

HOUSE BILL REPORT

SSB 5889

As Reported By House Committee On:

Health Care

Title: An act relating to civil remedies for abuse, abandonment, neglect, and exploitation of frail elderly and vulnerable adults.

Brief Description: Enacting the frail elderly and vulnerable adult civil protection act.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley and Kohl).

Brief History:

Committee Activity:

Health Care: 3/24/95, 3/31/95 [DPA].

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended. Signed by 12 members: Representatives Dyer, Chairman; Backlund, Vice Chairman; Hymes, Vice Chairman; Cody, Assistant Ranking Minority Member; Campbell; Casada; Conway; Crouse; Kessler; Morris; Sherstad and Skinner.

Staff: Antonio Sanchez (786-7383).

Background: Thousands of vulnerable persons live in facilities that provide long-term care assistance in Washington State. In 1994, approximately 4,300 complaints were received by the state long-term care ombudsman about the care and treatment in these facilities. Currently, the state's regulatory enforcement system does not allow for compensation for victims of abuse, abandonment, neglect or exploitation. However, sanctions currently exist in regulatory and criminal law that provide some civil protection for abuse of dependent persons.

Concern exists that frail elders and vulnerable adults without the ability to care for themselves may not have effective access to judicial protection. Obtaining appropriate and affordable legal counsel is often difficult for less well off members of this population. Giving this population a statutory cause of action, with the possibility of increased damage awards, attorney's fees, costs, and survival of action, could increase the likelihood of obtaining counsel and legal remedy for abuse and other maltreatment.

Summary of Amended Bill: Legislative intent to provide frail elders and vulnerable persons with the protection of the courts is stated.

Frail elders and vulnerable persons who are abused, neglected, exploited or abandoned (as defined), while residing in certain licensed care facilities or receiving other licensed care, have a cause of action for damages, including injuries, pain and suffering and loss of property. If they prevail in the legal action, they are awarded actual damages (money), costs of the suit (including fees for guardians ad litem and expert witnesses), and reasonable attorney's fees. The right of action can survive the plaintiff, for the benefit of the surviving spouse, children, or heirs.

The definition of "frail elder or vulnerable person" is expanded from persons over the age of 60 to also include persons over the age of 18. Under the definition of "exploitation", reference to trust income is included as one of the vulnerable persons income items that should also be considered protected.

Persons receiving a well recognized spiritual method of healing are exempted and not for that reason alone be considered abandoned, abused, or neglected under this law.

Parties to a dispute regarding the care or treatment of a frail elder or vulnerable person are encouraged whenever feasible to use the least formal means available to resolve the dispute, such as through direct discussion with the health care provider, use of the long-term care ombudsman, and if necessary, recourse through regulatory agencies.

Amended Bill Compared to Substitute Bill: Technical amendments are made to specify licensure and non licensure conditions as applicable to the conditions of the act and to clarify that a person abused or neglected by a home health care provider does not have to reside in a long-term care facility in order to be able to sue the home health provider.

The court's ability to order treble damages, or increase the award to \$10,000, whichever is less is removed. All references to "vulnerable adult" are changed to "vulnerable person."

The definition of "frail elder or vulnerable person" is expanded from persons over the age of 60 to also include persons over the age of 18. Under the definition of "exploitation", reference to trust income is included as one of the vulnerable person's income items that should also be considered protected.

Language was added that specifies that parties to a dispute regarding the care or treatment of a frail elder or vulnerable adult are encouraged whenever feasible to use the least formal means available to resolve the dispute, such as through direct

discussion with the health care provider, use of the long-term care ombudsman, and if necessary, recourse through regulatory agencies.

The amended bill includes the ability for persons receiving a well recognized spiritual method of healing to be exempted from being considered abandoned, abused, or neglected as a result of using that method of healing.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This legislation is needed to provide a meaningful and needed legal tool to protect vulnerable persons from caregivers who deliberately fail to provide safe and appropriate care. This places a value on elderly persons where currently no value exists in the legal system. Both the elderly and disabled persons will gain from this protection, as well as their families.

Testimony Against: Law on abuse ought to be merged to achieve coherence in legislative intent and purpose, standard terms, common definitions, coordinated reporting requirements, merged categories of dependent persons needing protections, investigating bodies and processes, and liability safeguards. Until these laws are reworked no further changes to any of these laws should be passed. This law will further harm the ability to get people to work with elderly and disabled people, because they will be in constant fear of being sued.

Testified: Senator Fairley, prime sponsor; Maura Donoghue, Washington Citizen Action; David Vannest; Dave and Cheryl Marshall, Washington Association of Citizens with Disabilities; Irene Robbins, Senior Lobby; Herbert Pember, American Association of Retired People; Jeff Crallard, Evergreen Legal Services; Frank Winslow, Alzheimer Society of Washington; Dr. Bob Cihak; Kary Hyre, Long-term Care Ombudsman; and Cliff Armstrong, Christian Science Church.