

House Study Bill 729

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS
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 in certain facilities
2 and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5499DP 82
5 rh/rj/5

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1 1 Section 1. Section 235B.2, subsection 5, paragraph a,
1 2 subparagraph (3), unnumbered paragraph 1, Code 2007, is
1 3 amended to read as follows:
1 4 Sexual exploitation of a dependent adult ~~who is a resident~~
~~1 5 of a health care facility, as defined in section 135C.1, by a~~
~~1 6 caretaker providing services to or employed by the health care~~
~~1 7 facility, whether within the health care facility or at a~~
~~1 8 location outside of the health care facility by a caretaker.~~
1 9 Sec. 2. Section 235B.3, subsection 1, paragraph a, Code
1 10 Supplement 2007, is amended to read as follows:
1 11 a. The department shall receive dependent adult abuse
1 12 reports and shall collect, maintain, and disseminate the
1 13 reports by establishing a central registry for dependent adult
1 14 abuse information. The department shall evaluate the reports
1 15 expeditiously. However, the department of inspections and
1 16 appeals is solely responsible for the evaluation and
1 17 disposition of dependent adult abuse cases within ~~health care~~
1 18 facilities pursuant to chapter 235E and shall inform the
1 19 department of human services of such evaluations and
1 20 dispositions pursuant to section 235E.2.
1 21 Sec. 3. Section 235B.3, subsection 2, paragraph a, Code
1 22 Supplement 2007, is amended to read as follows:
1 23 a. A member of the staff of a community mental health
1 24 center, ~~a member of the staff of a hospital, a member of the~~
~~1 25 staff or employee of a public or private health care facility~~
~~1 26 as defined in section 135C.1, a member of the staff or~~
~~1 27 employee of an elder group home as defined in section 231B.1,~~
~~1 28 a member of the staff or employee of an assisted living~~
~~1 29 program certified under section 231C.3, and a member of the~~
~~1 30 staff or employee of an adult day services program as defined~~
~~1 31 in section 231D.1.~~
1 32 Sec. 4. Section 235B.3, subsection 13, Code Supplement
1 33 2007, is amended to read as follows:
1 34 13. The department of inspections and appeals shall adopt
1 35 rules which require ~~licensed health care~~ facilities to
2 1 separate an alleged dependent adult abuser from a victim
2 2 following an allegation of perpetration of abuse and prior to
2 3 the completion of an investigation of the allegation.
2 4 Sec. 5. Section 235B.5, subsection 5, Code 2007, is
2 5 amended to read as follows:
2 6 5. An oral report of suspected dependent adult abuse
2 7 initially made to the central registry regarding a ~~health care~~
2 8 facility as defined in section 235E.1 shall be transmitted by
2 9 the department to the department of inspections and appeals on
2 10 the first working day following the submitting of the report.
2 11 Sec. 6. Section 235B.6, subsection 2, paragraph c,
2 12 subparagraphs (1) and (4), Code Supplement 2007, are amended
2 13 to read as follows:
2 14 (1) A licensing authority for a facility, including a
~~2 15 facility defined in section 235E.1~~, providing care to an adult
2 16 named in a report.
2 17 (4) The legally authorized protection and advocacy agency
2 18 recognized pursuant to section 135C.2 if a person identified

2 19 in the information as a victim or a perpetrator of abuse
2 20 resided in or receives services from a facility, including a
2 21 facility defined in section 235E.1, or agency because the
2 22 person is diagnosed as having a developmental disability or a
2 23 mental illness.

2 24 Sec. 7. Section 235B.6, subsection 2, paragraph d,
2 25 subparagraph (3), Code Supplement 2007, is amended to read as
2 26 follows:

2 27 (3) An expert witness or a witness who testifies at any
2 28 stage of an appeal necessary for correction of dependent adult
2 29 abuse information as provided in section 235B.10.

2 30 Sec. 8. Section 235B.16, subsection 5, paragraphs b, f, g,
2 31 and i, Code Supplement 2007, are amended to read as follows:

2 32 b. A person required to report cases of dependent adult
2 33 abuse pursuant to section sections 235B.3 and 235E.2, other
2 34 than a physician whose professional practice does not
2 35 regularly involve providing primary health care to adults,
3 1 shall complete two hours of training relating to the
3 2 identification and reporting of dependent adult abuse within
3 3 six months of initial employment or self-employment which
3 4 involves the examination, attending, counseling, or treatment
3 5 of adults on a regular basis. Within one month of initial
3 6 employment or self-employment, the person shall obtain a
3 7 statement of the abuse reporting requirements from the
3 8 person's employer or, if self-employed, from the department.
3 9 The person shall complete at least two hours of additional
3 10 dependent adult abuse identification and reporting training
3 11 every five years.

