUT NOT LIMITED TO, A WILL, TRUST, TRANSFERS OF REAL OR PERSONAL PROPERTY, INCLUDING NONPROBATE TRANSFERS OF PROPERTY, POWER OF ATTORNEY, OR ADVANCE HEALTH CARE DIRECTIVE, WITHIN A YEAR OF THE DATE OF DEATH OF A PERSON OR AFTER A DIAGNOSIS OF A TERMINAL CONDITION FOR A PERSON, WAS PROCURED BY UNDUE INFLUENCE, AND THAT THIS PRESUMPTION MAY BE REBUTTED BY PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT THERE WAS NO UNDUE INFLUENCE.

VOTE: MAJORITY.

SP 11: RELATING TO UNDUE INFLUENCE

WHEREAS, IT IS A COMMON OCCURRENCE THAT A SENIOR OR A PERSON SUFFERING FROM A FATAL DISEASE CHANGES HIS OR HER ESTATE PLAN TO TRANSFER REAL AND PERSONAL PROPERTY IN THE YEAR PRECEDING HIS OR HER DEATH OR AFTER HE OR SHE HAS BEEN DIAGNOSED AS BEING TERMINAL, NEAR DEATH, OR HAS BEEN DIAGNOSED AS BEING IN THE EARLY STAGES OF DEMENTIA;

WHEREAS, THESE CHANGES ARE USUALLY MADE TO BENEFIT A SINGLE FAMILY MEMBER, CAREGIVER, OR A NEW FRIEND;

WHEREAS, THESE CHANGES OFTEN DEVIATE FROM THE LONG ESTABLISHED ESTATE PLANS BECAUSE ANOTHER PERSON IS USING HIS OR HER INFLUENCE OVER THE SENIOR OR PERSON SUFFERING FROM A FATAL DISEASE TO MAKE THOSE CHANGES AND A PERSON’S ABILITY TO RESIST UNDUE INFLUENCE MAY NOT BE TAKEN INTO CONSIDERATION; NOW, THEREFORE, BE IT;

RESOLVED, BY THE SENIOR SENATE AND THE SENIOR ASSEMBLY, JOINTLY, THAT THE SENIOR LEGISLATURE OF THE STATE OF CALIFORNIA AT ITS 2015 REGULAR SESSION, A MAJORITY OF THE MEMBERS VOTING THEREFOR, HEREBY PROPOSES THAT THE LEGISLATURE AND THE GOVERNOR OF THE STATE OF CALIFORNIA ENACT APPROPRIATE LEGISLATION THAT WOULD CREATE A REBUTTABLE PRESUMPTION THAT THE CREATION OF, OR CHANGES TO, A PERSON’S ESTATE PLAN, INCLUDING, BUT NOT LIMITED TO, A WILL, TRUST, TRANSFERS OF REAL OR PERSONAL PROPERTY, INCLUDING NONPROBATE TRANSFERS OF PROPERTY, POWER OF ATTORNEY, OR ADVANCE HEALTH CARE DIRECTIVE, WITHIN A YEAR OF THE DATE OF DEATH OF A PERSON OR AFTER A DIAGNOSIS OF A TERMINAL CONDITION FOR A PERSON, WAS PROCURED BY UNDUE INFLUENCE, AND THAT THIS PRESUMPTION MAY BE REBUTTED BY PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT THERE WAS NO UNDUE INFLUENCE; AND BE IT FURTHER

RESOLVED, THAT THE SENIOR LEGISLATURE OF THE STATE OF CALIFORNIA RESPECTFULLY MEMORIALIZES THE LEGISLATURE AND THE GOVERNOR OF THE STATE OF CALIFORNIA TO ENACT APPROPRIATE LEGISLATION THAT WOULD ADDRESS THE CONCERNS SET FORTH IN THIS MEASURE; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THIS MEASURE BE TRANSMITTED TO THE PRESIDENT PRO TEMPORE OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE GOVERNOR OF THE STATE OF CALIFORNIA.