CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6202

Chapter 133, Laws of 2010

61st Legislature
2010 Regular Session

VULNERABLE ADULTS--FINANCIAL INSTITUTIONS--REPORTS OF ABUSE OR NEGLECT

EFFECTIVE DATE: 06/10/10

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

BRAD OWEN
President of the Senate

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

FRANK CHOPP
Speaker of the House of Representatives

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.

THOMAS HOEMANN
Secretary

Approved March 19, 2010, 1:57 p.m.

FILED
March 19, 2010

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to vulnerable adults; amending RCW 30.22.210, 74.34.020, and 74.34.035; and adding new sections to chapter 74.34 RCW.

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

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

(1) Nothing contained in this chapter shall be deemed to require any financial institution to make any payment from an account to a depositor, or any trust or P.O.D. account beneficiary, or any other person claiming an interest in any funds deposited in the account, if the financial institution has actual knowledge of the existence of a dispute between the depositors, beneficiaries, or other persons concerning their respective rights of ownership to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the financial institution is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit. In any such case, the financial institution may, without liability, notify, in writing, all depositors, beneficiaries, or other persons claiming an interest in the account of either its uncertainty as to who is entitled to the distributions or the existence of any
dispute, and may also, without liability, refuse to disburse any funds contained in the account to any depositor, and/or trust or P.O.D. account beneficiary thereof, and/or other persons claiming an interest therein, until such time as either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Financial exploitation" means the illegal or improper use of the 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.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.
"Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

"Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

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

"Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

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

"Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

"Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to
case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

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

"Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider.

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

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

(a) Of the vulnerable adult;

(b) On which the vulnerable adult is a beneficiary, including a trust or guardianship account; or

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

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

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

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

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

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

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

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

(c) The time when the financial institution is satisfied that the disbursement will not result in financial exploitation of a vulnerable adult.
(6) A court of competent jurisdiction may enter an order extending the refusal by the financial institution to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted. A court of competent jurisdiction may also order other protective relief as authorized by RCW 7.40.010 and 74.34.130.

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

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

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

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

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

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

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

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

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

(b) There is a fracture;
(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or
  (d) There is an attempt to choke a vulnerable adult.
(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.
(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

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

(7) Each report, oral or written, must contain as much as possible of the following information:
  (a) The name and address of the person making the report;
  (b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;
  (c) The name and address of the legal guardian or alternate decision maker;
  (d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;
  (e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;
  (f) The identity of the alleged perpetrator, if known; and
  (g) Other information that may be helpful in establishing the
extent of abandonment, abuse, financial exploitation, neglect, or the
cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person
consents, the identity of the person making the report under this
section is confidential.

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

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

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

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

(4) A financial institution may provide access to or copies of
records that are relevant to suspected financial exploitation or
attempted financial exploitation of a vulnerable adult to the
department, law enforcement, or the prosecuting attorney's office,
either as part of a referral to the department, law enforcement, or the
prosecuting attorney's office, or upon request of the department, law
enforcement, or the prosecuting attorney's office pursuant to an
investigation. The records may include historical records as well as
records relating to the most recent transaction or transactions that
may comprise financial exploitation.

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

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