
SUBSTITUTE SENATE BILL 5889

State of Washington

54th Legislature

1995 Regular Session

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

Read first time 03/01/95.

1 AN ACT Relating to civil remedies for abuse, abandonment, neglect,
2 and exploitation of frail elderly and vulnerable adults; amending RCW
3 74.34.010, 74.34.100, 74.34.020, 74.34.070, and 74.34.030; adding new
4 sections to chapter 74.34 RCW; and recodifying RCW 74.34.100.

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

6 **Sec. 1.** RCW 74.34.010 and 1984 c 97 s 7 are each amended to read
7 as follows:

8 The legislature finds that frail elders and vulnerable adults may
9 be subjected to abuse, neglect, exploitation, or abandonment. The
10 legislature finds that there are a number of adults ((~~sixty years of~~
11 age or older)) who lack the ability to perform or obtain those services
12 necessary to maintain or establish their well-being. The legislature
13 finds that many frail elders and vulnerable adults have health problems
14 that place them in a dependent position. The legislature further finds
15 that a significant number of frail elders and vulnerable adults have
16 mental and verbal limitations that leave them vulnerable and incapable
17 of asking for help and protection.

18 It is the intent of the legislature to prevent or remedy the abuse,
19 neglect, exploitation, or abandonment of persons sixty years of age or

1 older who have a functional, mental, or physical inability to care for
2 or protect themselves.

3 It is the intent of the legislature to assist frail elders and
4 vulnerable adults by providing these persons with the protection of the
5 courts and with the least-restrictive services, such as home care, and
6 by preventing or reducing inappropriate institutional care. The
7 legislature finds that it is in the interests of the public health,
8 safety, and welfare of the people of the state to provide a procedure
9 for identifying these vulnerable persons and providing the services and
10 remedies necessary for their well-being.

11 **Sec. 2.** RCW 74.34.100 and 1986 c 187 s 4 are each amended to read
12 as follows:

13 The legislature finds that frail elders and vulnerable adults~~((7))~~
14 ~~who are ((physically or emotionally))~~ abused, neglected, abandoned, or
15 ~~((financially))~~ exploited may need the protection of the courts. The
16 legislature further finds that many of these elderly or vulnerable
17 persons may be homebound or otherwise may be unable to represent
18 themselves in court or to retain legal counsel in order to obtain the
19 relief available to them under this chapter.

20 It is the intent of the legislature to improve access to the courts
21 for victims of abuse, neglect, exploitation, and abandonment in order
22 to better protect the state's frail elderly and vulnerable adults.

23 **Sec. 3.** RCW 74.34.020 and 1984 c 97 s 8 are each amended to read
24 as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

27 (1) "Abandonment" means ~~((leaving a))~~ action or inaction by a
28 person or entity with a duty of care for a frail elder or a vulnerable
29 adult that leaves the vulnerable ~~((adult))~~ person without the means or
30 ability to obtain necessary food, clothing, shelter, or health care.

31 (2) "Abuse" means ~~((an))~~ a nonaccidental act of physical or mental
32 mistreatment or injury, or sexual mistreatment, which harms ~~((or~~
33 ~~threatens))~~ a person through action or inaction by another individual.

34 (3) "Consent" means express written consent granted after the
35 person has been fully informed of the nature of the services to be
36 offered and that the receipt of services is voluntary.

1 (4) "Department" means the department of social and health
2 services.

3 (5) "Exploitation" means the illegal or improper use of a frail
4 elder or vulnerable adult or that ~~((adult's))~~ person's income or
5 resources for another person's profit or advantage.

6 (6) "Neglect" means a pattern of conduct ~~((resulting))~~ or inaction
7 by a person or entity with a duty of care for a frail elder or
8 vulnerable adult that results in the deprivation of care necessary to
9 maintain ~~((minimum))~~ the vulnerable person's physical ~~((and))~~ or mental
10 health.

11 (7) "Secretary" means the secretary of social and health services.

12 (8) "Frail elder or vulnerable adult" means a person sixty years of
13 age or older who has the functional, mental, or physical inability to
14 care for himself or herself. "Frail elder or vulnerable adult" shall
15 include, but not be limited to, persons found incapacitated under
16 chapter 11.88 RCW, or a person who has a developmental disability under
17 chapter 71A.10 RCW, and persons admitted to any long-term care facility
18 that is licensed or required to be licensed under chapter 18.20, 18.51,
19 72.36, or 70.128 RCW, or persons receiving services from home health,
20 hospice, or home care agencies licensed under chapter 70.127 RCW.

