

FEB 27 2004
Place On Calendar

HOUSE FILE 2391
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 660)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to dependent adult abuse and providing penalties.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2391

1 Section 1. Section 235B.1, subsection 4, paragraph a,
2 subparagraph (1), Code 2003, is amended to read as follows:

3 (1) ~~Advise the director-of-human-services-and-the~~
4 ~~administrator-of-the-division-of-child-and-family-services-of~~
5 ~~the-department-of-human-services-regarding departments charged~~
6 with the responsibility of addressing dependent adult abuse.

7 Sec. 2. Section 235B.2, subsection 5, paragraph a, Code
8 2003, is amended by striking the paragraph and inserting in
9 lieu thereof the following:

10 a. "Dependent adult abuse" means the same as defined in
11 section 726.9.

12 Sec. 3. Section 235B.3, subsection 2, Code Supplement
13 2003, is amended to read as follows:

14 2. All of the following persons shall report suspected
15 dependent adult abuse to the department:

16 ~~a. A social worker.~~

17 ~~b. A certified psychologist.~~

18 ~~c.~~ a. A person who, in the course of employment, examines,
19 attends, counsels, or treats a dependent adult and reasonably
20 believes the dependent adult has suffered abuse, including:

21 (1) A member of the staff of a community mental health
22 center, a member of the staff of a hospital, a member of the
23 staff or employee of a public or private health care facility
24 as defined in section 135C.1, a member of the staff or
25 employee of an elder group home as defined in section 231B.1,
26 a member of the staff or employee of an assisted living
27 program certified under section 231C.3, and a member of the
28 staff or employee of an adult day services program as defined
29 in section 231D.1.

30 (2) A peace officer.

31 (3) An in-home homemaker-home health aide.

32 (4) An individual employed as an outreach person.

33 (5) A health practitioner, as defined in section 232.68.

34 (6) A member of the staff or an employee of a supported
35 community living service, sheltered workshop, or work activity

1 center.

2 (7) A social worker.

3 (8) A certified psychologist.

4 ~~d.---A-person-who-performs-inspections-of-elder-group-homes~~
5 ~~for-the-department-of-inspections-and-appeals-and-a-resident~~
6 ~~advocate-committee-member-assigned-to-an-elder-group-home~~
7 ~~pursuant-to-chapter-231B.~~

8 b. A licensed funeral director.

9 Sec. 4. Section 235B.3, Code Supplement 2003, is amended
10 by adding the following new subsection:

11 NEW SUBSECTION. 3A. An employee of a financial
12 institution may report cases of suspected financial
13 exploitation of a dependent adult to the department.

14 Sec. 5. Section 235B.18, subsection 1, Code 2003, is
15 amended to read as follows:

16 1. If the department reasonably determines that a
17 dependent adult is a victim of dependent adult abuse and lacks
18 capacity to consent to the receipt of protective services, the
19 department may petition the district court in the county in
20 which the dependent adult resides for an order authorizing the
21 provision of protective services. The petition shall allege
22 specific facts sufficient to demonstrate that the dependent
23 adult is in need of protective services and lacks capacity to
24 consent to the receipt of services.

25 Sec. 6. Section 235B.19, subsection 1, Code 2003, is
26 amended to read as follows:

27 1. If the department determines that a dependent adult is
28 suffering from dependent adult abuse which presents an
29 immediate danger to the health or safety of the dependent
30 adult, that the dependent adult lacks capacity to consent to
31 receive protective services, and that no consent can be
32 obtained, the department may petition the district court with
33 probate jurisdiction in the county in which the dependent
34 adult resides for an emergency order authorizing protective
35 services.

1 Sec. 7. Section 235B.19, subsection 6, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

3 The department, upon finding that dependent adult abuse has
4 occurred and is either ongoing or is likely to reoccur, may
5 petition the district court in the county in which the
6 dependent adult resides for injunctive relief against the
7 alleged perpetrator. The petition shall conform to the
8 requirements of subsection 2 and shall specify the relief
9 sought. Upon finding that dependent adult abuse has occurred
10 and that the abuse is either ongoing or likely to reoccur, the
11 court may also enter temporary orders as may be appropriate to
12 third persons enjoining them from specific conduct. The
13 ~~orders may include temporary restraining orders which impose~~
14 ~~criminal sanctions if violated.~~ The court may enjoin third
15 persons from any of the following:

16 Sec. 8. NEW SECTION. 726.9 DEPENDENT ADULT ABUSE.

17 1. A caretaker commits dependent adult abuse when the
18 caretaker through willful or negligent acts or omissions does
19 any of the following:

20 a. Creates a substantial risk to a dependent adult's
21 physical, mental, or emotional health or safety.

