

HOUSE BILL REPORT

HB 1103

As Reported by House Committee On:
Judiciary

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

Brief Description: Concerning the estates of vulnerable adults.

Sponsors: Representatives Moeller, Green, Morrell and Kenney.

Brief History:

Committee Activity:

Judiciary: 1/22/09, 1/29/09 [DPS].

Brief Summary of Substitute Bill

- Prevents an abuser from inheriting property or receiving any benefit from a vulnerable adult who was the victim of financial exploitation.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Courtney Barnes (786-7194)

Background:

Financial Exploitation of Vulnerable Adults.

The Abuse of Vulnerable Adults Act provides a number of protections for vulnerable adults, including authorizing the Department of Social and Health Services and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults. A vulnerable adult who is suffering from abandonment, abuse, financial exploitation, or neglect may petition the superior court for an order for protection.

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.

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.

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."

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 he or she 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. Rather than being punitive, the slayer statute is broadly construed to enforce the state's policy that no person should be allowed to profit by his or her own wrongdoing.

Summary of Substitute Bill:

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. 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."

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.

Common Law Remedies.

The provisions of the bill are supplemental to, and do not derogate from, other statutory or common law proceedings, theories, or remedies, including the common law allocation of the burden of proof or production among the parties.

Statute Cross-References.

The bill amends statutes cross-referenced by the existing slayer statute related to:

- joint community property agreements;
- retirement benefits; and
- the Trust and Estate Dispute Resolution Act.

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.

Substitute Bill Compared to Original Bill:

The substitute bill adds the crimes of theft, forgery, fraud, identity theft, robbery, burglary, and extortion as conduct constituting financial exploitation against the decedent. A conviction of one of these crimes is admissible as evidence and conclusive for the purposes of determining whether a person is an abuser. The substitute bill adds new language to clarify that action or inaction causing injury to the property of the vulnerable adult must be willful.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill deals with inheritance, which is a very complicated issue. A number of stakeholders were involved in the bill drafting process. In most of the cases involving the abuse of vulnerable adults, family members of the vulnerable adult are the perpetrators. Many of these cases are not investigated or prosecuted. There are tools to fight the financial exploitation of vulnerable adults, including protection orders, guardianship, and a civil recovery action under the Trust and Estate Dispute Resolution Act. If the person who commits financial exploitation against a vulnerable adult is named in the vulnerable adult's will, there is nothing under the current law to prevent the perpetrator from inheriting property under the will. This bill provides a mechanism to prevent the perpetrator from inheriting from the vulnerable adult he or she financially exploited.

(With concerns) The bill should be clarified because there are some interpretative problems. For example, the bill references a conviction of financial exploitation, but there is no crime of financial exploitation. Financial exploitation is defined in the Vulnerable Adult Act, which is incorporated by reference into this bill. The Attorney General has plans to amend the definition of financial exploitation in the Vulnerable Adult Act to include attempted financial exploitation. Thus, a person attempting financial exploitation against a vulnerable adult may be prevented from inheriting from the vulnerable adult. The bill should be clarified to focus on actual financial exploitation of a vulnerable adult.

(Opposed) None.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Jim Senescu, Attorney; Detective Allen Cook, Washougal Police Department and Clark County Vulnerable Adult Task Force; and Sarah Flohr, Beacon Trustee Services.

(With concerns) Jeff Crollard, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.