3 12 f. A licensing board with authority over the license of a
3 13 person required to report cases of dependent adult abuse
3 14 pursuant to section sections 235B.3 and 235E.2 shall require
3 15 as a condition of licensure that the person is in compliance
3 16 with the requirements for abuse training under this
3 17 subsection. The licensing board shall require the person upon
3 18 licensure renewal to accurately document for the licensing
3 19 board the person's completion of the training requirements.
3 20 However, the licensing board may adopt rules providing for
3 21 waiver or suspension of the compliance requirements, if the
3 22 waiver or suspension is in the public interest, applicable to
3 23 a person who is engaged in active duty in the military service
3 24 of this state or of the United States, to a person for whom
3 25 compliance with the training requirements would impose a
3 26 significant hardship, or to a person who is practicing a
3 27 licensed profession outside this state or is otherwise subject
3 28 to circumstances that would preclude the person from
3 29 encountering dependent adult abuse in this state.

3 30 g. For persons required to report cases of dependent adult
3 31 abuse pursuant to section sections 235B.3 and 235E.2, who are
3 32 not engaged in a licensed profession that is subject to the
3 33 authority of a licensing board but are employed by a facility
3 34 or program subject to licensure, registration, or approval by
3 35 a state agency, the agency shall require as a condition of the
4 1 renewal of the facility's or program's licensure,
4 2 registration, or approval, that such persons employed by the
4 3 facility or program are in compliance with the training
4 4 requirements of this subsection.

4 5 i. For persons required to report cases of dependent adult
4 6 abuse pursuant to section sections 235B.3 and 235E.2 who are
4 7 employees of state departments and political subdivisions of
4 8 the state, the department director or the chief administrator
4 9 of the political subdivision shall ensure the persons'
4 10 compliance with the training requirements of this subsection.

4 11 Sec. 9. NEW SECTION. 235E.1 DEFINITIONS.
4 12 As used in this chapter, unless the context otherwise
4 13 requires:

4 14 1. "Caregiver" means a person who provides care including
4 15 but not limited to medical care, custodial care, personal
4 16 care, mental health care, rehabilitative care, or any other
4 17 kind of care provided that is required because of another's
4 18 age or disability, as a result of assuming the responsibility
4 19 voluntarily, by contract, through employment, or by court
4 20 order. There is a rebuttable presumption that an employee of
4 21 a facility is a caregiver for the purposes of this chapter.

4 22 2. "Court" means the district court.

4 23 3. "Department" means the department of inspections and
4 24 appeals.

4 25 4. "Dependent adult" means a person eighteen years of age
4 26 or older whose ability to perform the normal activities of
4 27 daily living or to provide for the person's own care or
4 28 protection is impaired due to a mental, emotional, physical,
4 29 or developmental disability or dysfunction, brain damage, or

4 30 the infirmities of aging. There is a rebuttable presumption
4 31 that a person who is admitted to a facility is a dependent
4 32 adult.

4 33 5. a. "Dependent adult abuse" means:

4 34 (1) Any of the following as a result of the acts or
4 35 omissions of a caregiver:

5 1 (a) Physical injury to, or injury which is at a variance
5 2 with the history given of the injury, or unreasonable
5 3 confinement, unreasonable punishment, or assault of a
5 4 dependent adult. "Assault of a dependent adult" means the
5 5 commission of any act which is generally intended to cause
5 6 pain or injury to a dependent adult, or which is generally
5 7 intended to result in physical contact which would be
5 8 considered by a reasonable person to be insulting or
5 9 offensive.

5 10 (b) The commission of a sexual offense under chapter 709
5 11 or section 726.2 with or against a dependent adult.