22 b. Uses unreasonable force, torture, or cruelty that
23 results in bodily injury, or that is intended to cause serious
24 injury.

25 c. Causes bodily injury to, unreasonably confines,
26 unreasonably punishes, or assaults a dependent adult.

27 d. Evidences unreasonable force, torture, or cruelty that
28 causes substantial mental or emotional harm to a dependent
29 adult.

30 e. Deprives a dependent adult of necessary food, clothing,
31 shelter, health care, or supervision when the person is
32 reasonably able to make the necessary provisions and which
33 deprivation substantially harms the dependent adult.

34 f. Permits the continuing physical or sexual abuse of a
35 dependent adult.

1 g. With or against a dependent adult, commits a sexual
2 offense under chapter 709 or section 726.2.

3 h. Abandons the dependent adult to fend for the dependent
4 adult's own self, knowing that the dependent adult is unable
5 to do so.

6 i. Exploits the dependent adult by the act or process of
7 taking financial resources or property from the dependent
8 adult without the informed consent of the dependent adult,
9 including by theft, undue influence, harassment, duress,
10 deception, false representation, or false pretense.

11 Dependent adult abuse does not include the situations
12 described in section 235B.2, subsection 5, paragraph "b".

13 2. Charges of dependent adult abuse may be initiated upon
14 the complaint of a private individual or as a result of
15 investigation by a social services agency or on the direct
16 initiative of a county attorney or law enforcement agency.

17 3. A caretaker who intentionally commits dependent adult
18 abuse resulting in serious or bodily injury to a dependent
19 adult is guilty of a class "C" felony.

20 4. A caretaker who recklessly commits dependent adult
21 abuse resulting in serious or bodily injury to a dependent
22 adult is guilty of a class "D" felony.

23 5. A caretaker who negligently commits dependent adult
24 abuse resulting in serious or bodily injury to a dependent
25 adult is guilty of an aggravated misdemeanor.

26 6. A caretaker who commits dependent adult abuse not
27 resulting in serious or bodily injury to a dependent adult is
28 guilty of a serious misdemeanor.

29 7. A caretaker who commits dependent adult abuse by
30 exploiting a dependent adult by the act or process of taking
31 financial resources or property without the informed consent
32 of the dependent adult is guilty of a class "D" felony.

33 8. A caretaker alleged to have committed a violation of
34 this section shall be charged with the respective offense
35 cited, unless a charge may be brought based upon a more

1 serious offense, in which case the charge of the more serious
2 offense shall supercede the less serious charge.

3 9. For the purposes of this section, "dependent adult"
4 means dependent adult as defined in section 235B.2 and
5 "caretaker" means a caretaker as defined in section 235B.2.

6 Sec. 9. Section 235B.20, Code 2003, is repealed.

7 EXPLANATION

8 This bill relates to dependent adult abuse.

9 The bill provides that the dependent adult abuse advisory
10 council is to advise not only the director of human services
11 and the administrator of the division of child and family
12 services regarding dependent adult abuse, but is to advise the
13 departments charged with addressing dependent adult abuse.

14 The bill specifies that the persons who are required to
15 report suspected dependent adult abuse do not include all
16 social workers and certified psychologists, but only those
17 social workers and certified psychologists who, in the course
18 of employment, examine, attend, counsel, or treat a dependent
19 adult and who reasonably believe the dependent adult has
20 suffered abuse. The bill eliminates persons who perform
21 inspections of elder group homes and resident advocate
22 committee members assigned to elder group homes from the list
23 of persons required to report suspected dependent adult abuse.
24 The bill adds a member of the staff of an elder group home, a
25 member of the staff or employee of an assisted living program
26 certified under Code section 231C.3, and a member of the staff
27 or employee of an adult day services program, and a licensed
28 funeral director to this list. In addition, the bill
29 specifies that an employee of a financial institution may
30 report cases of suspected financial exploitation to the
31 department of human services.

