

House File 328 - Introduced

HOUSE FILE 328

BY MASCHER

A BILL FOR

1 An Act relating to elders, including elder abuse, financial
2 exploitation of elders, and the development of an elder
3 abuse prevention system, and providing penalties.

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

1 Section 1. Section 235F.1, subsection 14, paragraph c, Code
2 2015, is amended to read as follows:

3 c. Is a person who is in a confidential relationship with
4 the vulnerable elder. ~~For the purposes of this paragraph "c", a~~
5 ~~confidential relationship does not include a legal, fiduciary,~~
6 ~~or ordinary commercial or transactional relationship the~~
7 ~~vulnerable elder may have with a bank incorporated under the~~
8 ~~provisions of any state or federal law, any savings and loan~~
9 ~~association or savings bank incorporated under the provisions~~
10 ~~of any state or federal law, any credit union organized under~~
11 ~~the provisions of any state or federal law, any attorney~~
12 ~~licensed to practice law in this state, or any agent, agency,~~
13 ~~or company regulated under chapter 505, 508, 515, or 543B The~~
14 determination of the existence of a confidential relationship
15 is an issue of fact to be determined by the court based upon the
16 totality of the circumstances.

17 Sec. 2. Section 235F.1, subsection 15, Code 2015, is amended
18 to read as follows:

19 15. *"Substitute petitioner"* means a any of the following
20 persons who files a petition under this chapter:

21 a. A family or household member, guardian, conservator,
22 attorney in fact, or guardian ad litem for a vulnerable elder,
23 ~~or other interested.~~

24 b. ~~A person who files a petition under this chapter who~~
25 has a demonstrated interest in the vulnerable elder based on a
26 legal right which will be directly affected by the outcome or
27 result of the action or based on a legal liability which will
28 be directly enlarged or diminished by the outcome or result of
29 the action.

30 Sec. 3. Section 235F.2, subsection 5, unnumbered paragraph
31 1, Code 2015, is amended to read as follows:

32 If a substitute petitioner files a petition under this
33 section on behalf of a vulnerable elder, the clerk of court
34 shall provide notice of the filing to the vulnerable elder. If
35 a petition is filed under this subsection, the vulnerable elder

1 shall retain the right to all of the following:

2 Sec. 4. Section 235F.2, Code 2015, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 6. The court may, in its discretion, limit
5 the number of petitions filed and the timeframe within which
6 multiple filings of petitions may be made under this section
7 involving the same vulnerable elder.

8 Sec. 5. NEW SECTION. **726.11 Financial exploitation of an**
9 **older individual.**

10 1. A person commits financial exploitation of an older
11 individual when the person stands in a position of trust or
12 confidence with the older individual and knowingly and by undue
13 influence, deception, coercion, fraud, breach of fiduciary
14 duty, or extortion, obtains control over or otherwise uses
15 or diverts the benefits, property, resources, belongings, or
16 assets of the older individual.

17 2. A person who commits financial exploitation of an older
18 individual is guilty of the following, as applicable:

19 a. Financial exploitation in the fifth degree which is
20 a simple misdemeanor if the value of the funds, benefits,
21 property, resources, belongings, or assets is two hundred
22 dollars or less.

23 b. Financial exploitation in the fourth degree which is
24 a serious misdemeanor if the value of the funds, benefits,
25 property, resources, belongings, or assets exceeds two hundred
26 dollars but does not exceed five hundred dollars.

27 c. Financial exploitation in the third degree which is an
28 aggravated misdemeanor if the value of the funds, benefits,
29 property, resources, belongings, or assets exceeds five hundred
30 dollars but does not exceed one thousand dollars.

31 d. Financial exploitation in the second degree which is a
32 class "D" felony if the value of the funds, benefits, property,
33 resources, belongings, or assets exceeds one thousand dollars
34 but does not exceed ten thousand dollars.

35 e. Financial exploitation in the first degree which is a

1 class "C" felony if the value of the funds, benefits, property,
2 resources, belongings, or assets exceeds ten thousand dollars.