5 12 (c) Exploitation of a dependent adult. "Exploitation"
5 13 means a caregiver who knowingly or recklessly obtains, uses,
5 14 endeavors to obtain to use, or who misappropriates, a
5 15 dependent adult's funds, assets, medications, or property with
5 16 the intent to temporarily or permanently deprive a dependent
5 17 adult of the use, benefit, or possession of the funds, assets,
5 18 medication, or property for the benefit of someone other than
5 19 the dependent adult.

5 20 (d) Neglect of a dependent adult. "Neglect of a dependent
5 21 adult" means the deprivation of the minimum food, shelter,
5 22 clothing, supervision, physical or mental health care, or
5 23 other care necessary to maintain a dependent adult's life,
5 24 physical or mental health, or safety.

5 25 (2) Sexual exploitation of a dependent adult by a
5 26 caregiver whether within a facility or at a location outside
5 27 of a facility. "Sexual exploitation" means any consensual or
5 28 nonconsensual sexual conduct with a dependent adult which
5 29 includes but is not limited to kissing; touching of the
5 30 clothed or unclothed breast, groin, buttock, anus, pubes, or
5 31 genitals; or a sex act, as defined in section 702.17. "Sexual
5 32 exploitation" includes the transmission, display, taking of
5 33 electronic images of the unclothed breast, groin, buttock,
5 34 anus, pubes, or genitals of a dependent adult by a caregiver
5 35 for a purpose not related to treatment or diagnosis or as part
6 1 of an ongoing investigation. Sexual exploitation does not
6 2 include touching which is part of a necessary examination,
6 3 treatment, or care by a caretaker acting within the scope of
6 4 the practice or employment of the caregiver; the exchange of a
6 5 brief touch or hug between the dependent adult and a caregiver
6 6 for the purpose of reassurance, comfort, or casual friendship;
6 7 or touching between spouses.

6 8 b. "Dependent adult abuse" does not include any of the
6 9 following:

6 10 (1) Circumstances in which the dependent adult declines
6 11 medical treatment if the dependent adult holds a belief or is
6 12 an adherent of a religion whose tenets and practices call for
6 13 reliance on spiritual means in place of reliance on medical
6 14 treatment.

6 15 (2) Circumstances in which the dependent adult's
6 16 caregiver, acting in accordance with the dependent adult's
6 17 stated or implied consent, declines medical treatment if the
6 18 dependent adult holds a belief or is an adherent of a religion
6 19 whose tenets and practices call for reliance on spiritual
6 20 means in place of reliance on medical treatment.

6 21 (3) The withholding or withdrawing of health care from a
6 22 dependent adult who is terminally ill in the opinion of a
6 23 licensed physician, when the withholding or withdrawing of
6 24 health care is done at the request of the dependent adult or
6 25 at the request of the dependent adult's next of kin, attorney
6 26 in fact, or guardian pursuant to the applicable procedures
6 27 under chapter 125, 144A, 144B, 222, 229, or 633.

6 28 6. "Facility" means a health care facility as defined in
6 29 section 135C.1, an elder group home as defined in section
6 30 231B.1, an assisted living program certified under section
6 31 231C.3, an adult day service program as defined in section
6 32 231D.1, or a hospital as defined in section 135B.1.

6 33 7. "Person" means person as defined in section 4.1.

6 34 8. "Recklessly" means that a person acts or fails to act
6 35 with respect to a material element of a public offense, when
7 1 the person is aware of and consciously disregards a
7 2 substantial and unjustifiable risk that the material element
7 3 exists or will result from the act or omission. The risk must
7 4 be of such a nature and degree that disregard of the risk
7 5 constitutes a gross deviation from the standard conduct that a

7 6 reasonable person would observe in the situation.
7 7 9. "Support services" includes but is not limited to
7 8 community-based services including area agency on aging
7 9 assistance, mental health services, fiscal management, home
7 10 health services, housing-related services, counseling
7 11 services, transportation services, adult day services, respite
7 12 services, legal services, and advocacy services.

7 13 Sec. 10. NEW SECTION. 235E.2 DEPENDENT ADULT ABUSE
7 14 REPORTS IN FACILITIES.

7 15 1. a. The department shall receive and evaluate reports
7 16 of dependent adult abuse in facilities. The department shall
7 17 inform the department of human services of such evaluations
7 18 and dispositions for inclusion in the central registry for
7 19 dependent adult abuse information pursuant to section 235B.5.