32 The bill specifies that a petition for an order authorizing
33 the provision of protective services or authorizing an
34 emergency order for protective services is to be filed with
35 the district court in the county in which the dependent adult

1 resides. The bill also provides that if the department of
2 human services finds that dependent adult abuse has occurred
3 and is ongoing or likely to reoccur, the department may
4 petition the court for injunctive relief against the alleged
5 perpetrator and directs that the court may enter temporary
6 orders as appropriate. The bill eliminates the court's
7 discretion to include temporary restraining orders which
8 impose criminal sanctions.

9 The bill eliminates a provision in Code chapter 235B
10 relating to initiation of charges and penalties for dependent
11 adult abuse, modifies the provision, and relocates it in Code
12 chapter 726 (protection of the family and dependent persons),
13 which is located in the criminal law portion of the Code.

14 Under current law in Code section 235B.20, a caretaker who
15 intentionally commits dependent adult abuse that results in
16 serious injury to the dependent adult is guilty of a class "C"
17 felony and if the abuse was committed in a reckless manner,
18 the person is guilty of a class "D" felony. Under current
19 provisions, a caretaker who intentionally commits dependent
20 adult abuse that results in physical injury is guilty of a
21 class "C" felony and if the abuse was committed in a reckless
22 manner, the person is guilty of an aggravated misdemeanor.
23 Additionally, under current provisions, if a caretaker
24 exploits a dependent adult, and the value of the property,
25 assets or resources exceeds \$100, the person is guilty of a
26 class "D" felony, and if the value is \$100 or less, the person
27 is guilty of a simple misdemeanor.

28 Under the bill, a caretaker who commits dependent adult
29 abuse is subject to criminal penalties. Under the bill, a
30 caretaker commits dependent adult abuse if the caretaker
31 through willful or negligent acts or omissions does any of the
32 following:

- 33 1. Creates a substantial risk to a dependent adult's
34 physical, mental, or emotional health or safety.
- 35 2. Uses unreasonable force, torture, or cruelty that

1 results in bodily injury, or that is intended to cause serious
2 injury.

3 3. Causes bodily injury to, unreasonably confines,
4 unreasonably punishes, or assaults a dependent adult.

5 4. Evidences unreasonable force, torture, or cruelty, that
6 causes substantial mental or emotional harm to a dependent
7 adult.

8 5. Deprives a dependent adult of necessary food, clothing,
9 shelter, health care, or supervision when the caretaker is
10 reasonably able to make the necessary provisions and which
11 deprivation substantially harms the dependent adult.

12 6. Permits the continuing physical or sexual abuse of a
13 dependent adult.

14 7. With or against a dependent adult commits a sexual
15 offense under Code chapter 709 or Code section 726.2.

16 8. Abandons the dependent adult to fend for the dependent
17 adult's own self, knowing that the dependent adult is unable
18 to do so.

19 9. Exploits a dependent adult by the act or process of
20 taking financial resources or property from the dependent
21 adult without the informed consent of the dependent adult,
22 including by theft, undue influence, harassment, duress,
23 deception, false representation, or false pretense.

24 The bill provides that if a caretaker intentionally commits
25 dependent adult abuse that results in serious or bodily
26 injury, the person is guilty of a class "C" felony, and if the
27 abuse was committed in a reckless manner, the person is guilty
28 of a class "D" felony. The bill provides that a caretaker who
29 negligently commits dependent adult abuse resulting in serious
30 or bodily injury is guilty of an aggravated misdemeanor. If a
31 caretaker commits dependent adult abuse that does not result
32 in serious or bodily injury to a dependent adult, the person
33 is guilty of a serious misdemeanor. A person who exploits a
34 dependent adult is guilty of a class "D" felony.

