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Sturgeon, Drake, Lzymoniak

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BY BOSWELL

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to dependent adult abuse and crimes against  
2 elders and dependent adults and providing a cause of action  
3 and a civil penalty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SP41

1 Section 1. Section 135C.38, subsection 1, paragraph a,  
2 Code 1993, is amended to read as follows:

3 a. Upon receipt of a complaint made in accordance with  
4 section 135C.37, the department or care review committee shall  
5 make a preliminary review of the complaint. The department or  
6 care review committee shall have access to all records  
7 maintained by the health care facility during an inspection or  
8 investigation relative to the complaint. Unless the  
9 department or committee concludes that the complaint is  
10 intended to harass a facility or a licensee or is without  
11 reasonable basis, it shall within twenty working days of  
12 receipt of the complaint make or cause to be made an on-site  
13 inspection of the health care facility which is the subject of  
14 the complaint. However, a complaint based upon an allegation  
15 of dependent adult abuse as defined in chapter 235B, neglect  
16 or abandonment of a dependent person as defined pursuant to  
17 section 726.3, wanton neglect of a resident of a health care  
18 facility as defined pursuant to section 726.7, wanton neglect  
19 or nonsupport of a dependent adult as defined pursuant to  
20 section 726.8, or upon any other allegation that indicates  
21 that the health and safety of a resident of a health care  
22 facility is jeopardized shall be investigated within five days  
23 of the receipt of the complaint and a report shall be issued  
24 within ten days of the receipt of the complaint.

25 Sec. 2. Section 135C.43, Code 1993, is amended by adding  
26 the following new subsection:

27 NEW SUBSECTION. 3. A resident of a health care facility,  
28 a family member of the resident, a person acting on behalf of  
29 a resident, an employee of a health care facility, or any  
30 person who has filed a complaint under section 135C.37, who  
31 desires to contest a ruling on the complaint or a sanction  
32 related to the complaint may do so in the manner provided by  
33 chapter 17A for contested cases. A person under this  
34 subsection who has exhausted all adequate administrative  
35 remedies and is aggrieved by the final action of the

1 department may petition for judicial review in the manner  
2 provided by chapter 17A.

3 Sec. 3. Section 235B.3, subsection 1, unnumbered paragraph  
4 1, Code 1993, is amended to read as follows:

5 The department shall receive dependent adult abuse reports  
6 and shall collect, maintain, and disseminate the reports by  
7 establishing a central registry for dependent adult abuse  
8 information. The department shall evaluate the reports  
9 expeditiously. ~~However, the~~ The department of inspections and  
10 appeals is solely responsible for the evaluation and  
11 disposition of dependent adult abuse cases within health care  
12 facilities and shall inform the department of human services  
13 of such evaluations and dispositions but may provide for  
14 delegation of the department's authority to investigate and  
15 perform inspections regarding complaints filed pursuant to  
16 section 135C.38 to a care review committee.

17 Sec. 4. Section 235B.3, subsection 7, paragraph a, Code  
18 1993, is amended to read as follows:

19 a. If, upon completion of the evaluation or upon referral  
20 from the department of inspections and appeals, the department  
21 determines that the best interests of the dependent adult  
22 require court action, the department shall initiate action for  
23 the appointment of a guardian or conservator or for admission  
24 or commitment to an appropriate institution or facility  
25 pursuant to the applicable procedures under chapter 125, 222,  
26 229, or 633. The department of human services shall review  
27 all services available to the abused dependent adult prior to  
28 the initiation of an action for the appointment of a guardian  
29 or conservator. If the department initiates action for the  
30 appointment of a guardian or conservator for an abused  
31 dependent adult, the department shall provide information to  
32 the district court in support of the recommended appointment.  
33 The appropriate county attorney shall assist the department in  
34 the preparation of the necessary papers to initiate the action  
35 and shall appear and represent the department at all district

1 court proceedings.

