

FILED FEB 19 2002

SENATE FILE 2214
BY LUNDBY

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 making penalties
2 applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 2214
HUMAN RESOURCES

1 Section 1. Section 154C.5, subsection 4, Code 2001, is
2 amended to read as follows:

3 4. To testify in a court hearing concerning matters
4 pertaining to the welfare of children or dependent adults as
5 defined in section 235B.2.

6 Sec. 2. Section 235B.1, unnumbered paragraph 1, Code 2001,
7 is amended to read as follows:

8 The department shall establish and operate a dependent
9 adult abuse services program. The program shall emphasize the
10 reporting and evaluation of cases of ~~abuse-of-a~~ suspected
11 ~~dependent adult who-is-unable-to-protect-the-adult's-own~~
12 ~~interests-or-unable-to-perform-activities-necessary-to-meet~~
13 ~~essential-human-needs~~ abuse. The program shall include but is
14 not limited to:

15 Sec. 3. Section 235B.2, subsection 5, paragraph a,
16 subparagraph (2), Code Supplement 2001, is amended to read as
17 follows:

18 (2) The deprivation of the minimum food, shelter,
19 clothing, supervision, physical or mental health care, and or
20 other care necessary to maintain a dependent adult's life or
21 health as a result of the acts or omissions of the dependent
22 adult.

23 Sec. 4. Section 235B.3, Code Supplement 2001, is amended
24 by adding the following new subsections:

25 NEW SUBSECTION. 4A. The department shall assess reports
26 or referrals of suspected dependent adult abuse. The
27 assessment of a report or referral of suspected dependent
28 adult abuse shall include interviews with the dependent adult,
29 if appropriate, with the alleged perpetrator of the dependent
30 adult abuse, and with any person believed to have knowledge of
31 the circumstances of the case.

32 NEW SUBSECTION. 5A. The department shall inform the
33 appropriate county attorneys of any reports of dependent adult
34 abuse.

35 Sec. 5. Section 235B.3, subsections 5, 6, 7, and 8, Code

1 Supplement 2001, are amended to read as follows:

2 5. Following the reporting of suspected dependent adult
3 abuse, the department of human services or an agency approved
4 by the department shall also complete an assessment of
5 necessary services and shall make appropriate referrals for
6 receipt of these services. The assessment of necessary
7 services shall include ~~interviews-with-the-dependent-adult,~~
8 ~~and,-if-appropriate,-with-the-alleged-perpetrator-of-the~~
9 ~~dependent-adult-abuse-and-with-any-person-believed-to-have~~
10 ~~knowledge-of-the-circumstances-of-the-case~~ a determination of
11 the risk of dependent adult abuse and a determination of the
12 services necessary to address the situation. The department
13 shall attempt to develop and engage support services to meet
14 the needs of the dependent adult, may provide necessary
15 protective services, and may establish a sliding fee schedule
16 for those persons able to pay a portion of the protective
17 services.

18 6. Upon a showing of probable cause that a dependent adult
19 has been abused, a court may authorize a person, also
20 authorized by the department, to make an evaluation, to enter
21 the residence of, and to examine the dependent adult. Upon a
22 showing of probable cause that a dependent adult has been
23 financially exploited, a court may authorize a person, also
24 authorized by the department, to make an evaluation, and to
25 gain access to the financial records of the dependent adult.

26 ~~7.--The-department-shall-inform-the-appropriate-county~~
27 ~~attorneys-of-any-reports-of-dependent-adult-abuse.--The~~

28 a. In performing the evaluation, the department may
29 request information from any person believed to have knowledge
30 of a case of dependent adult abuse. The person, including but
31 not limited to a county attorney, a law enforcement agency, a
32 multidisciplinary team, a social services agency in the state,
33 or any person who is required pursuant to subsection 2 to
34 report dependent adult abuse, whether or not the person made
35 the specific dependent adult abuse report, shall cooperate and

1 assist in the evaluation upon the request of the department.
2 If the department's assessment evaluation reveals that
3 dependent adult abuse exists which might constitute a criminal
4 offense, a report shall be made to the appropriate law
5 enforcement agency. County attorneys and appropriate law
6 enforcement agencies shall also take any other lawful action
7 necessary or advisable for the protection of the dependent
8 adult.