7 20 b. Reports of dependent adult abuse which is the result of
7 21 the acts or omissions of the dependent adult shall be
7 22 collected and maintained in the files of the dependent adult
7 23 as assessments only and shall not be included in the central
7 24 registry.

7 25 c. A report of dependent adult abuse that meets the
7 26 definition of dependent adult abuse under section 235E.1,
7 27 subsection 5, paragraph "a", subparagraph (1), subparagraph
7 28 subdivision (a) or (d), which the department determines is
7 29 minor, isolated, and unlikely to reoccur shall be collected
7 30 and maintained by the department as an assessment only for a
7 31 five-year period and shall not be included in the central
7 32 registry and shall not be considered to be founded dependent
7 33 adult abuse. However, a subsequent report of dependent adult
7 34 abuse that meets the definition of dependent adult abuse under
7 35 section 235E.1, subsection 5, paragraph "a", subparagraph (1),
8 1 subparagraph subdivision (a) or (d), that occurs within the
8 2 five-year period, and that is committed by the caretaker
8 3 responsible for the act or omission which was the subject of
8 4 the previous report of dependent adult abuse which the
8 5 department determined was minor, isolated, and unlikely to
8 6 reoccur, shall not be considered minor, isolated, and unlikely
8 7 to reoccur.

8 8 2. A person who, in the course of employment, examines,
8 9 attends, counsels, or treats a dependent adult in a facility
8 10 and reasonably believes the dependent adult has suffered
8 11 dependent adult abuse, shall report the suspected dependent
8 12 adult abuse to the department. Persons required to report
8 13 include a member of the staff or employee of a facility.

8 14 3. a. If a staff member or employee is required to make a
8 15 report pursuant to this section, the staff member or employee
8 16 shall immediately notify the person in charge or the person's
8 17 designated agent who shall then notify the department within
8 18 twenty-four hours of such notification.

8 19 b. The employer or supervisor of a person who is required
8 20 to or may make a report pursuant to this section shall not
8 21 apply a policy, work rule, or other requirement that
8 22 interferes with the person making a report of dependent adult
8 23 abuse or that results in the failure of another person to make
8 24 the report.

8 25 4. An employee of a financial institution may report
8 26 suspected financial exploitation of a dependent adult to the
8 27 department.

8 28 5. Any other person who believes that a dependent adult
8 29 has suffered dependent adult abuse may report the suspected
8 30 dependent adult abuse to the department of inspections and
8 31 appeals. The department of inspections and appeals shall
8 32 transfer any reports received of dependent adult abuse in the
8 33 community to the department of human services. The department
8 34 of human services shall transfer any reports received of
8 35 dependent adult abuse in facilities to the department of
9 1 inspections and appeals.

9 2 6. The department of inspections and appeals shall inform
9 3 the appropriate county attorneys of any reports of dependent
9 4 adult abuse. The department may request information from any
9 5 person believed to have knowledge of a case of dependent adult
9 6 abuse. The person, including but not limited to a county
9 7 attorney, a law enforcement agency, a multidisciplinary team,
9 8 a social services agency in the state, or any person who is
9 9 required pursuant to subsection 2 to report dependent adult
9 10 abuse, whether or not the person made the specific dependent
9 11 adult abuse report, shall cooperate and assist in the
9 12 evaluation upon the request of the department. If the
9 13 department's assessment reveals that dependent adult abuse
9 14 exists which might constitute a criminal offense, a report
9 15 shall be made to the appropriate law enforcement agency.
9 16 County attorneys and appropriate law enforcement agencies

9 17 shall also take any other lawful action necessary or advisable
9 18 for the protection of the dependent adult.

9 19 a. If, upon completion of an investigation, the department
9 20 of inspections and appeals determines that the best interests
9 21 of the dependent adult require court action, the department of
9 22 inspections and appeals shall notify the department of human
9 23 services of the potential need for a guardian or conservator
9 24 or for admission or commitment to an appropriate institution
9 25 or facility pursuant to the applicable procedures under
9 26 chapter 125, 222, 229, or 633, or shall pursue other remedies
9 27 provided by law. The appropriate county attorney shall assist
9 28 the department of inspections and appeals in the preparation
9 29 of the necessary papers to initiate the action and shall
9 30 appear and represent the department of inspections and appeals
9 31 at all district court proceedings.

9 32 b. The department shall assist the court during all stages
9 33 of court proceedings involving a suspected case of dependent
9 34 adult abuse.