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H-8315

1 Amend House File 2391 as follows:

2 1. Page 1, by inserting after line 11 the
3 following:

4 "Sec. _____. Section 235B.2, subsection 5, paragraph
5 b, subparagraph (2), Code 2003, is amended to read as
6 follows:

7 (2) ~~Circumstances in which the dependent adult's~~
8 ~~caretaker a person~~, acting in accordance with the
9 dependent adult's stated or implied consent, declines
10 medical treatment on behalf of the dependent adult if
11 the dependent adult holds a belief or is an adherent
12 of a religion whose tenets and practices call for
13 reliance on spiritual means in place of reliance on
14 medical treatment."

15 2. Page 3, line 17, by striking the word
16 "caretaker" and inserting the following: "person".

17 3. Page 3, line 18, by striking the word
18 "caretaker" and inserting the following: "person".

19 4. Page 4, by inserting after line 10 the
20 following:

21 "j. Causes any mental injury to a dependent
22 adult's intellectual or psychological capacity as
23 evidenced by an observable and substantial impairment
24 in the dependent adult's ability to function within
25 the dependent adult's normal range of performance and
26 behavior as the result of the acts or omissions of a
27 person, if the impairment is diagnosed and confirmed
28 by a licensed physician or qualified mental health
29 professional as defined in section 622.10."

30 5. Page 4, line 17, by striking the word
31 "caretaker" and inserting the following: "person".

32 6. Page 4, line 20, by striking the word
33 "caretaker" and inserting the following: "person".

34 7. Page 4, line 23, by striking the word
35 "caretaker" and inserting the following: "person".

36 8. Page 4, line 26, by striking the word
37 "caretaker" and inserting the following: "person".

38 9. Page 4, line 29, by striking the word
39 "caretaker" and inserting the following: "person".

40 10. Page 4, line 33, by striking the word
41 "caretaker" and inserting the following: "person".

42 11. Page 5, by striking lines 4 and 5 and
43 inserting the following: "means dependent adult as
44 defined in section 235B.2."

45 12. By renumbering as necessary.

By FORD of Polk

H-8315 FILED MARCH 24, 2004

H-8232

1 Amend House File 2391 as follows:

2 1. Page 4, by striking lines 17 through 32 and
3 inserting the following:

4 "3. A caretaker who intentionally commits
5 dependent adult abuse on a dependent adult in
6 violation of this section is guilty of a class "C"
7 felony if the intentional dependent adult abuse
8 results in serious injury.

9 4. A caretaker who recklessly commits dependent
10 adult abuse on a dependent adult in violation of this
11 section is guilty of a class "D" felony if the
12 reckless dependent adult abuse results in serious
13 injury.

14 5. A caretaker who intentionally commits dependent
15 adult abuse on a dependent adult in violation of this
16 section is guilty of a class "C" felony if the
17 intentional dependent adult abuse results in physical
18 injury.

19 6. A caretaker who commits dependent adult abuse
20 by exploiting a dependent adult in violation of this
21 section is guilty of a class "D" felony if the value
22 of the property, assets, or resources exceeds one
23 hundred dollars.

24 7. A caretaker who recklessly commits dependent
25 adult abuse on a person in violation of this section
26 is guilty of an aggravated misdemeanor if the reckless
27 dependent adult abuse results in physical injury.

28 8. A caretaker who commits dependent adult abuse
29 by exploiting a dependent adult in violation of this
30 section is guilty of a simple misdemeanor if the value
31 of the property, assets, or resources is one hundred
32 dollars or less."

33 2. By renumbering as necessary.

By UPMEYER of Hancock

H-8232 FILED MARCH 11, 2004

HOUSE FILE 2391

H-8235

1 Amend House File 2391 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 96.5, subsection 2, Code 2003,
5 is amended by adding the following new unnumbered
6 paragraph:

7 NEW PARAGRAPH. d. A rebuttable presumption exists
8 that an individual was discharged for misconduct if
9 the individual was the subject of a founded dependent
10 adult abuse record under chapter 235B or if the
11 individual has been convicted of dependent adult abuse
12 pursuant to section 726.9."

13 2. Page 2, by inserting after line 13 the
14 following:

15 "Sec. _____. Section 235B.6, subsection 2, paragraph
16 d, Code Supplement 2003, is amended by adding the
17 following new subparagraph:

18 NEW SUBPARAGRAPH. (4) An administrative agency or
19 court making a determination regarding an unemployment
20 compensation claim pursuant to section 96.6."

