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**INTRODUCED BY SENIOR SENATOR HOWK**

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Legislative Counsel’s Digest

SP 3: UNDUE INFLUENCE.

EXISTING LAW DEFINES UNDUE INFLUENCE AS EXCESSIVE PERSUASION THAT CAUSES ANOTHER PERSON TO ACT OR REFRAIN FROM ACTING BY OVERCOMING THAT PERSON’S FREE WILL AND RESULTS IN INEQUALITY. EXISTING LAW DEEMS AN EXECUTION OR REVOCATION OF A WILL OR A PART OF A WILL INEFFECTIVE TO THE EXTENT THE EXECUTION OR REVOCATION WAS PROCURED BY, AMONG OTHER THINGS, UNDUE INFLUENCE. EXISTING LAW ASSIGNS THE BURDEN OF PROOF OF UNDUE INFLUENCE TO THE CONTESTANTS OF A WILL. EXISTING LAW ESTABLISHES AN EXPRESS PRESUMPTION OF UNDUE INFLUENCE WHEN A DONATIVE INSTRUMENT MAKES A GIFT TO THE PERSON WHO DRAFTED OR TRANSCRIBED THE INSTRUMENT AND CERTAIN OTHER DISQUALIFIED PERSONS.

THIS MEASURE WOULD MEMORIALIZE THE LEGISLATURE AND THE GOVERNOR TO ENACT LEGISLATION THAT WOULD ESTABLISH AN EXPRESS PRESUMPTION OF UNDUE INFLUENCE WHEN A SENIOR, AGE 65 OR OLDER, GIFTS REAL OR PERSONAL PROPERTY OR CREATES OR CHANGES HIS OR HER ESTATE PLAN WITHIN A YEAR OF THE DATE OF HIS OR HER DEATH OR AFTER A DIAGNOSIS OF TERMINAL ILLNESS. THIS PRESUMPTION WOULD BE REBUTTABLE BY ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE THAT THERE WAS NO UNDUE INFLUENCE.

VOTE MAJORITY.

SP 3: RELATING TO UNDUE INFLUENCE

WHEREAS, CALIFORNIA LAW ESTABLISHES A REBUTTABLE PRESUMPTION THAT INDIVIDUALS HAVE THE CAPACITY TO MAKE AND CHANGE THEIR ESTATE PLANS AT ANY TIME; AND

WHEREAS, IT IS A COMMON OCCURRENCE THAT A SENIOR GIFTS REAL OR PERSONAL PROPERTY OR CHANGES HIS OR HER ESTATE PLAN IN THE YEAR PRECEDING HIS OR HER DEATH OR AFTER HE OR SHE HAS BEEN DIAGNOSED WITH A TERMINAL ILLNESS; AND

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

WHEREAS, THESE GIFTS OR CHANGES MAY DEVIATE FROM THE LONG-ESTABLISHED ESTATE PLANS OF A SENIOR AND CAN BE A RESULT OF ANOTHER PERSON USING HIS OR HER INFLUENCE OVER THE SENIOR; AND

WHEREAS, EXISTING LAW PROVIDES THAT FINANCIAL ABUSE OF AN ELDER OCCURS WHEN, AMONG OTHER THINGS, A PERSON OR ENTITY TAKES, OR ASSISTS IN TAKING, REAL OR PERSONAL PROPERTY OF AN ELDER OR DEPENDENT ADULT BY UNDUE INFLUENCE; AND

WHEREAS, UNDUE INFLUENCE IS DEFINED AS EXCESSIVE PERSUASION THAT CAUSES ANOTHER PERSON TO ACT OR REFRAIN FROM ACTING BY OVERCOMING THAT PERSON’S FREE WILL AND RESULTS IN INEQUITY; AND

WHEREAS, CALIFORNIA COURTS HAVE INTERPRETED STATUTORY WILLS TO NOT REQUIRE WITNESSES WHEN A CHANGE TO THE WILL OCCURS, DECREASING SENIORS’ PROTECTIONS FROM UNDUE INFLUENCE; AND

WHEREAS, CALIFORNIA LAW DOES NOT ADEQUATELY TAKE INTO CONSIDERATION THE ABILITY OF A SENIOR, AGE 65 OR OLDER AND WITHIN A YEAR OF HIS OR HER DEATH OR AFTER DIAGNOSIS OF A TERMINAL ILLNESS, TO RESIST UNDUE INFLUENCE; AND

WHEREAS, EXISTING LAW PLACES THE BURDEN OF PROVING UNDUE INFLUENCE OVER THE SENIOR ON THE ORIGINAL HEIRS CONTESTING THE ESTATE PLAN OR GIFT; AND

WHEREAS, MANY TIMES THE COST OF LITIGATION TO PROVE UNDUE INFLUENCE EXISTED EXCEEDS THE VALUE OF THE ESTATE ITSELF, LEAVING THE HEIRS WITH NO REMEDY; 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 2016 REGULAR SESSION, A MAJORITY OF THE MEMBERS VOTING THEREFOR, HEREBY PROPOSES THAT THE LEGISLATURE AND THE GOVERNOR OF THE STATE OF CALIFORNIA ENACT LEGISLATION THAT WOULD CREATE AN EXPRESS PRESUMPTION OF UNDUE INFLUENCE WHEN A SENIOR, AGE 65 OR OLDER, GIFTS REAL OR PERSONAL PROPERTY OR CREATES OR CHANGES HIS OR HER ESTATE PLAN WITHIN A YEAR OF THE DATE OF DEATH OF THE SENIOR OR AFTER A DIAGNOSIS OF TERMINAL ILLNESS. THE PRESUMPTION WOULD BE REBUTTABLE BY ESTABLISHING 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.