
Judiciary Committee

HB 1103

Title: An act relating to the estates of vulnerable adults.

Brief Description: Concerning the estates of vulnerable adults.

Sponsors: Representatives Moeller, Green, Morrell and Kenney.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Prevents an abuser from inheriting property or receiving any benefit from a vulnerable adult who was the victim of financial exploitation.
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Hearing Date: 1/22/09

Staff: Courtney Barnes (786-7194) and Lara Zarowsky (786-7123)

Background:

Financial Exploitation of Vulnerable Adults

The Abuse of Vulnerable Adults Act provides a number of protections for vulnerable adults, including authorizing the Department of Social and Health Services and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults. A vulnerable adult who is suffering from abandonment, abuse, financial exploitation, or neglect may petition the superior court for an order for protection.

A vulnerable adult includes a person who:

- is age 60 years or older who has a functional, mental, or physical inability for self-care;
- has been found to be incapacitated;
- has a developmental disability;
- resides in a licensed facility such as a nursing home, adult family home, or residential habilitation center; or
- is receiving hospice or home health services.

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.

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

Inheritance Rights

Under certain circumstances, an individual who takes the life of another is not entitled to inherit property or receive any benefit from the person he or she killed. This rule, in statute as part of the state's estate distribution laws, is commonly referred to as the "slayer statute." A "slayer" is a person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person. Rather than being punitive, the slayer statute is broadly construed to enforce the state's policy that no person should be allowed to profit by his or her own wrongdoing.

Summary of Bill:

An abuser may not inherit property or any benefit from a deceased person who, at any time during life in which the decedent was a vulnerable adult, was the victim of financial exploitation by the abuser. An abuser is defined as "a person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult."

Disposition of Property

The decedent's estate is distributed according to the same scheme provided in the slayer statute.

Ratification

An abuser may inherit property or benefits from the vulnerable adult's estate if the vulnerable adult:

- knew of the financial exploitation; and
- subsequently ratified his or her intent to transfer the property interest or benefit to the abuser.

The court must find by clear, cogent, and convincing evidence that the decedent ratified the abuser's conduct.

Abuser Designation

A criminal conviction for financial exploitation of a decedent while the decedent was a vulnerable adult is conclusive for the purposes of determining whether a person is an abuser. In the absence of a criminal conviction, a court may find by clear, cogent, and convincing evidence that:

- the decedent was a vulnerable adult at the time the alleged financial exploitation took place; and
- the conduct constituting financial exploitation was willful action or inaction causing injury to the property of the vulnerable adult.

Findings made by the court are conclusive for the purpose of determining whether a person is an abuser.

Department of Social and Health Services Findings

Findings of abuse made by the Department of Social and Health Services are not admissible in any claim or proceeding to determine whether a person is an abuser for inheritance purposes.

Common Law Remedies

The provisions of the bill are supplemental to, and do not derogate from, other statutory or common law proceedings, theories, or remedies, including the common law allocation of the burden of proof or production among the parties.

Statute Cross-References

The bill amends statutes cross-referenced by the existing slayer statute related to:

- joint community property agreements;
- retirement benefits; and
- the Trust and Estate Dispute Resolution Act (TEDRA).

Slayer Designation

A criminal conviction for the willful and unlawful killing of a decedent is conclusive for the purposes of determining whether a person is a slayer. In the absence of a criminal conviction, a court may find by a preponderance of the evidence that a person participated in the willful and unlawful killing of the decedent.

Findings made by the court are conclusive for the purpose of determining whether a person is a slayer.

Appropriation: None.

Fiscal Note: Not requested.

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