

SECOND REGULAR SESSION

SENATE BILL NO. 576

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS MAXWELL AND HOWARD.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2908S.01I

AN ACT

To repeal section 660.250, RSMo 1994, relating to protection of the elderly, and to enact in lieu thereof three new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 660.250, RSMo 1994, is repealed and three new sections enacted in lieu thereof, to be known as sections 660.250, 660.282 and 660.284, to read as follows:

660.250. As used in sections 660.250 to 660.305, the following terms mean:

(1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation;

(2) "Court", the circuit court;

(3) "Department", the department of social services;

(4) "Director", director of the department of social services or his designees;

(5) "**Elderly Fiduciary**", a person who has been designated as a trustee, either by written directive or by an act of the eligible adult making the designation. The term elderly fiduciary shall include, but not be limited to, an attorney in fact, and the designation of a trustee by an eligible adult by placing a person in a position of trust by placing such person's name on a bank account or other financial holding including real or personal property when such person has no ownership or interest in the funds or property. An elderly fiduciary shall exercise the power conferred in the eligible adult's best interest and good faith;

(6) "Eligible adult", a person sixty years of age or older or an adult with a handicap, as

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

defined in section 660.053, between the ages of eighteen and fifty-nine who is unable to protect his own interests or adequately perform or obtain services which are necessary to meet his essential human needs;

[(6)] (7) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;

[(7)] (8) "In-home services employee", a person employed by an in-home services provider agency;

[(8)] (9) "In-home services provider agency", a business entity under contract with the department or with a medicaid participation agreement or an agency licensed by the department of health as provided in sections 197.400 to 197.470, RSMo, which employs persons to deliver any kind of services provided for eligible adults in their private homes;

[(9)] (10) "Least restrictive environment", a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;

[(10)] (11) "Likelihood of serious physical harm", one or more of the following:

(a) A substantial risk that physical harm to an eligible adult will occur because of his failure or inability to provide for his essential human needs as evidenced by acts or behavior which has caused such harm or which gives another person probable cause to believe that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself, as evidenced by recent credible threats, acts, or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by another upon an eligible adult as evidenced by recent acts or behavior which has caused such harm or which gives another person probable cause to believe the eligible adult will sustain such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his financial resources by another person;

[(11)] (12) "Neglect", the failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result;

(13) 'Person in a position of trust', a person who has been given, has accepted or has assumed the responsibility for the management of the property, money or financial affairs of, or has entered into an agreement to provide care or services for, an eligible adult when the eligible adult is unable to protect his own interests or unable

to know the true value of the money or property or the nature of the acts taken regarding his interests. A person in a position of trust shall exercise the powers conferred in the eligible adult's best interest and in good faith;

[(12)] (14) "Protective services", services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his essential human needs.

660.282. 1. An elderly fiduciary or a person in a position of trust commits financial exploitation of the elderly when such person:

(1) Converts money or property of the eligible adult to his own use or the use of another without the expressed or specific consent or knowledge of the eligible adult;

(2) Gains access to, or consent to access, money or property for his own use or the use of another through the exercise of undue influence or misrepresentation of fact or intent; or

(3) Gains access to, or consent to access, money or property for his own use or the use of another through a contractual or promissory arrangement and subsequently knowingly or intentionally breaches that agreement.

2. Financial exploitation of the elderly is a class A misdemeanor if the money or property converted has an aggregate value of one hundred and fifty dollars or less, or, if the money or property converted has an aggregate value of over one hundred and fifty dollars, financial exploitation is a class D felony.

660.284. 1. When a person who has reasonable cause to believe that an eligible adult has been the victim of financial exploitation, such person may report or cause a report to be made to the department.

2. The report shall contain the name and address of the person in a position of trust or elderly fiduciary, the name and address of the eligible adult, information regarding the nature of the financial exploitation, the name of the complainant, and any other information which might be helpful in an investigation.

3. Anyone, except any person who has financially exploited an eligible adult, who makes a report pursuant to this section, or who cooperates, testifies or provides information to an employee of the department during an investigation of a report made pursuant to this section, or who testifies in any administrative or judicial proceeding arising from the report, shall be immune from any civil or criminal liability for making such a report or for testifying, except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.