3 3. Nothing in this section shall be construed to limit other
4 remedies available to the older individual including those
5 provided under chapters 235F and 236.

6 4. A person alleged to have committed a violation under this
7 section shall be charged with the respective offense, unless
8 a charge may be brought based upon a more serious offense,
9 in which case the charge of the more serious offense shall
10 supersede the less serious charge.

11 5. Nothing in this section shall be construed to impose
12 criminal liability on a person who has made a good-faith effort
13 to assist an older individual in the management of the older
14 individual's benefits, property, resources, belongings, or
15 assets, but through no fault of the person, the person has been
16 unable to provide such assistance.

17 6. It shall not be a defense to financial exploitation of
18 an older individual that the alleged perpetrator did not know
19 the age of the older individual or reasonably believed that the
20 alleged victim was not an older individual.

21 7. For the purposes of this section:

22 a. "*Caretaker*" means a related or nonrelated person who has
23 the responsibility for the protection, care, or custody of an
24 older individual as a result of assuming the responsibility
25 voluntarily, by contract, through employment, or by order of
26 the court. "*Caretaker*" does not include a caretaker as defined
27 in section 235E.1.

28 b. "*Coercion*" means communication or conduct which compels
29 an older individual to act or refrain from acting against the
30 older individual's will.

31 c. "*Fiduciary*" means a person or entity with the legal
32 responsibility to make decisions on behalf of and for the
33 benefit of an older individual and to act in good faith and
34 with fairness. "*Fiduciary*" includes but is not limited to an
35 attorney in fact, a guardian, or a conservator.

1 *d. "Older individual"* means a person sixty years of age or
2 older.

3 *e. "Stands in a position of trust or confidence"* means the
4 person has any of the following relationships relative to the
5 older individual:

6 (1) Is a parent, spouse, adult child, or other relative by
7 consanguinity or affinity of the older individual.

8 (2) Is a caretaker for the older individual.

9 (3) Is a person who is in a confidential relationship with
10 the older individual. The determination of the existence of a
11 confidential relationship is an issue of fact to be determined
12 by the court based upon the totality of the circumstances.

13 *f. "Undue influence"* means taking advantage of a person's
14 role, relationship, or authority to improperly change or
15 obtain control over the actions or decision making of an older
16 individual against the older individual's best interests.

17 Sec. 6. AGENCY COLLABORATION — ELDER ABUSE PREVENTION
18 SYSTEM DRAFT LEGISLATION.

19 1. The department on aging, department of human services,
20 department of inspections and appeals, department of public
21 health, the office of long-term care ombudsman, and the
22 office of the attorney general shall collaborate to develop
23 draft legislation to develop an elder abuse prevention system
24 for the state. The draft legislation shall incorporate a
25 multidisciplinary approach to elder abuse, based on best
26 practices utilizing the strengths of the various agencies and
27 the aging network in addressing prevention, detection, and
28 investigation of elder abuse and shall do all of the following:

29 a. Protect all Iowans sixty years of age and older from
30 the recognized categories of abuse including physical abuse,
31 emotional or psychological abuse, sexual abuse, financial
32 or material exploitation, and abandonment, neglect, and
33 self-neglect.

34 b. Specify who should be a mandatory reporter of elder
35 abuse.

- 1 c. Specify a penalty for failure to report elder abuse.
2 d. Include consequences for perpetrators of elder abuse.
3 e. Provide for a central elder abuse registry.
4 f. Specify educational and training requirements for
5 staff of entities that address prevention, detection, and
6 investigation of elder abuse.
7 g. Specify who will provide legal assistance for victims of
8 elder abuse.
9 h. Include services provisions.
10 i. Recognize the multidisciplinary team as an essential
11 element and require that the department on aging in
12 cooperation with law enforcement agencies, the department
13 of human services, and the department of public health be
14 responsible for a state multidisciplinary team and work with
15 the aging and disability resource centers to establish local
16 multidisciplinary teams throughout the state.
17 j. Enable all parties providing assistance to have access to
18 information needed to maximize assistance to victims of elder
19 abuse while maintaining the privacy of the victims.
20 k. Utilize the aging and disability resource centers as the
21 named contact source for elder abuse reporting while building
22 upon the collaborative no-wrong door approach.
23 1. Provide for designated elder abuse investigators who are
24 not also child abuse or dependent adult abuse investigators.
25 2. The agencies and offices shall submit a report to
26 the governor and the general assembly by December 15, 2015,
27 including draft legislation as specified in subsection 1.
28 Sec. 7. CODE EDITOR DIRECTIVES. The Code editor shall
29 revise the title of chapter 726 to read "Protection of the
30 family, dependent persons, residents of health care facilities,
31 and older individuals".

