
SENATE BILL 5889

State of Washington

54th Legislature

1995 Regular Session

By Senators Fairley and Kohl

Read first time 02/13/95. Referred to Committee on Human Services & Corrections.

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, and 74.34.020; adding new sections to chapter
4 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~~)) eighteen

1 years of age or older who have a functional, mental, or physical
2 inability to care for 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))~~
13 eighteen years of age or older who has the functional, mental, or
14 physical inability to care for himself or herself. "Frail elder or
15 vulnerable adult" shall include, but not be limited to, persons found
16 incapacitated under chapter 11.88 RCW, or a person who has a
17 developmental disability under chapter 71A.10 RCW, and persons admitted
18 to any long-term care facility that is licensed or required to be
19 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW.

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

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

33 (2) In an action brought under this section, a prevailing frail
34 elder or vulnerable adult shall be awarded his or her actual damages,
35 together with the costs of the suit, including a reasonable attorney's
36 fee, and the court may in its discretion increase the award of damages
37 to an amount not to exceed three times the actual damages sustained.
38 However, such increased damages award may not exceed ten thousand

1 dollars. The term "costs" includes, but is not limited to, the
2 reasonable fees for a guardian, guardian ad litem, and experts, if any,
3 that may be necessary to the litigation of a claim brought under this
4 section.

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

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

18 NEW SECTION. **Sec. 6.** RCW 74.34.100 is recodified as RCW
19 74.34.015.

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