9 35 c. In every case involving dependent adult abuse which is
10 1 substantiated by the department and which results in a
10 2 judicial proceeding on behalf of the dependent adult, legal
10 3 counsel shall be appointed by the court to represent the
10 4 dependent adult in the proceedings. The court may also
10 5 appoint a guardian ad litem to represent the dependent adult
10 6 if necessary to protect the dependent adult's best interests.
10 7 The same attorney may be appointed to serve both as legal
10 8 counsel and as guardian ad litem. Before legal counsel or a
10 9 guardian ad litem is appointed pursuant to this paragraph, the
10 10 court shall require the dependent adult and any person legally
10 11 responsible for the support of the dependent adult to complete
10 12 under oath a detailed financial statement. If, on the basis
10 13 of that financial statement, the court deems that the
10 14 dependent adult or the legally responsible person is able to
10 15 bear all or a portion of the cost of the legal counsel or
10 16 guardian ad litem, the court shall so order. In cases where
10 17 the dependent adult or the legally responsible person is
10 18 unable to bear the cost of the legal counsel or guardian ad
10 19 litem, the expense shall be paid by the county.

10 20 7. A person participating in good faith in reporting or
10 21 cooperating with or assisting the department in evaluating a
10 22 case of dependent adult abuse has immunity from liability,
10 23 civil or criminal, which might otherwise be incurred or
10 24 imposed based upon the act of making the report or giving the
10 25 assistance. The person has the same immunity with respect to
10 26 participating in good faith in a judicial proceeding resulting
10 27 from the report, cooperation, or assistance or relating to the
10 28 subject matter of the report, cooperation, or assistance.

10 29 8. It shall be unlawful for any person or employer to
10 30 discharge, suspend, or otherwise discipline a person required
10 31 to report or voluntarily reporting an instance of suspected
10 32 dependent adult abuse pursuant to subsection 2 or 4, or
10 33 cooperating with, or assisting the department in evaluating a
10 34 case of dependent adult abuse, or participating in judicial
10 35 proceedings relating to the reporting or cooperation or
11 1 assistance based solely upon the person's reporting or
11 2 assistance relative to the instance of dependent adult abuse.
11 3 A person or employer found in violation of this subsection is
11 4 guilty of a simple misdemeanor.

11 5 9. A person required by this section to report a suspected
11 6 case of dependent adult abuse pursuant to subsection 2 who
11 7 knowingly and willfully fails to do so commits a simple
11 8 misdemeanor. A person required by subsection 2 to report a
11 9 suspected case of dependent adult abuse who knowingly fails to
11 10 do so or who knowingly interferes with the making of such a
11 11 report or applies a requirement that results in such a failure
11 12 is civilly liable for the damages proximately caused by the
11 13 failure.

11 14 10. The department shall adopt rules which require
11 15 facilities to separate an alleged dependent adult abuser from
11 16 a victim following an allegation of perpetration of dependent
11 17 adult abuse and prior to the completion of an investigation of
11 18 the allegation.

11 19 11. The department shall adopt rules which may allow the
11 20 department to notify a facility that subsequently employs a
11 21 dependent adult abuser when the notice of investigative
11 22 findings is issued and prior to the completion of an
11 23 investigation that is founded for dependent adult abuse.

11 24 12. An inspector of the department may enter any facility
11 25 without a warrant and may examine all records pertaining to
11 26 residents, employees, former employees, and the alleged
11 27 dependent adult abuser. An inspector of the department may

11 28 contact or interview any resident, employee, former employee,
11 29 or any other person who might have knowledge about the alleged
11 30 dependent adult abuse. An inspector may take or cause to be
11 31 taken photographs of the dependent adult victim and the
11 32 vicinity involved.

11 33 Sec. 11. NEW SECTION. 235E.3 PREVENTION OF ADDITIONAL
11 34 DEPENDENT ADULT ABUSE == NOTIFICATION OF RIGHTS.

11 35 If a peace officer has reason to believe that dependent
12 1 adult abuse, which is criminal in nature, has occurred in a
12 2 facility, the officer shall use all reasonable means to
12 3 prevent further dependent adult abuse, including but not
12 4 limited to any of the following:

12 5 1. If requested, remaining on the scene as long as there
12 6 is a danger to the dependent adult's physical safety without
12 7 the presence of a peace officer, including but not limited to
12 8 staying in the facility, or if unable to remain at the scene,
12 9 assisting the dependent adult in leaving the facility and
12 10 securing support services or emergency shelter services.