9 a. b. If, upon completion of the evaluation or upon
10 referral from the department of inspections and appeals, the
11 department determines that the best interests of the dependent
12 adult require court action, the department shall initiate
13 action for the appointment of a guardian or conservator or for
14 admission or commitment to an appropriate institution or
15 facility pursuant to the applicable procedures under chapter
16 125, 222, 229, or 633, or shall pursue other remedies provided
17 by law. The appropriate county attorney shall assist the
18 department in the preparation of the necessary papers to
19 initiate the action and shall appear and represent the
20 department at all district court proceedings.

21 b. c. The department shall assist the court during all
22 stages of court proceedings involving a suspected case of
23 dependent adult abuse.

24 c. d. In every case involving abuse which is substantiated
25 by the department and which results in a judicial proceeding
26 on behalf of the dependent adult, legal counsel shall be
27 appointed by the court to represent the dependent adult in the
28 proceedings. The court may also appoint a guardian ad litem
29 to represent the dependent adult if necessary to protect the
30 dependent adult's best interests. The same attorney may be
31 appointed to serve both as legal counsel and as guardian ad
32 litem. Before legal counsel or a guardian ad litem is
33 appointed pursuant to this section, the court shall require
34 the dependent adult and any person legally responsible for the
35 support of the dependent adult to complete under oath a

1 detailed financial statement. If, on the basis of that
2 financial statement, the court deems that the dependent adult
3 or the legally responsible person is able to bear all or a
4 portion of the cost of the legal counsel or guardian ad litem,
5 the court shall so order. In cases where the dependent adult
6 or the legally responsible person is unable to bear the cost
7 of the legal counsel or guardian ad litem, the expense shall
8 be paid by the county.

9 ~~8-~~ 7. A person, including a multidisciplinary team or an
10 agency, participating in good faith in reporting or
11 cooperating with or assisting the department in evaluating a
12 case of dependent adult abuse has immunity from liability,
13 civil or criminal, which might otherwise be incurred or
14 imposed based upon the act of making the report ~~or-giving-the,~~
15 providing assistance to the department, or providing necessary
16 services to the dependent adult. The person has the same
17 immunity with respect to participating in good faith in a
18 judicial proceeding resulting from the report or cooperation
19 or assistance or relating to the subject matter of the report,
20 cooperation, or assistance.

21 Sec. 6. Section 235B.6, subsection 1, Code Supplement
22 2001, is amended to read as follows:

23 1. Notwithstanding chapter 22, the confidentiality of all
24 dependent adult abuse information shall be maintained, except
25 as specifically provided by subsections 2 and 3. The identity
26 of a reporter of suspected dependent adult abuse shall be
27 redacted from any intake forms prior to the forms being
28 provided to parties authorized to have access pursuant to this
29 section.

30 Sec. 7. Section 235B.6, subsection 2, unnumbered paragraph
31 1, Code Supplement 2001, is amended to read as follows:

32 Access to founded dependent adult abuse information ~~other~~
33 ~~than-unfounded-dependent-adult-abuse-information~~ is authorized
34 only to the following persons:

35 Sec. 8. Section 235B.6, subsection 2, paragraph b, Code

1 Supplement 2001, is amended by adding the following new
2 subparagraphs:

3 NEW SUBPARAGRAPH. (6A) An employee of an agency who is
4 providing case management or assessment services to an alleged
5 victim of dependent adult abuse who has been referred to the
6 department of human services for evaluation or assessment.

7 NEW SUBPARAGRAPH. (8) The long-term care resident's
8 advocate established pursuant to section 231.41 for the
9 purposes of information exchange if the alleged victim resides
10 in a long-term care facility or the alleged perpetrator is
11 employed by a long-term care facility.

12 Sec. 9. Section 235B.6, Code Supplement 2001, is amended
13 by adding the following new subsection:

14 NEW SUBSECTION. 2A. With the exception of the identity of
15 the reporter of the alleged dependent adult abuse,
16 departmental staff may waive confidentiality with regard to
17 dependent adult abuse information relative to a specific case
18 in order to provide testimony during a court proceeding.

