

HOUSE BILL REPORT

SSB 6202

As Passed House:
March 3, 2010

Title: An act relating to vulnerable adults.

Brief Description: Expanding provisions relating to vulnerable adults.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Holmquist, Franklin, Honeyford, McCaslin, Regala, Morton, Keiser, Delvin, Swecker, Rockefeller, Tom, Kline, McAuliffe and Kilmer; by request of Attorney General).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/23/10 [DP].

Floor Activity:

Passed House: 3/3/10, 97-0.

Brief Summary of Substitute Bill

- Permits a financial institution, including a broker-dealer or investment adviser, to refuse to disburse funds from the account of a vulnerable adult or a suspected perpetrator of financial exploitation of a vulnerable adult when the financial institution reasonably believes that financial exploitation of a vulnerable adult has occurred, has been attempted, or is being attempted.
- Immunizes a financial institution from liability for certain acts taken in response to the suspected financial exploitation of a vulnerable adult.
- Requires that a report be made to the medical examiner or coroner, the Department of Social and Health Services, and law enforcement when a vulnerable adult's death was due to abuse, neglect, or abandonment.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

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.

Staff: Alexa Silver (786-7190).

Background:

The Abuse of Vulnerable Adults Act provides a number of protections for vulnerable adults, including authorizing the Department of Social and Health Services (DSHS) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults; requiring mandatory reporting and investigations; and allowing vulnerable adults to seek protection orders or file civil suits for damages resulting from abandonment, abuse, exploitation, or neglect.

When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters must immediately report to the DSHS. If there is reason to suspect that sexual or physical assault has occurred, mandated reporters must immediately report to the appropriate law enforcement agency and to the DSHS.

A vulnerable adult is a person who meets one of the following conditions: is 60 years old or older and is functionally, mentally, or physically unable to care for himself or herself; has been found incapacitated; has a developmental disability; resides in a licensed facility such as a nursing home, adult family home, or residential habilitation center; receives services from a home health, hospice, or home care agency; or receives services from an individual home services provider.

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

A financial institution is defined as a state or national bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in the state. A broker-dealer is a person in the business of effecting transactions in securities. An investment adviser is a person in the business of advising others on the value of securities and the advisability of investing in securities or who issues reports on securities.

The following individuals are mandated reporters under law: employees of the DSHS; law enforcement officers; social workers; professional school personnel; individual providers; employees or operators of a facility; employees of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroners and medical examiners; Christian Science practitioners; and health care providers.

Summary of Bill:

A. Financial Institutions.

If a financial institution, including a broker-dealer or investment adviser, reasonably believes that financial exploitation of a vulnerable adult has occurred, has been attempted, or is being attempted, the financial institution may refuse to disburse funds from certain bank accounts pending an investigation by the DSHS or law enforcement. The bank accounts from which

the financial institution may refuse to disburse funds are the vulnerable adult's account, an account on which the vulnerable adult is a beneficiary, and an account belonging to a person suspected of perpetrating the financial exploitation. The financial institution may also refuse to disburse funds if notified by the DSHS, law enforcement, or the prosecuting attorney's office that it is reasonable to believe that exploitation has occurred, has been attempted, or is being attempted.

1. Notification.

If the institution refuses to disburse funds, it must make a reasonable effort to notify all parties authorized to transact business on the account. The notice may be oral or in writing. The institution must also report the refusal to the DSHS and local law enforcement.

2. Expiration and Court Order.

The refusal to disburse funds expires ten business days after the refusal if the transaction involved the sale of a security or offer to sell a security, five business days after the refusal for other transactions, or when the institution is satisfied that disbursement will not result in financial exploitation, whichever is sooner. A court may enter an order extending the refusal to disburse funds.

3. Training.

A financial institution must provide training on financial exploitation of vulnerable adults to certain employees within one year of the act's effective date and within the first three months of employment for new employees. A financial institution that is a broker-dealer or investment adviser must provide 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. All other financial institutions must provide training to employees who have regular contact with customers and access to account information as part of their jobs. The Office of the Attorney General and the DSHS must develop a standardized training, but a financial institution may develop its own training. The training must include recognition of indicators of financial exploitation, reporting obligations, and prevention of financial exploitation.

4. Access to Records.

A financial institution may provide access to recent and historical records relevant to financial exploitation of a vulnerable adult to the DSHS, law enforcement, or the prosecuting attorney's office.

5. Immunity.

The determination of whether to refuse to disburse funds is within the financial institution's discretion. The institution and its employees are immune from criminal, civil, and administrative liability for refusing to disburse funds or disbursing funds if the determination was made in good faith.

The institution and its employees participating in good faith in making a report or providing access to information to the DSHS, law enforcement, or the prosecuting attorney's office are immune from criminal, civil, and administrative liability.

B. Mandated Reporters' Duties.

When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment, a mandated reporter must report the death to the medical examiner or coroner, law enforcement, and the DSHS in the most expeditious manner possible. If abuse, neglect, or abandonment contributed to the death, it is a death caused by unnatural or unlawful means, and the body is in the jurisdiction of the coroner or medical examiner.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There are a disturbing number of crimes committed against the elderly with disabilities and people with developmental disabilities, and those crimes are occurring with increasing frequency. This bill is the recommendation of a vulnerable adult summit. Any technical issues with wording should not keep the bill from moving forward. Compared to the House version of the bill, the sentence enhancement was removed because of the fiscal impact. The bill should clarify that the power of appointed guardians to freeze accounts is discretionary.

(With concerns) Banks are concerned about the provision regarding notification of a guardian. Banks are often not told there is a guardian, or banks may not have contact information for the guardian. The guardian may also be the person under investigation.

(Opposed) None.

Persons Testifying: (In support) Peggy Quan, Association for the Advancement of Retired Persons; Michael Johnson, Washington Association of Professional Guardians; David Lord, Disability Rights Washington; Chris Johnson, Office of the Attorney General; Cherie Tessier, People First of Washington; and Louise Ryan, Long-Term Care Ombudsman.

(With concerns) Holly Chisa, Community Bankers of Washington.

Persons Signed In To Testify But Not Testifying: (In support with amendment) Bill Stauffacher, Securities Industry and Financial Markets Association.