2 Sec. 5. NEW SECTION. 235B.17 PRIVATE CAUSE OF ACTION.

3 A person who is allegedly harmed by dependent adult abuse,  
4 neglect, or abandonment of a dependent person as defined  
5 pursuant to section 726.3, wanton neglect of a resident of a  
6 health care facility as defined pursuant to section 726.7,  
7 wanton neglect or nonsupport of a dependent adult as defined  
8 pursuant to section 726.8, or any other jeopardization of the  
9 health or safety of a resident of a health care facility, may  
10 bring a civil action for injunctive relief or monetary and  
11 punitive damages and shall be protected from retaliation from  
12 the facility or other caretaker. If a person is found to have  
13 committed the alleged abuse, neglect, or nonsupport based upon  
14 a preponderance of the evidence, the person shall pay, in  
15 addition to damages, costs and reasonable attorney fees.

16 Sec 6. NEW SECTION. 668B.1 CIVIL PENALTY AND CAUSE OF  
17 ACTION FOR CERTAIN OFFENSES COMMITTED AGAINST ELDERLY OR  
18 DISABLED -- FUND ESTABLISHED.

19 1. The court may impose upon a person who commits an  
20 offense or violates any provision of chapter 523A, 523B, 523E,  
21 537, 555A, 557B, or 714, or commits another public offense,  
22 where the offense or violation is committed against an older  
23 person or disabled person, in addition to any other civil  
24 penalty or criminal fine, an additional civil penalty not to  
25 exceed five thousand dollars for each such violation. The  
26 civil penalty may be imposed in any civil action against the  
27 person as permitted in this section, section 714.16, or as  
28 part of a sentence rendered upon a plea or verdict of guilty,  
29 or a special verdict upon which a judgment of conviction may  
30 be rendered.

31 A civil penalty imposed pursuant to this section shall be  
32 paid to the treasurer of state, who shall deposit the money in  
33 the elderly and disabled victim fund, a separate fund  
34 administered by the attorney general for the investigation and  
35 prosecution of crimes against the elderly or disabled.

1 Notwithstanding section 8.33, any balance in the fund on June  
2 30 of any fiscal year shall not revert to the general fund of  
3 the state.

4 2. In determining whether to impose a civil penalty under  
5 subsection 1, the court shall consider the following:

6 a. Whether the defendant's conduct was in willful  
7 disregard of the rights of the older person or disabled  
8 person.

9 b. Whether the defendant knew or should have known that  
10 the defendant's conduct was directed to an older person or  
11 disabled person.

12 c. Whether the defendant's conduct caused an older person  
13 or disabled person to suffer any of the following:

14 (1) Mental or emotional anguish.

15 (2) Loss of or encumbrance upon a primary residence of the  
16 older person or disabled person.

17 (3) Loss of or encumbrance upon the older person's or  
18 disabled person's principal employment or principal source of  
19 income.

20 (4) Substantial loss of property set aside for retirement,  
21 or for personal or family care and maintenance.

22 (5) Substantial loss of funds received under a pension or  
23 retirement plan or a government benefits program.

24 (6) Loss of assets essential to the health and welfare of  
25 the older person or disabled person.

26 d. Whether the older person or disabled person is  
27 substantially more vulnerable to the defendant's conduct  
28 because of age, poor health, infirmity, impaired  
29 understanding, restricted mobility, or disability, than other  
30 individuals, and whether the older person or disabled person  
31 actually suffered substantial physical, emotional, or economic  
32 damage resulting from the defendant's conduct.

33 e. Any other factors the court deems appropriate.

34 3. An older person or disabled person who suffers damage  
35 or injury as a result of an offense or violation described in

1 subsection 1, has a cause of action to recover actual damages,  
2 including incidental and consequential damages, punitive  
3 damages, if appropriate, and reasonable attorney fees.  
4 Restitution ordered pursuant to this subsection has priority  
5 over a civil penalty imposed by the court pursuant to  
6 subsection 1.

7 4. As used in this section, unless the context otherwise  
8 requires:

9 a. "Disabled person" means a person who has a physical or  
10 mental impairment which substantially limits one or more major  
11 life activities of the person.

12 b. "Major life activities" means functions such as caring  
13 for one's self, performing manual tasks, walking, seeing,  
14 hearing, speaking, breathing, learning, and working.

