

SSB 6202 - H AMD 1296

By Representative Hurst

ADOPTED 03/03/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 30.22.210 and 1981 c 192 s 21 are each amended to
4 read as follows:

5 (1) Nothing contained in this chapter shall be deemed to require
6 any financial institution to make any payment from an account to a
7 depositor, or any trust or P.O.D. account beneficiary, or any other
8 person claiming an interest in any funds deposited in the account, if
9 the financial institution has actual knowledge of the existence of a
10 dispute between the depositors, beneficiaries, or other persons
11 concerning their respective rights of ownerships to the funds contained
12 in, or proposed to be withdrawn, or previously withdrawn from the
13 account, or in the event the financial institution is otherwise
14 uncertain as to who is entitled to the funds pursuant to the contract
15 of deposit. In any such case, the financial institution may, without
16 liability, notify, in writing, all depositors, beneficiaries, or other
17 persons claiming an interest in the account of either its uncertainty
18 as to who is entitled to the distributions or the existence of any
19 dispute, and may also, without liability, refuse to disburse any funds
20 contained in the account to any depositor, and/or trust or P.O.D.
21 account beneficiary thereof, and/or other persons claiming an interest
22 therein, until such time as either:

23 ~~((1))~~ (a) All such depositors and/or beneficiaries have
24 consented, in writing, to the requested payment; or

25 ~~((2))~~ (b) The payment is authorized or directed by a court of
26 proper jurisdiction.

27 (2) If a financial institution reasonably believes that financial
28 exploitation of a vulnerable adult, as defined in RCW 74.34.020, may
29 have occurred, may have been attempted, or is being attempted, the

1 financial institution may refuse a transaction as permitted under
2 section 3 of this act.

3 **Sec. 2.** RCW 74.34.020 and 2007 c 312 s 1 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Abandonment" means action or inaction by a person or entity
8 with a duty of care for a vulnerable adult that leaves the vulnerable
9 person without the means or ability to obtain necessary food, clothing,
10 shelter, or health care.

11 (2) "Abuse" means the willful action or inaction that inflicts
12 injury, unreasonable confinement, intimidation, or punishment on a
13 vulnerable adult. In instances of abuse of a vulnerable adult who is
14 unable to express or demonstrate physical harm, pain, or mental
15 anguish, the abuse is presumed to cause physical harm, pain, or mental
16 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
17 and exploitation of a vulnerable adult, which have the following
18 meanings:

19 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
20 including but not limited to unwanted or inappropriate touching, rape,
21 sodomy, sexual coercion, sexually explicit photographing, and sexual
22 harassment. Sexual abuse includes any sexual contact between a staff
23 person, who is not also a resident or client, of a facility or a staff
24 person of a program authorized under chapter 71A.12 RCW, and a
25 vulnerable adult living in that facility or receiving service from a
26 program authorized under chapter 71A.12 RCW, whether or not it is
27 consensual.

28 (b) "Physical abuse" means the willful action of inflicting bodily
29 injury or physical mistreatment. Physical abuse includes, but is not
30 limited to, striking with or without an object, slapping, pinching,
31 choking, kicking, shoving, prodding, or the use of chemical restraints
32 or physical restraints unless the restraints are consistent with
33 licensing requirements, and includes restraints that are otherwise
34 being used inappropriately.

35 (c) "Mental abuse" means any willful action or inaction of mental
36 or verbal abuse. Mental abuse includes, but is not limited to,

1 coercion, harassment, inappropriately isolating a vulnerable adult from
2 family, friends, or regular activity, and verbal assault that includes
3 ridiculing, intimidating, yelling, or swearing.

4 (d) "Exploitation" means an act of forcing, compelling, or exerting
5 undue influence over a vulnerable adult causing the vulnerable adult to
6 act in a way that is inconsistent with relevant past behavior, or
7 causing the vulnerable adult to perform services for the benefit of
8 another.

9 (3) "Consent" means express written consent granted after the
10 vulnerable adult or his or her legal representative has been fully
11 informed of the nature of the services to be offered and that the
12 receipt of services is voluntary.

13 (4) "Department" means the department of social and health
14 services.

15 (5) "Facility" means a residence licensed or required to be
16 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,
17 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36
18 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
19 centers; or any other facility licensed by the department.

20 (6) "Financial exploitation" means the illegal or improper use of
21 the property, income, resources, or trust funds of the vulnerable adult
22 by any person for any person's profit or advantage other than for the
23 vulnerable adult's profit or advantage.

