

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6202

61st Legislature
2010 Regular Session

Passed by the Senate March 8, 2010
YEAS 45 NAYS 0

President of the Senate

Passed by the House March 3, 2010
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6202** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6202

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate 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)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to vulnerable adults; amending RCW 30.22.210,
2 74.34.020, and 74.34.035; and adding new sections to chapter 74.34 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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13 in, or proposed to be withdrawn, or previously withdrawn from the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

1 dispute, and may also, without liability, refuse to disburse any funds
2 contained in the account to any depositor, and/or trust or P.O.D.
3 account beneficiary thereof, and/or other persons claiming an interest
4 therein, until such time as either:

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

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

9 (2) If a financial institution reasonably believes that financial
10 exploitation of a vulnerable adult, as defined in RCW 74.34.020, may
11 have occurred, may have been attempted, or is being attempted, the
12 financial institution may refuse a transaction as permitted under
13 section 3 of this act.

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

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

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

22 (2) "Abuse" means the willful action or inaction that inflicts
23 injury, unreasonable confinement, intimidation, or punishment on a
24 vulnerable adult. In instances of abuse of a vulnerable adult who is
25 unable to express or demonstrate physical harm, pain, or mental
26 anguish, the abuse is presumed to cause physical harm, pain, or mental
27 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
28 and exploitation of a vulnerable adult, which have the following
29 meanings:

30 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
31 including but not limited to unwanted or inappropriate touching, rape,
32 sodomy, sexual coercion, sexually explicit photographing, and sexual
33 harassment. Sexual abuse includes any sexual contact between a staff
34 person, who is not also a resident or client, of a facility or a staff
35 person of a program authorized under chapter 71A.12 RCW, and a
36 vulnerable adult living in that facility or receiving service from a

1 program authorized under chapter 71A.12 RCW, whether or not it is
2 consensual.

3 (b) "Physical abuse" means the willful action of inflicting bodily
4 injury or physical mistreatment. Physical abuse includes, but is not
5 limited to, striking with or without an object, slapping, pinching,
6 choking, kicking, shoving, prodding, or the use of chemical restraints
7 or physical restraints unless the restraints are consistent with
8 licensing requirements, and includes restraints that are otherwise
9 being used inappropriately.

10 (c) "Mental abuse" means any willful action or inaction of mental
11 or verbal abuse. Mental abuse includes, but is not limited to,
12 coercion, harassment, inappropriately isolating a vulnerable adult from
13 family, friends, or regular activity, and verbal assault that includes
14 ridiculing, intimidating, yelling, or swearing.

15 (d) "Exploitation" means an act of forcing, compelling, or exerting
16 undue influence over a vulnerable adult causing the vulnerable adult to
17 act in a way that is inconsistent with relevant past behavior, or
18 causing the vulnerable adult to perform services for the benefit of
19 another.

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

24 (4) "Department" means the department of social and health
25 services.

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

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

35 (7) "Financial institution" has the same meaning as in RCW
36 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
37 institution" also means a "broker-dealer" or "investment adviser" as
38 defined in RCW 21.20.005.

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

4 ~~((+8+))~~ (9) "Individual provider" means a person under contract
5 with the department to provide services in the home under chapter 74.09
6 or 74.39A RCW.

7 ~~((+9+))~~ (10) "Interested person" means a person who demonstrates to
8 the court's satisfaction that the person is interested in the welfare
9 of the vulnerable adult, that the person has a good faith belief that
10 the court's intervention is necessary, and that the vulnerable adult is
11 unable, due to incapacity, undue influence, or duress at the time the
12 petition is filed, to protect his or her own interests.

13 ~~((+10+))~~ (11) "Mandated reporter" is an employee of the department;
14 law enforcement officer; social worker; professional school personnel;
15 individual provider; an employee of a facility; an operator of a
16 facility; an employee of a social service, welfare, mental health,
17 adult day health, adult day care, home health, home care, or hospice
18 agency; county coroner or medical examiner; Christian Science
19 practitioner; or health care provider subject to chapter 18.130 RCW.

20 ~~((+11+))~~ (12) "Neglect" means (a) a pattern of conduct or inaction
21 by a person or entity with a duty of care that fails to provide the
22 goods and services that maintain physical or mental health of a
23 vulnerable adult, or that fails to avoid or prevent physical or mental
24 harm or pain to a vulnerable adult; or (b) an act or omission that
25 demonstrates a serious disregard of consequences of such a magnitude as
26 to constitute a clear and present danger to the vulnerable adult's
27 health, welfare, or safety, including but not limited to conduct
28 prohibited under RCW 9A.42.100.

29 ~~((+12+))~~ (13) "Permissive reporter" means any person, including,
30 but not limited to, an employee of a financial institution, attorney,
31 or volunteer in a facility or program providing services for vulnerable
32 adults.

33 ~~((+13+))~~ (14) "Protective services" means any services provided by
34 the department to a vulnerable adult with the consent of the vulnerable
35 adult, or the legal representative of the vulnerable adult, who has
36 been abandoned, abused, financially exploited, neglected, or in a state
37 of self-neglect. These services may include, but are not limited to

1 case management, social casework, home care, placement, arranging for
2 medical evaluations, psychological evaluations, day care, or referral
3 for legal assistance.

4 ~~((14))~~ (15) "Self-neglect" means the failure of a vulnerable
5 adult, not living in a facility, to provide for himself or herself the
6 goods and services necessary for the vulnerable adult's physical or
7 mental health, and the absence of which impairs or threatens the
8 vulnerable adult's well-being. This definition may include a
9 vulnerable adult who is receiving services through home health,
10 hospice, or a home care agency, or an individual provider when the
11 neglect is not a result of inaction by that agency or individual
12 provider.