12 11 2. Assisting the dependent adult in obtaining medical
12 12 treatment necessitated by the dependent adult abuse, including
12 13 providing assistance to the dependent adult in obtaining
12 14 transportation to the emergency room of the nearest hospital.

12 15 3. Providing a dependent adult with immediate and adequate
12 16 notice of the dependent adult's rights. The notice shall
12 17 consist of handing the dependent adult a copy of the following
12 18 written statement, requesting the dependent adult to read the
12 19 card and asking the dependent adult whether the dependent
12 20 adult understands the rights:

12 21 "a. You have the right to ask the court for the
12 22 following help on a temporary basis:

12 23 (1) Keeping the alleged perpetrator away from
12 24 you, your home, your facility, and your place of
12 25 work.

12 26 (2) The right to stay at your home or facility
12 27 without interference from the alleged perpetrator.

12 28 (3) Professional counseling for you, your
12 29 family, or household members, and the alleged
12 30 perpetrator of the dependent adult abuse.

12 31 b. If you are in need of medical treatment, you
12 32 have the right to request that the peace officer
12 33 present assist you in obtaining transportation to
12 34 the nearest hospital or otherwise assist you.

12 35 c. If you believe that police protection is
13 1 needed for your physical safety, you have the
13 2 right to request that the peace officer present
13 3 remain at the scene until you and other affected
13 4 parties can leave or safety is otherwise ensured."

13 5 The notice shall also contain the telephone number of the
13 6 local emergency shelter services, support services, or crisis
13 7 lines operating in the area.

13 8 Sec. 12. NEW SECTION. 235E.4 CHAPTER 235B APPLICATION.
13 9 The provisions of chapter 235B not inconsistent with this
13 10 chapter shall apply to this chapter.

13 11 Sec. 13. NEW SECTION. 235E.5 RULEMAKING AUTHORITY.

13 12 The department may adopt rules, including emergency rules,
13 13 pursuant to chapter 17A to administer this chapter.

13 14 EXPLANATION

13 15 This bill relates to dependent adult abuse in certain
13 16 facilities and provides for penalties.

13 17 The bill creates new Code chapter 235E, relating to
13 18 dependent adult abuse in certain facilities, authorizing the
13 19 department of inspections and appeals (department) to receive
13 20 and evaluate reports of dependent adult abuse within elder
13 21 group homes, assisted living programs, adult day service
13 22 programs, and hospitals and transfers the current authority of
13 23 the department of inspections and appeals to receive and
13 24 evaluate reports of dependent adult abuse within health care
13 25 facilities under Code chapter 235B (dependent adult abuse) to
13 26 new Code chapter 235E created in the bill. Under current law,
13 27 the department of human services has the authority to receive
13 28 and evaluate reports of dependent adult abuse within elder
13 29 group homes, assisted living programs, adult day service
13 30 programs, and hospitals.

13 31 The bill defines a dependent adult to mean a person 18
13 32 years of age or older whose ability to perform the normal
13 33 activities of daily living or to provide for the person's own
13 34 care or protection is impaired due to a mental, emotional,
13 35 physical, or developmental disability or dysfunction, brain
14 1 damage, or the infirmities of aging. The bill creates a
14 2 rebuttable presumption that a person who is admitted to a
14 3 facility is a dependent adult. "Facility" means a health care

