

2 **SSB 5889** - H COMM AMD
3 By Committee on Health Care

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5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 74.34.010 and 1984 c 97 s 7 are each amended to read
8 as follows:

9 The legislature finds that frail elders and vulnerable persons may
10 be subjected to abuse, neglect, exploitation, or abandonment. The
11 legislature finds that there are a number of (~~adults sixty years of~~
12 ~~age or older~~) persons who lack the ability to perform or obtain those
13 services necessary to maintain or establish their well-being. The
14 legislature finds that many frail elders and vulnerable persons have
15 health problems that place them in a dependent position. The
16 legislature further finds that a significant number of frail elders and
17 vulnerable persons have mental and verbal limitations that leave them
18 vulnerable and incapable of asking for help and protection.

19 It is the intent of the legislature to prevent or remedy the abuse,
20 neglect, exploitation, or abandonment of persons sixty years of age or
21 older or vulnerable persons who have a functional, mental, or physical
22 inability to care for or protect themselves.

23 It is the intent of the legislature to assist frail elders and
24 vulnerable persons by providing these persons with the protection of
25 the courts and with the least-restrictive services, such as home care,
26 and by preventing or reducing inappropriate institutional care. The
27 legislature finds that it is in the interests of the public health,
28 safety, and welfare of the people of the state to provide a procedure
29 for identifying these vulnerable persons and providing the services and
30 remedies necessary for their well-being.

31 **Sec. 2.** RCW 74.34.100 and 1986 c 187 s 4 are each amended to read
32 as follows:

33 The legislature finds that frail elders and vulnerable (~~adults,~~)
34 persons who are (~~physically or emotionally~~) abused, neglected,
35 abandoned, or (~~financially~~) exploited may need the protection of the

1 courts. The legislature further finds that many of these elderly or
2 vulnerable persons may be homebound or otherwise may be unable to
3 represent themselves in court or to retain legal counsel in order to
4 obtain the relief available to them under this chapter.

5 It is the intent of the legislature to improve access to the courts
6 for victims of abuse, neglect, exploitation, and abandonment in order
7 to better protect the state's frail elderly and vulnerable persons.

8 **Sec. 3.** RCW 74.34.020 and 1984 c 97 s 8 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Abandonment" means (~~leaving a~~) action or inaction by a
13 person or entity with a duty of care for a frail elder or a vulnerable
14 person that leaves the vulnerable (~~adult~~) person without the means or
15 ability to obtain necessary food, clothing, shelter, or health care.

16 (2) "Abuse" means (~~an~~) a nonaccidental act of physical or mental
17 mistreatment or injury, or sexual mistreatment, which harms (~~or~~
18 threatens)) a person through action or inaction by another individual.

19 (3) "Consent" means express written consent granted after the
20 person has been fully informed of the nature of the services to be
21 offered and that the receipt of services is voluntary.

22 (4) "Department" means the department of social and health
23 services.

24 (5) "Exploitation" means the illegal or improper use of a frail
25 elder or vulnerable (~~adult~~) person or that (~~adult's~~) person's
26 income or resources including trust income for another person's profit
27 or advantage.

28 (6) "Neglect" means a pattern of conduct (~~resulting~~) or inaction
29 by a person or entity with a duty of care for a frail elder or
30 vulnerable person that results in the deprivation of care necessary to
31 maintain (~~minimum~~) the vulnerable person's physical (~~and~~) or mental
32 health.

33 (7) "Secretary" means the secretary of social and health services.

34 (8) "Frail elder or vulnerable (~~adult~~) person" means a person
35 (~~sixty~~) eighteen years of age or older who has the functional,
36 mental, or physical inability to care for himself or herself. "Frail
37 elder or vulnerable person" shall include, but not be limited to,
38 persons found incapacitated under chapter 11.88 RCW, or a person who

1 has a developmental disability under chapter 71A.10 RCW, and persons
2 admitted to any long-term care facility that is licensed or required to
3 be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or
4 persons receiving services from home health, hospice, or home care
5 agencies licensed or required to be licensed under chapter 70.127 RCW.

6 (9) No frail elder or vulnerable person who relies upon and is
7 being provided spiritual treatment in lieu of medical treatment in
8 accordance with the tenets and creed of a well-recognized religious
9 denomination shall for that reason alone be considered abandoned,
10 abused, or neglected, nor shall anything in this chapter be construed
11 to permit or require medical or spiritual treatment contrary to the
12 stated or clearly implied objection of such a person.