13 ~~((15))~~ (16) "Vulnerable adult" includes a person:
14 (a) Sixty years of age or older who has the functional, mental, or
15 physical inability to care for himself or herself; or
16 (b) Found incapacitated under chapter 11.88 RCW; or
17 (c) Who has a developmental disability as defined under RCW
18 71A.10.020; or
19 (d) Admitted to any facility; or
20 (e) Receiving services from home health, hospice, or home care
21 agencies licensed or required to be licensed under chapter 70.127 RCW;
22 or
23 (f) Receiving services from an individual provider.

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

26 (1) Pending an investigation by the financial institution, the
27 department, or law enforcement, if a financial institution reasonably
28 believes that financial exploitation of a vulnerable adult may have
29 occurred, may have been attempted, or is being attempted, the financial
30 institution may, but is not required to, refuse a transaction requiring
31 disbursement of funds contained in the account:

- 32 (a) Of the vulnerable adult;
- 33 (b) On which the vulnerable adult is a beneficiary, including a
34 trust or guardianship account; or
- 35 (c) Of a person suspected of perpetrating financial exploitation of
36 a vulnerable adult.

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

7 (3) A financial institution is not required to refuse to disburse
8 funds when provided with information alleging that financial
9 exploitation may have occurred, may have been attempted, or is being
10 attempted, but may use its discretion to determine whether or not to
11 refuse to disburse funds based on the information available to the
12 financial institution.

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

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

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

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

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

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

36 (c) The time when the financial institution is satisfied that the
37 disbursement will not result in financial exploitation of a vulnerable
38 adult.

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

7 (7) A financial institution or an employee of a financial
8 institution is immune from criminal, civil, and administrative
9 liability for refusing to disburse funds or disbursing funds under this
10 section and for actions taken in furtherance of that determination if
11 the determination of whether or not to disburse funds was made in good
12 faith.

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

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

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

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

25 (a) Mandated reporters shall immediately report to the department;
26 and

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

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

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

37 (b) There is a fracture;

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

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

4 (5) When there is reason to suspect that the death of a vulnerable
5 adult was caused by abuse, neglect, or abandonment by another person,
6 mandated reporters shall, pursuant to RCW 68.50.020, report the death
7 to the medical examiner or coroner having jurisdiction, as well as the
8 department and local law enforcement, in the most expeditious manner
9 possible. A mandated reporter is not relieved from the reporting
10 requirement provisions of this subsection by the existence of a
11 previously signed death certificate. If abuse, neglect, or abandonment
12 caused or contributed to the death of a vulnerable adult, the death is
13 a death caused by unnatural or unlawful means, and the body shall be
14 the jurisdiction of the coroner or medical examiner pursuant to RCW
15 68.50.010.

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

20 ((+6+)) (7) No facility, as defined by this chapter, agency
21 licensed or required to be licensed under chapter 70.127 RCW, or
22 facility or agency under contract with the department to provide care
23 for vulnerable adults may develop policies or procedures that interfere
24 with the reporting requirements of this chapter.

25 ((+7+)) (8) Each report, oral or written, must contain as much as
26 possible of the following information:

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

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

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

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

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

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

37 (g) Other information that may be helpful in establishing the

1 extent of abandonment, abuse, financial exploitation, neglect, or the
2 cause of death of the deceased vulnerable adult.

3 ~~((+8))~~ (9) Unless there is a judicial proceeding or the person
4 consents, the identity of the person making the report under this
5 section is confidential.

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

8 (1) A financial institution shall provide training concerning the
9 financial exploitation of vulnerable adults to the employees specified
10 in subsection (2) of this section within one year of the effective date
11 of this act and shall thereafter provide such training to the new
12 employees specified in subsection (2) of this section within the first
13 three months of their employment.

14 (2) A financial institution that is a broker-dealer or investment
15 adviser as defined in RCW 21.20.005 shall provide training concerning
16 the financial exploitation of vulnerable adults to employees who are
17 required to be registered in the state of Washington as salespersons or
18 investment adviser representatives under RCW 21.20.040 and who have
19 contact with customers and access to account information on a regular
20 basis and as part of their job. All other financial institutions shall
21 provide training concerning the financial exploitation of vulnerable
22 adults to employees who have contact with customers and access to
23 account information on a regular basis and as part of their job.

24 (3) The training must include recognition of indicators of
25 financial exploitation of a vulnerable adult, the manner in which
26 employees may report suspected financial exploitation to the department
27 and law enforcement as permissive reporters, and steps employees may
28 take to prevent suspected financial exploitation of a vulnerable adult
29 as authorized by law or agreements between the financial institution
30 and customers of the financial institution. The office of the attorney
31 general and the department shall develop a standardized training that
32 financial institutions may offer, or the financial institution may
33 develop its own training.

34 (4) A financial institution may provide access to or copies of
35 records that are relevant to suspected financial exploitation or
36 attempted financial exploitation of a vulnerable adult to the
37 department, law enforcement, or the prosecuting attorney's office,

1 either as part of a referral to the department, law enforcement, or the
2 prosecuting attorney's office, or upon request of the department, law
3 enforcement, or the prosecuting attorney's office pursuant to an
4 investigation. The records may include historical records as well as
5 records relating to the most recent transaction or transactions that
6 may comprise financial exploitation.

7 (5) A financial institution or employee of a financial institution
8 participating in good faith in making a report or providing
9 documentation or access to information to the department, law
10 enforcement, or the prosecuting attorney's office under this chapter
11 shall be immune from criminal, civil, or administrative liability.

--- END ---