24 (7) "Financial institution" has the same meaning as in RCW
25 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
26 institution" also means a "broker-dealer" or "investment adviser" as
27 defined in RCW 21.20.005.

28 (8) "Incapacitated person" means a person who is at a significant
29 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),
30 (c), or (d).

31 ((+8)) (9) "Individual provider" means a person under contract
32 with the department to provide services in the home under chapter 74.09
33 or 74.39A RCW.

34 ((+9)) (10) "Interested person" means a person who demonstrates to
35 the court's satisfaction that the person is interested in the welfare
36 of the vulnerable adult, that the person has a good faith belief that
37 the court's intervention is necessary, and that the vulnerable adult is

1 unable, due to incapacity, undue influence, or duress at the time the
2 petition is filed, to protect his or her own interests.

3 ~~((+10+))~~ (11) "Mandated reporter" is an employee of the department;
4 law enforcement officer; social worker; professional school personnel;
5 individual provider; an employee of a facility; an operator of a
6 facility; an employee of a social service, welfare, mental health,
7 adult day health, adult day care, home health, home care, or hospice
8 agency; county coroner or medical examiner; Christian Science
9 practitioner; or health care provider subject to chapter 18.130 RCW.

10 ~~((+11+))~~ (12) "Neglect" means (a) a pattern of conduct or inaction
11 by a person or entity with a duty of care that fails to provide the
12 goods and services that maintain physical or mental health of a
13 vulnerable adult, or that fails to avoid or prevent physical or mental
14 harm or pain to a vulnerable adult; or (b) an act or omission that
15 demonstrates a serious disregard of consequences of such a magnitude as
16 to constitute a clear and present danger to the vulnerable adult's
17 health, welfare, or safety, including but not limited to conduct
18 prohibited under RCW 9A.42.100.

19 ~~((+12+))~~ (13) "Permissive reporter" means any person, including,
20 but not limited to, an employee of a financial institution, attorney,
21 or volunteer in a facility or program providing services for vulnerable
22 adults.

23 ~~((+13+))~~ (14) "Protective services" means any services provided by
24 the department to a vulnerable adult with the consent of the vulnerable
25 adult, or the legal representative of the vulnerable adult, who has
26 been abandoned, abused, financially exploited, neglected, or in a state
27 of self-neglect. These services may include, but are not limited to
28 case management, social casework, home care, placement, arranging for
29 medical evaluations, psychological evaluations, day care, or referral
30 for legal assistance.

31 ~~((+14+))~~ (15) "Self-neglect" means the failure of a vulnerable
32 adult, not living in a facility, to provide for himself or herself the
33 goods and services necessary for the vulnerable adult's physical or
34 mental health, and the absence of which impairs or threatens the
35 vulnerable adult's well-being. This definition may include a
36 vulnerable adult who is receiving services through home health,
37 hospice, or a home care agency, or an individual provider when the

1 neglect is not a result of inaction by that agency or individual
2 provider.

3 ((+15+)) (16) "Vulnerable adult" includes a person:

4 (a) Sixty years of age or older who has the functional, mental, or
5 physical inability to care for himself or herself; or

6 (b) Found incapacitated under chapter 11.88 RCW; or

7 (c) Who has a developmental disability as defined under RCW
8 71A.10.020; or

9 (d) Admitted to any facility; or

10 (e) Receiving services from home health, hospice, or home care
11 agencies licensed or required to be licensed under chapter 70.127 RCW;
12 or

13 (f) Receiving services from an individual provider.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.34 RCW
15 to read as follows:

16 (1) Pending an investigation by the financial institution, the
17 department, or law enforcement, if a financial institution reasonably
18 believes that financial exploitation of a vulnerable adult may have
19 occurred, may have been attempted, or is being attempted, the financial
20 institution may, but is not required to, refuse a transaction requiring
21 disbursement of funds contained in the account:

22 (a) Of the vulnerable adult;

23 (b) On which the vulnerable adult is a beneficiary, including a
24 trust or guardianship account; or

25 (c) Of a person suspected of perpetrating financial exploitation of
26 a vulnerable adult.

27 (2) A financial institution may also refuse to disburse funds under
28 this section if the department, law enforcement, or the prosecuting
29 attorney's office provides information to the financial institution
30 demonstrating that it is reasonable to believe that financial
31 exploitation of a vulnerable adult may have occurred, may have been
32 attempted, or is being attempted.