21 3. By renumbering as necessary.

By UPMEYER of Hancock

H-8235 FILED MARCH 11, 2004

**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

HF 2391 - Dependent Adult Abuse (LSB 5110 HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version — New

Description

House File 2391 expands the list of mandatory reporters of suspected dependent adult abuse. The Bill creates a graduated system of penalties in the criminal code for dependent adult abuse, and repeals existing penalties in Chapter 235B, Code of Iowa. House File 2391 increases the existing penalty from an aggravated misdemeanor to a Class D felony offense for recklessly committing abuse resulting in bodily injury; creates new serious and aggravated misdemeanor offenses, and increases the penalty from a simple misdemeanor to a Class D felony for exploiting a dependent adult.

Assumptions

1. According to the Justice Data Warehouse, there were three convictions in FY 2003 for violations of Section 235B.20, Code of Iowa, and all three were Class D felony exploitation convictions where the value of the property exceeded \$100.
2. Expanding the number of mandatory reporters substantially increases the likelihood that charges and convictions will increase. However, there is no information available to estimate the increase.
3. Creating new offenses or enhancing existing penalties increases the demand for resources in the criminal justice system. This includes costs in the Judicial Branch, Community-Based Corrections (CBC), the State prison system, and indigent defense.
4. The penalties imposed under HF 2391 are felonies or indictable misdemeanors.
5. State cost for a simple misdemeanor conviction ranges from \$14 to \$300.
6. State cost for a serious misdemeanor conviction ranges from \$100 to \$5,000.
7. State cost for an aggravated misdemeanor conviction ranges from \$1,100 to \$4,600.
8. State cost for a Class D felony conviction ranges from \$2,000 to \$8,000.
9. State cost for a Class C felony conviction ranges from \$3,000 to \$11,000.
10. The cost for a conviction of a serious or aggravated misdemeanor and a Class D or C felony will be incurred over multiple fiscal years as the offender serves time in the correctional system. The costs stated above include the Judicial Branch holding a trial; indigent defense; and supervision while on probation, parole, or prison, if applicable.

Correctional Impact

There is insufficient information to predict the increased number of convictions under the Bill. The impact on correctional resources may be significant.

Fiscal Impact

Due to insufficient information, the fiscal impact of HF 2391 cannot be determined.

The State's cost for one conviction for the new serious misdemeanor offense ranges from \$100 to \$5,000, depending on appointment of counsel and length of the term in the corrections system. The State's cost for one conviction for the new aggravated misdemeanor offense ranges from \$1,100 to \$4,600. The cost of enhancing the existing penalty of an aggravated misdemeanor to a Class D felony ranges from \$600 to \$3,400 per conviction. The cost of enhancing the penalty from a simple misdemeanor to a Class D felony offense ranges from \$2,000 to \$8,000 per conviction.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
Office of the State Public Defender

Dennis C Prouty

March 3, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

*Upmeyer
Lukan
Smith*

Succeeded By
SF 2391

HSB 660
HUMAN RESOURCES

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
ELDER AFFAIRS BILL)

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 dependent adult
2 endangerment and providing penalties.

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

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1 Section 1. Section 235B.1, subsection 4, paragraph a,
2 subparagraph (1), Code 2003, is amended to read as follows:

3 (1) Advise the ~~director-of-human-services-and-the~~
4 ~~administrator-of-the-division-of-child-and-family-services-of~~
5 ~~the-department-of-human-services-regarding~~ departments charged
6 with the responsibility of addressing dependent adult abuse.

7 Sec. 2. Section 235B.2, subsection 4, Code 2003, is
8 amended to read as follows:

9 4. "Dependent adult" means a person eighteen years of age
10 or older who is unable to protect the person's own interests
11 or unable to adequately perform or obtain services necessary
12 to meet essential human needs, as a result of a physical or
13 mental condition which requires assistance from another, or a
14 person eighteen years of age or older who is certified for
15 residency in a health care facility pursuant to chapter 135C,
16 or as defined by departmental rule.