19 Sec. 10. Section 235B.9, subsection 2, Code 2001, is
20 amended to read as follows:

21 2. Dependent adult abuse information which ~~cannot be~~
22 ~~determined by a preponderance of the evidence to be founded or~~
23 ~~unfounded shall be expunged one year after the receipt of the~~
24 ~~initial report of abuse and dependent adult abuse information~~
25 which is determined by a preponderance of the evidence to be
26 unfounded shall be expunged ~~immediately when it is determined~~
27 ~~to be unfounded~~ one year after the receipt of the initial
28 report.

29 Sec. 11. Section 235B.16, subsection 5, paragraph e, Code
30 Supplement 2001, is amended by striking the paragraph.

31 Sec. 12. Section 235B.17, Code 2001, is amended to read as
32 follows:

33 235B.17 PROVISION OF PROTECTIVE SERVICES WITH THE CONSENT
34 OF DEPENDENT ADULT -- CARETAKER REFUSAL.

35 If a ~~caretaker of a~~ dependent adult, who consents to the

1 receipt of protective services, but a caretaker refuses to
2 allow or interferes with the provision of the services, the
3 department may petition the court for an order enjoining the
4 caretaker from interfering with the provision of services.
5 The petition shall allege specific facts sufficient to
6 demonstrate that the dependent adult is in need of protective
7 services and consents to the provision of services and that
8 the caretaker refuses to allow provision of the services. If
9 the judge finds by clear and convincing evidence that the
10 dependent adult is in need of protective services and consents
11 to the services and that the caretaker refuses to allow the
12 services, the judge may issue an order enjoining the caretaker
13 from interfering with the provision of the protective
14 services.

15 Sec. 13. Section 235B.19, subsection 1, Code 2001, is
16 amended to read as follows:

17 1. If the department determines that a dependent adult is
18 suffering from dependent adult abuse which presents an
19 immediate danger to the health or safety of the dependent
20 adult, that the dependent adult lacks capacity to consent to
21 receive protective services, and that no consent can be
22 obtained, the department may petition the district court with
23 probate-jurisdiction in the county in which the dependent
24 adult resides for an emergency order authorizing protective
25 services.

26 Sec. 14. Section 235B.19, subsection 6, unnumbered
27 paragraph 1, Code 2001, is amended to read as follows:

28 The If the department determines that dependent adult abuse
29 has occurred and is either ongoing or is likely to reoccur,
30 the department may petition the district court in the county
31 in which the dependent adult resides for injunctive relief
32 against the alleged perpetrator. The petition shall conform
33 to the requirements of subsection 2 and shall specify the
34 relief sought. Upon finding that dependent adult abuse has
35 occurred and that the abuse is either ongoing or likely to

1 reoccur, the court may also enter temporary orders as may be
2 appropriate to third persons enjoining them from specific
3 conduct. ~~The orders may include temporary restraining orders~~
4 ~~which impose criminal sanctions if violated.~~ In instances of
5 self-denial of critical care, the court may enter temporary
6 orders authorizing the provision of support services to the
7 dependent adult. Temporary orders entered pursuant to this
8 subsection shall remain in effect for a period of thirty days
9 from the date of entry, unless extended by the court for good
10 cause. Third parties enjoined under this subsection shall be
11 provided proper notice of the court order. The court may
12 enjoin third persons from specified actions including but not
13 limited to any of the following:

14 EXPLANATION

15 This bill relates to dependent adult abuse. The bill
16 provides that the dependent adult abuse services program is to
17 emphasize the reporting and evaluation of cases of suspected
18 dependent adult abuse.

19 The bill provides that reports and referrals of suspected
20 dependent adult abuse are to be assessed by the department of
21 human services. The assessment is to include interviews with
22 the dependent adult, and, if appropriate, with the alleged
23 perpetrator of the dependent adult abuse, and with any person
24 believed to have knowledge of the circumstances of the case.
25 Additionally, following the report of the suspected dependent
26 adult abuse, the department of human services or an agency
27 approved by the department is to complete an assessment of the
28 necessary services and make appropriate referrals for
29 services. The assessment of necessary services is to include
30 a determination of the risk of dependent adult abuse and a
31 determination of the services necessary to address the
32 situation. The department is directed to attempt to develop
33 and engage support services to meet the needs of the dependent
34 adult. The bill specifies that persons, including a
35 multidisciplinary team or an agency, participating in good

1 faith in reporting or cooperating with or assisting the
2 department in evaluating a case of dependent adult abuse have
3 immunity from liability, civil or criminal, which might
4 otherwise be incurred or imposed based upon the act of making
5 the report, providing assistance to the department, or
6 providing necessary services to the dependent adult.