33 (3) A financial institution is not required to refuse to disburse
34 funds when provided with information alleging that financial
35 exploitation may have occurred, may have been attempted, or is being
36 attempted, but may use its discretion to determine whether or not to

1 refuse to disburse funds based on the information available to the
2 financial institution.

3 (4) A financial institution that refuses to disburse funds based on
4 a reasonable belief that financial exploitation of a vulnerable adult
5 may have occurred, may have been attempted, or is being attempted
6 shall:

7 (a) Make a reasonable effort to notify all parties authorized to
8 transact business on the account orally or in writing; and

9 (b) Report the incident to the adult protective services division
10 of the department and local law enforcement.

11 (5) Any refusal to disburse funds as authorized by this section
12 based on the reasonable belief of a financial institution that
13 financial exploitation of a vulnerable adult may have occurred, may
14 have been attempted, or is being attempted will expire upon the sooner
15 of:

16 (a) Ten business days after the date on which the financial
17 institution first refused to disburse the funds if the transaction
18 involved the sale of a security or offer to sell a security, as defined
19 in RCW 21.20.005, unless sooner terminated by an order of a court of
20 competent jurisdiction;

21 (b) Five business days after the date on which the financial
22 institution first refused to disburse the funds if the transaction did
23 not involve the sale of a security or offer to sell a security, as
24 defined in RCW 21.20.005, unless sooner terminated by an order of a
25 court of competent jurisdiction; or

26 (c) The time when the financial institution is satisfied that the
27 disbursement will not result in financial exploitation of a vulnerable
28 adult.

29 (6) A court of competent jurisdiction may enter an order extending
30 the refusal by the financial institution to disburse funds based on a
31 reasonable belief that financial exploitation of a vulnerable adult may
32 have occurred, may have been attempted, or is being attempted. A court
33 of competent jurisdiction may also order other protective relief as
34 authorized by RCW 7.40.010 and 74.34.130.

35 (7) A financial institution or an employee of a financial
36 institution is immune from criminal, civil, and administrative
37 liability for refusing to disburse funds or disbursing funds under this

1 section and for actions taken in furtherance of that determination if
2 the determination of whether or not to disburse funds was made in good
3 faith.

4 **Sec. 4.** RCW 74.34.035 and 2003 c 230 s 2 are each amended to read
5 as follows:

6 (1) When there is reasonable cause to believe that abandonment,
7 abuse, financial exploitation, or neglect of a vulnerable adult has
8 occurred, mandated reporters shall immediately report to the
9 department.

10 (2) When there is reason to suspect that sexual assault has
11 occurred, mandated reporters shall immediately report to the
12 appropriate law enforcement agency and to the department.

13 (3) When there is reason to suspect that physical assault has
14 occurred or there is reasonable cause to believe that an act has caused
15 fear of imminent harm:

16 (a) Mandated reporters shall immediately report to the department;
17 and

18 (b) Mandated reporters shall immediately report to the appropriate
19 law enforcement agency, except as provided in subsection (4) of this
20 section.

21 (4) A mandated reporter is not required to report to a law
22 enforcement agency, unless requested by the injured vulnerable adult or
23 his or her legal representative or family member, an incident of
24 physical assault between vulnerable adults that causes minor bodily
25 injury and does not require more than basic first aid, unless:

26 (a) The injury appears on the back, face, head, neck, chest,
27 breasts, groin, inner thigh, buttock, genital, or anal area;

28 (b) There is a fracture;

29 (c) There is a pattern of physical assault between the same
30 vulnerable adults or involving the same vulnerable adults; or

31 (d) There is an attempt to choke a vulnerable adult.

32 (5) When there is reason to suspect that the death of a vulnerable
33 adult was caused by abuse, neglect, or abandonment by another person,
34 mandated reporters shall, pursuant to RCW 68.50.020, report the death
35 to the medical examiner or coroner having jurisdiction, as well as the
36 department and local law enforcement, in the most expeditious manner
37 possible. A mandated reporter is not relieved from the reporting

1 requirement provisions of this subsection by the existence of a
2 previously signed death certificate. If abuse, neglect, or abandonment
3 caused or contributed to the death of a vulnerable adult, the death is
4 a death caused by unnatural or unlawful means, and the body shall be
5 the jurisdiction of the coroner or medical examiner pursuant to RCW
6 68.50.010.

7 (6) Permissive reporters may report to the department or a law
8 enforcement agency when there is reasonable cause to believe that a
9 vulnerable adult is being or has been abandoned, abused, financially
10 exploited, or neglected.