14 4 facility as defined in Code section 135C.1, an elder group
14 5 home as defined in Code section 231B.1, an assisted living
14 6 program certified under Code section 231C.3, an adult day
14 7 service program as defined in Code section 231D.1, and a
14 8 hospital as defined in Code section 135B.1.
14 9 The bill defines dependent adult abuse to mean any of the
14 10 following as a result of the acts or omissions of a caregiver:
14 11 physical injury to, or injury which is at a variance with the
14 12 history given of the injury, or unreasonable confinement,
14 13 unreasonable punishment, or assault of a dependent adult; the
14 14 commission of a sexual offense under Code chapter 709 or Code
14 15 section 726.2 with or against a dependent adult; exploitation
14 16 of a dependent adult; neglect of a dependent adult; and sexual
14 17 exploitation of a dependent adult by a caregiver whether
14 18 within a facility or at a location outside of a facility.
14 19 "Dependent adult abuse" does not include circumstances in
14 20 which the dependent adult or the dependent adult's caregiver,
14 21 acting in accordance with the dependent adult's wishes,
14 22 declines medical treatment if the dependent adult holds a
14 23 belief or is an adherent of a religion whose tenets and
14 24 practices call for reliance on spiritual means in place of
14 25 reliance on medical treatment and the withholding or
14 26 withdrawing of health care from a dependent adult who is
14 27 terminally ill in the opinion of a licensed physician, when
14 28 the withholding or withdrawing of health care is done at the
14 29 request of the dependent adult or at the request of another
14 30 person authorized to act on behalf of the dependent adult.
14 31 The bill provides that persons required to report incidents
14 32 of dependent adult abuse to the department of human services
14 33 include members of the staff or employees of facilities as
14 34 defined in the bill. The bill provides civil and criminal
14 35 immunity to a person who in good faith reports a suspected
15 1 case of dependent adult abuse in a facility and also provides
15 2 that a mandatory reporter who knowingly and willfully fails to
15 3 report a suspected case of dependent adult abuse commits a
15 4 simple misdemeanor and is civilly liable for the damages
15 5 proximately caused by the knowing failure to report. A person
15 6 or employer who discharges, suspends, or otherwise disciplines
15 7 a person who reports an instance of suspected dependent adult
15 8 abuse is guilty of a simple misdemeanor. A simple misdemeanor
15 9 is punishable by confinement for no more than 30 days or a
15 10 fine of at least \$65 but not more than \$625 or by both.
15 11 The bill provides that the department shall inform the
15 12 appropriate county attorneys of any reports of dependent adult
15 13 abuse. If the department's assessment reveals that dependent
15 14 adult abuse exists which might constitute a criminal offense,
15 15 a report shall be made to the appropriate law enforcement
15 16 agency. County attorneys and appropriate law enforcement
15 17 agencies shall also take any other lawful action necessary or
15 18 advisable for the protection of the dependent adult. In
15 19 addition, if a peace officer has reason to believe that
15 20 dependent adult abuse, which is criminal in nature, has
15 21 occurred, the officer shall remain on the scene as long as
15 22 there is a danger to the dependent adult's physical safety,
15 23 assist the dependent adult in leaving the facility and
15 24 securing support services or emergency shelter services,
15 25 assist the dependent adult in obtaining medical treatment, and
15 26 provide the dependent adult with immediate and adequate notice
15 27 of the dependent adult's rights.
15 28 The bill provides that if, upon completion of an
15 29 investigation, the department determines that the best
15 30 interests of the dependent adult require court action, the
15 31 department shall notify the department of human services of
15 32 the potential need for a guardian or conservator or for
15 33 admission or commitment to an appropriate institution or
15 34 facility. In every case involving abuse which is
15 35 substantiated by the department and which results in a
16 1 judicial proceeding on behalf of the dependent adult, legal
16 2 counsel shall be appointed by the court to represent the
16 3 dependent adult in the proceedings. The court may also
16 4 appoint a guardian ad litem to represent the dependent adult.
16 5 The bill provides that an inspector of the department may
16 6 enter any facility without a warrant and may examine all
16 7 records pertaining to residents, employees, former employees,
16 8 and the dependent adult abuser, may contact or interview any
16 9 resident, employee, former employee, or any other person who
16 10 might have knowledge about the alleged abuse, and may take or
16 11 cause to be taken photographs of the dependent adult victim
16 12 and the vicinity involved.
16 13 The bill requires the department to inform the department
16 14 of human services about the dependent adult abuse evaluations

16 15 and dispositions for inclusion in the dependent adult abuse
16 16 information registry created and maintained pursuant to Code
16 17 chapter 235B. The provisions of Code chapter 235B, including
16 18 provisions relating to the collection, maintenance, and
16 19 dissemination of adult abuse information in the dependent
16 20 adult abuse registry created pursuant to Code chapter 235B, so
16 21 far as applicable, and not inconsistent with the new Code
16 22 chapter 235E, shall apply to dependent adult abuse information
16 23 collected pursuant to new Code chapter 235E.
16 24 LSB 5499DP 82
16 25 rh/rj/5.2