13 NEW SECTION. Sec. 4. A new section is added to chapter 74.34 RCW
14 to read as follows:

15 (1) In addition to other remedies available under the law, a frail
16 elder or vulnerable person age eighteen or older who has been subjected
17 to abuse, neglect, exploitation, or abandonment either while residing
18 in a long-term care facility or, in the case of a person in the care of
19 a home health, hospice, or home care agency, residing at home, shall
20 have a cause of action for damages on account of his or her injuries,
21 pain and suffering, and loss of property sustained thereby. This
22 action shall be available where the defendant is or was a corporation,
23 trust, unincorporated association, partnership, administrator,
24 employee, agent, officer, partner, or director of a long-term care
25 facility, such as a nursing home or boarding home, that is licensed or
26 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
27 RCW, or of a home health, hospice, or home care agency licensed or
28 required to be licensed under chapter 70.127 RCW, as now or
29 subsequently designated.

30 (2) It is the intent of the legislature, however, that where there
31 is a dispute about the care or treatment of a frail elder or vulnerable
32 adult, the parties should use the least formal means available to try
33 to resolve the dispute. Where feasible, parties are encouraged but not
34 mandated to employ direct discussion with the health care provider, use
35 of the long-term care ombudsman or other intermediaries, and, when
36 necessary, recourse through licensing or other regulatory authorities.

37 (3) In an action brought under this section, a prevailing plaintiff
38 shall be awarded his or her actual damages, together with the costs of

1 the suit, including a reasonable attorney's fee. The term "costs"
2 includes, but is not limited to, the reasonable fees for a guardian,
3 guardian ad litem, and experts, if any, that may be necessary to the
4 litigation of a claim brought under this section.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.34 RCW
6 to read as follows:

7 A petition for an order for protection or an action for damages
8 under this chapter may be brought by the plaintiff, or where necessary,
9 by his or her family members and/or guardian or legal fiduciary, or as
10 otherwise provided under this chapter. The death of the plaintiff
11 shall not deprive the court of jurisdiction over a petition or claim
12 brought under this chapter. Upon petition, after the death of the
13 vulnerable person, the right to initiate or maintain the action shall
14 be transferred to the executor or administrator of the deceased, for
15 the benefit of the surviving spouse, child or children, or other heirs
16 set forth in chapter 4.20 RCW.

17 **Sec. 6.** RCW 74.34.070 and 1984 c 97 s 13 are each amended to read
18 as follows:

19 In responding to reports of abuse, exploitation, neglect, or
20 abandonment under this chapter, the department shall provide
21 information to the ((elderly person)) frail elder or vulnerable person
22 on protective services available to the person and inform the person of
23 the right to refuse such services. The department shall develop
24 cooperative agreements with community-based agencies servicing the
25 abused elderly and vulnerable persons. The agreements shall cover such
26 subjects as the appropriate roles and responsibilities of the
27 department and community-based agencies in identifying and responding
28 to reports of ((elderly)) abuse, the provision of case-management
29 services, standardized data collection procedures, and related
30 coordination activities.

31 **Sec. 7.** RCW 74.34.030 and 1986 c 187 s 1 are each amended to read
32 as follows:

33 Any person, including but not limited to, financial institutions or
34 attorneys, having reasonable cause to believe that a vulnerable
35 ((adult)) person has suffered abuse, exploitation, neglect, or
36 abandonment, or is otherwise in need of protective services may report

1 such information to the department. Any police officer, social worker,
2 employee of the department, a social service, welfare, mental health,
3 or health agency, including but not limited to home health, hospice,
4 and home care agencies licensed under chapter 70.127 RCW, congregate
5 long-term care facility, including but not limited to adult family
6 homes licensed under chapter 70.128 RCW, boarding homes licensed under
7 chapter 18.20 RCW, and nursing homes licensed under chapter 18.51 RCW,
8 or assisted living services pursuant to RCW 74.39A.010, or health care
9 provider licensed under Title 18 RCW, including but not limited to
10 doctors, nurses, psychologists, and pharmacists, having reasonable
11 cause to believe that a vulnerable (~~adult~~) person has suffered abuse,
12 exploitation, neglect, or abandonment, shall make an immediate oral
13 report of such information to the department and shall report such
14 information in writing to the department within ten calendar days of
15 receiving the information.

16 NEW SECTION. **Sec. 8.** RCW 74.34.100 is recodified as RCW
17 74.34.015."

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