11 ((+6+)) (7) No facility, as defined by this chapter, agency
12 licensed or required to be licensed under chapter 70.127 RCW, or
13 facility or agency under contract with the department to provide care
14 for vulnerable adults may develop policies or procedures that interfere
15 with the reporting requirements of this chapter.

16 ((+7+)) (8) Each report, oral or written, must contain as much as
17 possible of the following information:

18 (a) The name and address of the person making the report;

19 (b) The name and address of the vulnerable adult and the name of
20 the facility or agency providing care for the vulnerable adult;

21 (c) The name and address of the legal guardian or alternate
22 decision maker;

23 (d) The nature and extent of the abandonment, abuse, financial
24 exploitation, neglect, or self-neglect;

25 (e) Any history of previous abandonment, abuse, financial
26 exploitation, neglect, or self-neglect;

27 (f) The identity of the alleged perpetrator, if known; and

28 (g) Other information that may be helpful in establishing the
29 extent of abandonment, abuse, financial exploitation, neglect, or the
30 cause of death of the deceased vulnerable adult.

31 ((+8+)) (9) Unless there is a judicial proceeding or the person
32 consents, the identity of the person making the report under this
33 section is confidential.

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

36 (1) A financial institution shall provide training concerning the
37 financial exploitation of vulnerable adults to the employees specified

1 in subsection (2) of this section within one year of the effective date
2 of this act and shall thereafter provide such training to the new
3 employees specified in subsection (2) of this section within the first
4 three months of their employment.

5 (2) A financial institution that is a broker-dealer or investment
6 adviser as defined in RCW 21.20.005 shall provide training concerning
7 the financial exploitation of vulnerable adults to employees who are
8 required to be registered in the state of Washington as salespersons or
9 investment adviser representatives under RCW 21.20.040 and who have
10 contact with customers and access to account information on a regular
11 basis and as part of their job. All other financial institutions shall
12 provide training concerning the financial exploitation of vulnerable
13 adults to employees who have contact with customers and access to
14 account information on a regular basis and as part of their job.

15 (3) The training must include recognition of indicators of
16 financial exploitation of a vulnerable adult, the manner in which
17 employees may report suspected financial exploitation to the department
18 and law enforcement as permissive reporters, and steps employees may
19 take to prevent suspected financial exploitation of a vulnerable adult
20 as authorized by law or agreements between the financial institution
21 and customers of the financial institution. The office of the attorney
22 general and the department shall develop a standardized training that
23 financial institutions may offer, or the financial institution may
24 develop its own training.

25 (4) A financial institution may provide access to or copies of
26 records that are relevant to suspected financial exploitation or
27 attempted financial exploitation of a vulnerable adult to the
28 department, law enforcement, or the prosecuting attorney's office,
29 either as part of a referral to the department, law enforcement, or the
30 prosecuting attorney's office, or upon request of the department, law
31 enforcement, or the prosecuting attorney's office pursuant to an
32 investigation. The records may include historical records as well as
33 records relating to the most recent transaction or transactions that
34 may comprise financial exploitation.

35 (5) A financial institution or employee of a financial institution
36 participating in good faith in making a report or providing
37 documentation or access to information to the department, law

1 enforcement, or the prosecuting attorney's office under this chapter
2 shall be immune from criminal, civil, or administrative liability."

3 Correct the title.

EFFECT: Makes the following changes to the underlying bill:

(1) Defines "financial institution" to include broker-dealers and investment advisers.

(2) Requires a financial institution that refuses to disburse funds to make a reasonable effort to notify all parties authorized to transact business on the account.

(3) Provides that the refusal to disburse funds expires within ten business days for a transaction involving the sale of a security or offer to sell a security.

(4) Requires a financial institution to provide training to certain employees regarding financial exploitation of vulnerable adults within one year of the effective date of the act and within the first three months of employment for new employees.

(5) Requires a broker-dealer or investment adviser to provide such training to employees who are required to be registered as salespersons or investment adviser representatives and who have regular contact with customers and access to account information as part of their jobs.

(6) Revises the immunity for providing access to records so that only good faith participation in making a report or providing documentation or access to records is immune from liability.

(7) Requires mandated reporters to report the death of a vulnerable adult when they have reason to suspect (rather than the circumstances indicate) that the death was caused by abuse, neglect, or abandonment.

(8) Removes provisions related to professional guardians.

(9) Makes various technical changes.

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