17 Sec. 3. Section 235B.3, subsection 2, Code Supplement
18 2003, is amended to read as follows:

19 2. All of the following persons shall report suspected
20 dependent adult abuse to the department:

21 ~~a. A social worker.~~

22 ~~b. A certified psychologist.~~

23 ~~c. a.~~ A person who, in the course of employment, examines,
24 attends, counsels, or treats a dependent adult and reasonably
25 believes the dependent adult has suffered abuse, including:

26 (1) A member of the staff of a community mental health
27 center, a member of the staff of a hospital, a member of the
28 staff or employee of a public or private health care facility
29 as defined in section 135C.1.

30 (2) A peace officer.

31 (3) An in-home homemaker-home health aide.

32 (4) An individual employed as an outreach person.

33 (5) A health practitioner, as defined in section 232.68.

34 (6) A member of the staff or an employee of a supported
35 community living service, sheltered workshop, or work activity

1 center.

2 (7) A social worker.

3 (8) A certified psychologist.

4 ~~d. -- A person who performs inspections of elder group homes~~
5 ~~for the department of inspections and appeals and a resident~~
6 ~~advocate committee member assigned to an elder group home~~
7 ~~pursuant to chapter 231B.~~

8 b. A licensed funeral director.

9 Sec. 4. Section 235B.3, Code Supplement 2003, is amended
10 by adding the following new subsection:

11 NEW SUBSECTION. 3A. An employee of a financial
12 institution may report cases of suspected financial
13 exploitation of a dependent adult to the department.

14 Sec. 5. Section 235B.18, subsection 1, Code 2003, is
15 amended to read as follows:

16 1. If the department reasonably determines that a
17 dependent adult is a victim of dependent adult abuse and lacks
18 capacity to consent to the receipt of protective services, the
19 department may petition the district court in the county in
20 which the dependent adult resides for an order authorizing the
21 provision of protective services. The petition shall allege
22 specific facts sufficient to demonstrate that the dependent
23 adult is in need of protective services and lacks capacity to
24 consent to the receipt of services.

25 Sec. 6. Section 235B.19, subsection 1, Code 2003, is
26 amended to read as follows:

27 1. If the department determines that a dependent adult is
28 suffering from dependent adult abuse which presents an
29 immediate danger to the health or safety of the dependent
30 adult, that the dependent adult lacks capacity to consent to
31 receive protective services, and that no consent can be
32 obtained, the department may petition the district court with
33 probate jurisdiction in the county in which the dependent
34 adult resides for an emergency order authorizing protective
35 services.

1 Sec. 7. Section 235B.19, subsection 6, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

3 The department, upon finding that dependent adult abuse has
4 occurred and is either ongoing or is likely to reoccur, may
5 petition the district court in the county in which the
6 dependent adult resides for injunctive relief against the
7 alleged perpetrator. The petition shall conform to the
8 requirements of subsection 2 and shall specify the relief
9 sought. Upon finding that dependent adult abuse has occurred
10 and that the abuse is either ongoing or likely to reoccur, the
11 court may also enter temporary orders as may be appropriate to
12 third persons enjoining them from specific conduct. The
13 orders-may-include-temporary-restraining-orders-which-impose
14 criminal-sanctions-if-violated. In instances of self-denial
15 of critical care, the court may enter temporary orders
16 authorizing the provision of support services to the dependent
17 adult. Temporary orders entered pursuant to this subsection
18 shall remain in effect for a period of thirty days from the
19 date of entry unless extended for good cause. Third parties
20 enjoined under this subsection shall be provided notice of the
21 court order in accordance with court rules. The court may
22 enjoin third persons from any of the following:

23 Sec. 8. NEW SECTION. 726.9 DEPENDENT ADULT ENDANGERMENT.

24 1. A caretaker commits dependent adult endangerment when
25 the caretaker through willful or negligent acts or omissions
26 does any of the following:

27 a. Creates a substantial risk to a dependent adult's
28 physical, mental, or emotional health or safety.

29 b. Uses unreasonable force, torture, or cruelty that
30 results in bodily injury, or that is intended to cause serious
31 injury.

32 c. Causes bodily injury to, unreasonably confines,
33 unreasonably punishes, or assaults a dependent adult.

34 d. Evidences unreasonable force, torture, or cruelty that
35 causes substantial mental or emotional harm to a dependent

1 adult.