32

EXPLANATION

33

The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35

This bill includes provisions relating to elder abuse and

1 financial exploitation. The bill eliminates a listing of
2 persons who were exempt from the confidential relationship
3 requirement in order to be considered as standing in a position
4 of trust or confidence with a vulnerable elder and thereby
5 potentially subject to an allegation of financial exploitation
6 under the elder abuse Code chapter. The bill provides instead
7 that the determination of the existence of a confidential
8 relationship is an issue of fact to be determined by the court
9 based upon the totality of the circumstances.

10 The bill redefines "substitute petitioner" by eliminating as
11 a potential substitute petitioner any other interested person,
12 and instead including a person who has a demonstrated interest
13 in the vulnerable elder.

14 The bill provides that if a substitute petitioner files
15 a petition for relief from elder abuse, the clerk of court
16 shall provide notice to the vulnerable elder. The bill also
17 authorizes the court, in its discretion, to limit the number of
18 petitions filed and the timeframe within which multiple filings
19 of petitions may be made involving the same vulnerable elder.

20 The bill establishes the crime of financial exploitation of
21 an older individual. A person commits financial exploitation
22 of an older individual when the person stands in a position of
23 trust or confidence with the older individual and knowingly
24 and by undue influence, deception, coercion, fraud, breach of
25 fiduciary duty, or extortion, obtains control over or otherwise
26 uses the benefits, property, resources, belongings, or assets
27 of the older individual. The criminal penalties range from a
28 simple misdemeanor to a class "C" felony based on the amount
29 of benefits, property, resources, belongings, or assets of the
30 older individual involved.

31 The bill directs the department on aging, department
32 of human services, department of inspections and appeals,
33 department of public health, the office of long-term
34 care ombudsman, and the office of the attorney general to
35 collaborate to develop draft legislation to develop an elder

1 abuse prevention system for the state. The draft legislation
2 is required to incorporate a multidisciplinary approach to
3 elder abuse, based on best practices, utilizing the strengths
4 of the various agencies and the aging network in addressing
5 prevention, detection, and investigation of elder abuse and
6 is required to do all of the following: protect all Iowans
7 60 years of age and older from the recognized categories of
8 abuse including physical abuse, emotional or psychological
9 abuse, sexual abuse, financial or material exploitation, and
10 abandonment, neglect, and self-neglect; specify who should
11 be a mandatory reporter of elder abuse; specify a penalty
12 for failure to report elder abuse; include consequences for
13 perpetrators of elder abuse; provide for a central elder abuse
14 registry; specify educational and training requirements for
15 staff of the agencies that address prevention, detection,
16 and investigation of elder abuse; specify who will provide
17 legal assistance for victims of elder abuse; include services
18 provisions; recognize the multidisciplinary team as an
19 essential element of an elder abuse system and require entities
20 to work together to establish local multidisciplinary teams
21 throughout the state; enable all parties providing assistance
22 to have access to information needed to maximize assistance to
23 victims of elder abuse while maintaining the privacy of the
24 victims; utilize the aging and disability resource centers
25 as the named contact source for elder abuse reporting while
26 building upon the collaborative no-wrong door approach; and
27 provide for designated elder abuse investigators who are not
28 also child abuse or dependent adult abuse investigators. The
29 bill requires the agencies and offices to submit a report to
30 the governor and the general assembly by December 15, 2015,
31 including draft legislation as specified in the bill.