15 c. "Older person" means a person who is sixty-five years  
16 of age or older, or a surviving spouse who is fifty-five years  
17 of age or older and whose spouse has died within the previous  
18 five years.

19 d. "Physical or mental impairment" means either of the  
20 following:

21 (1) Physiological disorder or condition, disfigurement, or  
22 anatomical loss substantially affecting one or more of the  
23 following body systems:

24 (a) Neurological.

25 (b) Musculoskeletal.

26 (c) Special sense organs.

27 (d) Respiratory, including speech organs.

28 (e) Cardiovascular.

29 (f) Digestive.

30 (g) Genitourinary.

31 (h) Hemic and lymphatic.

32 (i) Skin.

33 (j) Endocrine.

34 (2) Mental or psychological disorder, such as mental  
35 retardation, organic brain syndrome, emotional or mental

1 illness, or specific learning disabilities.

2 "Physical or mental impairment" includes, but is not  
3 limited to, such diseases and conditions as locomotor  
4 impairment, visual impairment, speech and hearing impairment,  
5 cerebral palsy, epilepsy, muscular dystrophy, multiple  
6 sclerosis, cancer, heart disease, diabetes, dementia,  
7 depression, or impairment caused by the effects of prescribed  
8 medications.

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#### EXPLANATION

10 This bill provides for access to health care facility  
11 records during the inspection or investigation of a complaint  
12 alleging a violation of the rules or requirements established  
13 for health care facilities, and provides for an expedited  
14 investigation in instances of complaints based upon dependent  
15 adult abuse, neglect, nonsupport, or other actions which  
16 jeopardize the health or safety of a resident. The bill  
17 provides for the contesting of rulings and judicial review  
18 regarding such complaints by certain persons including the  
19 resident, a family member of a resident, or an employee of the  
20 health care facility. The bill provides for the delegation of  
21 the department of inspections and appeals' authority to care  
22 review committees regarding investigations of dependent adult  
23 abuse in a health care facility, requires certain information  
24 to be provided to the district court by the department of  
25 human services when an action for the appointment of a  
26 guardian or conservator is initiated, and requires that all  
27 alternative services are reviewed prior to the initiation of  
28 such an action. The bill also provides a procedure for the  
29 initiation of a private cause of action in cases of alleged  
30 dependent adult abuse, neglect, nonsupport, or other similar  
31 acts.

32 This bill also establishes a new chapter providing an  
33 additional civil penalty to be imposed by the court of up to  
34 \$5,000 for offenses or violations against older or disabled  
35 persons under the sales of funeral services and merchandise

1 Act (chapter 523A), the business opportunity promotions Act  
2 (chapter 523B), sales of cemetery merchandise Act (chapter  
3 523E), the Iowa consumer credit code (chapter 537), the door-  
4 to-door sales Act (chapter 555A), the membership campgrounds  
5 Act (chapter 557B), the theft and fraud Act (chapter 714), or  
6 other criminal provisions. The civil penalty is to be  
7 deposited in a fund for investigation and prosecution of  
8 crimes against the elderly and disabled. The fund will be  
9 administered by the attorney general. In assessing the  
10 penalty, the court is to look at whether the defendant's  
11 conduct was in willful disregard of the rights of the person,  
12 whether the defendant knew or should have known that the  
13 person was an older person or disabled person, whether any of  
14 a list of enumerated injuries have been suffered by the older  
15 person or disabled person as a result of the defendant's  
16 conduct, and whether the older person or disabled person is  
17 substantially more vulnerable than others. A cause of action  
18 is created against the person in favor of the older person or  
19 disabled person whereby the plaintiff may recover actual  
20 damages, punitive damages, if appropriate, and reasonable  
21 attorney fees. Any restitution ordered in favor of the older  
22 person or disabled person has priority over a civil penalty  
23 imposed pursuant to this bill. This bill defines an "older  
24 person" as a person who is 65 years of age or older or as a  
25 person 55 years of age or older who has been widowed within  
26 the last five years, and a "disabled person" as a person who  
27 has a physical or mental impairment which substantially limits  
28 one or more major life activities of the person. Other  
29 definitions are provided as necessary.

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