21 NEW SECTION. Sec. 4. A new section is added to chapter 74.34 RCW
22 to read as follows:

23 (1) In addition to other remedies available under the law, a frail
24 elder or vulnerable adult or a person age eighteen or older residing in
25 a long-term care facility who has been subjected to abuse, neglect,
26 exploitation, or abandonment while residing in a long-term care
27 facility shall have a cause of action for damages on account of his or
28 her injuries, pain and suffering, and loss of property sustained
29 thereby. This action shall be available where the defendant is or was
30 a corporation, trust, unincorporated association, partnership,
31 administrator, employee, agent, officer, partner, or director of a
32 long-term care facility, such as a nursing home or boarding home, that
33 is licensed or required to be licensed under chapter 18.20, 18.51,
34 72.36, or 70.128 RCW, or a home health, hospice, or home care agency
35 licensed under chapter 70.127 RCW, as now or subsequently designated.

36 (2) In an action brought under this section, a prevailing frail
37 elder or vulnerable adult or a person age eighteen or older residing in
38 a long-term care facility shall be awarded his or her actual damages,

1 together with the costs of the suit, including a reasonable attorney's
2 fee, and the court may in its discretion increase the award of damages
3 to an amount not to exceed three times the actual damages sustained.
4 However, such increased damages award may not exceed ten thousand
5 dollars. The term "costs" includes, but is not limited to, the
6 reasonable fees for a guardian, guardian ad litem, and experts, if any,
7 that may be necessary to the litigation of a claim brought under this
8 section.

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

11 A petition for an order for protection or an action for damages
12 under this chapter may be brought by the frail elder or vulnerable
13 adult or a person age eighteen or older residing in a long-term care
14 facility, or where necessary, by his or her family members and/or
15 guardian or legal fiduciary, or as otherwise provided under this
16 chapter. The death of the frail elder or vulnerable adult shall not
17 deprive the court of jurisdiction over a petition or claim brought
18 under this chapter. Upon petition, after the death of the vulnerable
19 person, the right to initiate or maintain the action shall be
20 transferred to the executor or administrator of the deceased, for the
21 benefit of the surviving spouse, child or children, or other heirs set
22 forth in chapter 4.20 RCW.

23 **Sec. 6.** RCW 74.34.070 and 1984 c 97 s 13 are each amended to read
24 as follows:

25 In responding to reports of abuse, exploitation, neglect, or
26 abandonment under this chapter, the department shall provide
27 information to the ((~~elderly person~~)) frail elder or vulnerable adult
28 on protective services available to the person and inform the person of
29 the right to refuse such services. The department shall develop
30 cooperative agreements with community-based agencies servicing the
31 abused elderly and vulnerable adults. The agreements shall cover such
32 subjects as the appropriate roles and responsibilities of the
33 department and community-based agencies in identifying and responding
34 to reports of ((~~elderly~~)) abuse, the provision of case-management
35 services, standardized data collection procedures, and related
36 coordination activities.

1 **Sec. 7.** RCW 74.34.030 and 1986 c 187 s 1 are each amended to read
2 as follows:

3 Any person, including but not limited to, financial institutions or
4 attorneys, having reasonable cause to believe that a vulnerable adult
5 has suffered abuse, exploitation, neglect, or abandonment, or is
6 otherwise in need of protective services may report such information to
7 the department. Any police officer, social worker, employee of the
8 department, a social service, welfare, mental health, or health agency,
9 including but not limited to home health, hospice, and home care
10 agencies licensed under chapter 70.127 RCW, congregate long-term care
11 facility, including but not limited to adult family homes licensed
12 under chapter 70.128 RCW, boarding homes licensed under chapter 18.20
13 RCW, and nursing homes licensed under chapter 18.51 RCW, or assisted
14 living services pursuant to RCW 74.39A.010, or health care provider
15 licensed under Title 18 RCW, including but not limited to doctors,
16 nurses, psychologists, and pharmacists, having reasonable cause to
17 believe that a vulnerable adult has suffered abuse, exploitation,
18 neglect, or abandonment, shall make an immediate oral report of such
19 information to the department and shall report such information in
20 writing to the department within ten calendar days of receiving the
21 information.

22 NEW SECTION. **Sec. 8.** RCW 74.34.100 is recodified as RCW
23 74.34.015.

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