2 e. Deprives a dependent adult of necessary food, clothing,
3 shelter, health care, or supervision when the person is
4 reasonably able to make the necessary provisions and which
5 deprivation substantially harms the dependent adult.

6 f. Permits the continuing physical or sexual abuse of a
7 dependent adult.

8 g. With or against a dependent adult, commits a sexual
9 offense under chapter 709 or section 726.2.

10 h. Abandons the dependent adult to fend for the dependent
11 adult's own self, knowing that the dependent adult is unable
12 to do so.

13 i. Exploits the dependent adult by the act or process of
14 taking financial resources or property from the dependent
15 adult without the informed consent of the dependent adult,
16 including by theft, undue influence, harassment, duress,
17 deception, false representation, or false pretense.

18 2. A caretaker who intentionally commits dependent adult
19 endangerment resulting in serious or bodily injury to a
20 dependent adult is guilty of a class "C" felony.

21 3. A caretaker who recklessly commits dependent adult
22 endangerment resulting in serious or bodily injury to a
23 dependent adult is guilty of a class "D" felony.

24 4. A caretaker who commits dependent adult endangerment
25 not resulting in serious or bodily injury to a dependent adult
26 is guilty of an aggravated misdemeanor.

27 5. A caretaker who commits dependent adult endangerment by
28 exploiting a dependent adult by the act or process of taking
29 financial resources or property without the informed consent
30 of the dependent adult is guilty of a class "D" felony.

31 6. A caretaker alleged to have committed a violation of
32 this section shall be charged with the respective offense
33 cited, unless a charge may be brought based upon a more
34 serious offense, in which case the charge of the more serious
35 offense shall supercede the less serious charge.

1 7. For the purposes of this section, "dependent adult"
2 means dependent adult as defined in section 235B.2 and
3 "caretaker" means a caretaker as defined in section 235B.2.

4 Sec. 9. Section 235B.20, Code 2003, is repealed.

5 EXPLANATION

6 This bill relates to dependent adult abuse.

7 The bill provides that the dependent adult abuse advisory
8 council is to advise not only the director of human services
9 and the administrator of the division of child and family
10 services regarding dependent adult abuse, but is to advise the
11 departments charged with addressing dependent adult abuse.

12 The bill defines "dependent adult" to include a person 18
13 years of age or older who is certified for residency in a
14 health care facility or as defined by departmental rule.

15 The bill specifies that the persons who are required to
16 report suspected dependent adult abuse do not include all
17 social workers and certified psychologists, but only those
18 social workers and certified psychologists who, in the course
19 of employment, examine, attend, counsel, or treat a dependent
20 adult and who reasonably believe the dependent adult has
21 suffered abuse. The bill eliminates persons who perform
22 inspections of elder group homes and resident advocate
23 committee members assigned to elder group homes from the list
24 of persons required to report suspected dependent adult abuse.
25 The bill adds licensed funeral directors to this list. In
26 addition, the bill specifies that an employee of a financial
27 institution may report cases of suspected financial
28 exploitation to the department of human services.

29 The bill specifies that a petition for an order authorizing
30 the provision of protective services or authorizing an
31 emergency order for protective services is to be filed with
32 the district court in the county in which the dependent adult
33 resides. The bill also provides that if the department of
34 human services finds that dependent adult abuse has occurred
35 and is ongoing or likely to reoccur, the department may

1 petition the court for injunctive relief against the alleged
 2 perpetrator and directs that the court may enter temporary
 3 orders as appropriate. The bill eliminates the court's
 4 discretion to include temporary restraining orders which
 5 impose criminal sanctions. The bill also provides that if the
 6 court enters a temporary order, the order remains in effect
 7 for 30 days unless extended for good cause. Third parties
 8 enjoined under these provisions are to be provided notice of
 9 the court order in accordance with court rules.

10 The bill eliminates a provision in Code chapter 235B
 11 relating to initiation of charges and penalties for dependent
 12 adult abuse, modifies the provision, and relocates it in Code
 13 chapter 726 (protection of the family and dependent persons),
 14 which is located in the criminal law portion of the Code.
 15 This provision has been retitled "dependent adult
 16 endangerment".

