

SENATE BILL REPORT

SHB 1103

As Reported by Senate Committee On:
Judiciary, March 24, 2009

Title: An act relating to the estates of vulnerable adults.

Brief Description: Concerning the estates of vulnerable adults.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Moeller, Green, Morrell and Kenney).

Brief History: Passed House: 2/20/09, 94-0.

Committee Activity: Judiciary: 3/17/09, 3/24/09 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles and Tom.

Staff: Kim Johnson (786-7472)

Background: Inheritance Rights. Under certain circumstances, an individual who takes the life of another is not entitled to inherit property or receive any benefit from the person the individual killed. This rule, in statute as part of the state's estate distribution laws, is commonly referred to as the "slayer statute." A "slayer" is a person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person.

Vulnerable Adults. A vulnerable adult includes a person who:

- is age 60 years or older who has a functional, mental, or physical inability for self-care;
- has been found to be incapacitated;
- has a developmental disability;
- resides in a licensed facility such as a nursing home, adult family home, or residential habilitation center; or
- is receiving hospice or home health services.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Financial exploitation is defined as "the illegal or improper use of property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage."

Summary of Bill (Recommended Amendments): An abuser is defined as "a person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult." An abuser may not inherit property or any benefit from a deceased person who, at any time during life in which the decedent was a vulnerable adult, was the victim of financial exploitation by the abuser.

Disposition of Property. The decedent's estate is distributed according to the same scheme provided in the slayer statute.

Ratification. An abuser may inherit property or benefits from the vulnerable adult's estate if the vulnerable adult:

- knew of the financial exploitation; and
- subsequently ratified his or her intent to transfer the property interest or benefit to the abuser.

The court must find by clear, cogent, and convincing evidence that the decedent ratified the abuser's conduct.

Abuser Designation. A criminal conviction for conduct constituting financial exploitation against a decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, is conclusive for the purposes of determining whether a person is an abuser. In the absence of a criminal conviction, a court may find by clear, cogent, and convincing evidence that:

- the decedent was a vulnerable adult at the time the alleged financial exploitation took place; and
- the conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.

Findings made by the court are conclusive for the purpose of determining whether a person is an abuser.

Department of Social and Health Services Findings. Findings of abuse made by the Department of Social and Health Services are not admissible in any claim or proceeding to determine whether a person is an abuser for inheritance purposes.

Slayer Designation. A criminal conviction for the willful and unlawful killing of a decedent is conclusive for the purposes of determining whether a person is a slayer. In the absence of a criminal conviction, a court may find by a preponderance of the evidence that a person participated in the willful and unlawful killing of the decedent.

Findings made by the court are conclusive for the purpose of determining whether a person is a slayer.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): Section 7 of the bill was removed. Section 7 generally provided for how certain real property interests should pass based on the life expectancy of the decedent and whether the property interest was obtained through fraudulent means.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: Many of our citizens that lived through the depression era, who have saved their entire lives and take pride in making their own decisions, are forced at some point to put their lives and money in another's hands. Sadly, as we age, we become more dependent upon people close to us for basic necessities, yet some of these people take advantage. One of the most common excuses we hear is that "well, I would have inherited the money anyway." Well, that is still theft. It is a crime. This simply expands the current slayer statute to include financial exploitation.

We enlisted as many people as we possibly could to work out the details of this bill. This bill includes a provision that allows a person who is aware that they are a victim of a crime to still allow the perpetrator of this crime to inherit. We recognize that people in families have the capacity to forgive.

In 1997 my parents had a trust set up to provide for their care as they aged, and my brother was put in charge. He did not take care of my mother and was verbally abusive. He had me disinherited. Something needs to be done to change the law.

Persons Testifying: PRO: Representative Moeller, prime sponsor; Claudia Donnelly, citizen.