17 Under current law in Code section 235B.20, a caretaker who
 18 intentionally commits dependent adult abuse that results in
 19 serious injury to the dependent adult is guilty of a class "C"
 20 felony and if the abuse was committed in a reckless manner,
 21 the person is guilty of a class "D" felony. Under current
 22 provisions, a caretaker who intentionally commits dependent
 23 adult abuse that results in physical injury is guilty of a
 24 class "C" felony and if the abuse was committed in a reckless
 25 manner, the person is guilty of an aggravated misdemeanor.
 26 Additionally, under current provisions, if a caretaker
 27 exploits a dependent adult, and the value of the property,
 28 assets or resources exceeds \$100, the person is guilty of a
 29 class "D" felony, and if the value is \$100 or less, the person
 30 is guilty of a simple misdemeanor.

31 Under the bill, a caretaker who commits dependent adult
 32 endangerment is subject to criminal penalties. Under the
 33 bill, a caretaker commits dependent adult endangerment if the
 34 caretaker through willful or negligent acts or omissions does
 35 any of the following:

- 1 1. Creates a substantial risk to a dependent adult's
2 physical, mental, or emotional health or safety.
- 3 2. Uses unreasonable force, torture, or cruelty that
4 results in bodily injury, or that is intended to cause serious
5 injury.
- 6 3. Causes bodily injury to, unreasonably confines,
7 unreasonably punishes, or assaults a dependent adult.
- 8 4. Evidences unreasonable force, torture, or cruelty, that
9 causes substantial mental or emotional harm to a dependent
10 adult.
- 11 5. Deprives a dependent adult of necessary food, clothing,
12 shelter, health care, or supervision when the caretaker is
13 reasonably able to make the necessary provisions and which
14 deprivation substantially harms the dependent adult.
- 15 6. Permits the continuing physical or sexual abuse of a
16 dependent adult.
- 17 7. With or against a dependent adult commits a sexual
18 offense under Code chapter 709 or Code section 726.2.
- 19 8. Abandons the dependent adult to fend for the dependent
20 adult's own self, knowing that the dependent adult is unable
21 to do so.
- 22 9. Exploits a dependent adult by the act or process of
23 taking financial resources or property from the dependent
24 adult without the informed consent of the dependent adult,
25 including by theft, undue influence, harassment, duress,
26 deception, false representation, or false pretense.
- 27 The bill provides that if a caretaker intentionally commits
28 dependent adult endangerment that results in serious or bodily
29 injury, the person is guilty of a class "C" felony, and if the
30 endangerment was committed in a reckless manner, the person is
31 guilty of a class "D" felony. If a person commits dependent
32 adult endangerment that does not result in serious or bodily
33 injury to a dependent adult, the person is guilty of an
34 aggravated misdemeanor. A person who exploits a dependent
35 adult is guilty of a class "D" felony.



STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR
SALLY J. PEDERSON
LT. GOVERNOR

DEPARTMENT OF ELDER AFFAIRS
MARK A. HAVERLAND, DIRECTOR

MEMORANDUM

TO: Members of Iowa's 80th General Assembly
From: Mark A. Haverland
RE: 2004 Prefiling of Iowa Code Changes, Chapter 235B
Date: October 23, 2004

The changes to chapter 235B Dependent Adult Abuse, consist of clean up language and clarification on who is a mandatory reporter, adds funeral directors as mandatory reporters and establishes financial institutions as voluntary reporters of suspected abuse, neglect or exploitation. This language also expands the Dependent Adult Protection Advisory Council's authority to not only advise the Department of Human services, but also any state department charged with the protection of dependent adults. Currently this would include the Departments of Inspections and Appeals and Elder Affairs.

The bill includes language that sets the venue to where the dependent adult resides and eases access to district court for the purpose of enjoining abusive activity or intervening for provision of support services in situations where abuse is either ongoing or likely to reoccur rather than requiring a showing of immediate danger to health or safety. This is imperative in cases of suspected financial exploitation. The penalties are to be moved to the 726 criminal series for easement of reference for county attorneys. In addition it establishes a law with enhanced penalties for "Violation of an Individual age 60 or older and / or disabled".