7 The bill provides that the identity of a reporter of
8 suspected dependent adult abuse shall be redacted from any
9 intake forms prior to the forms being provided to parties
10 authorized to have access to the information. The bill also
11 provides that access to founded dependent adult abuse
12 information, rather than to information other than unfounded
13 dependent adult abuse information, is authorized to the
14 persons specified.

15 Under the bill an employee of an agency who is providing
16 case management or assessment services to an alleged victim of
17 dependent adult abuse is allowed access to founded dependent
18 adult abuse information. Additionally, the bill provides such
19 access to the long-term care resident's advocate for the
20 purposes of information exchange if the alleged victim resides
21 in a long-term care facility or the alleged perpetrator is
22 employed by a long-term care facility.

23 With regard to the confidentiality of dependent adult abuse
24 information, the bill provides that with the exception of the
25 identity of the reporter of the alleged dependent adult abuse,
26 departmental staff may waive confidentiality with regard to
27 dependent adult abuse information relative to a specific case
28 in order to provide testimony during a court proceeding.

29 Currently, dependent adult abuse information which cannot
30 be determined by a preponderance of the evidence to be founded
31 or unfounded is expunged one year after the receipt of the
32 initial report of abuse, and dependent adult abuse information
33 which is determined by a preponderance of the evidence to be
34 unfounded is expunged immediately upon a determination that it
35 is unfounded. Under the bill, dependent adult abuse

1 information that is determined by a preponderance of the
2 evidence to be unfounded is expunged one year after the
3 receipt of the initial report.

4 The bill eliminates a provision that allows a person who is
5 required to complete both child abuse and dependent adult
6 abuse mandatory reporter training to complete the training
7 through a combined program that provides two hours of training
8 and is approved by the department of human services. Under
9 the bill the mandatory reporter would be required to complete
10 training that is specifically related to identification and
11 reporting of dependent adult abuse separately from training
12 that combines both dependent adult abuse and child abuse
13 information.

14 The bill provides that if a dependent adult consents to
15 receipt of protective services, but the caretaker of the
16 dependent adult refuses to allow or interferes with the
17 provision of protective services, the department may petition
18 the court for injunctive relief against the caretaker.

19 Under the bill, if the department determines that dependent
20 adult abuse has occurred and that the abuse is either ongoing
21 or likely to reoccur, the department may petition the district
22 court for injunctive relief against the perpetrator. If the
23 court finds that the abuse is either ongoing or likely to
24 reoccur, the court may enter temporary orders to enjoin third
25 persons from specific conduct. If the situation is based on
26 self-denial of critical care, the court may enter temporary
27 orders for the provision of support services. The temporary
28 orders are effective for 30 days from the date of entry,
29 unless the court extends the order for good cause. The bill
30 directs that third parties are to be provided notice of the
31 court order.

32 The bill makes a conforming change in the social work code
33 chapter (154C) to provide that a licensed social worker or a
34 person working under a licensed social worker shall not
35 disclose or be compelled to disclose information acquired in a

1 professional capacity, except to testify in court concerning
2 the welfare of dependent adults.

3 Existing penalties relating to violation of provisions
4 relating to dependent adult abuse information apply to the
5 bill. The penalties include civil remedies for disseminating
6 or requesting and receiving dependent adult abuse information
7 in violation of the chapter. The civil remedies include
8 actual and exemplary damages, court costs, and attorney fees,
9 and in no case are damages to be in an amount less than \$500.
10 Criminal penalties provide that a person who willfully
11 requests, obtains, or seeks to obtain dependent adult abuse
12 information under false pretenses, a person who willfully
13 communicates or seeks to communicate dependent adult abuse
14 information to any person except as provided under law, or a
15 person connected with authorized research who willfully
16 falsifies dependent adult abuse information or records of the
17 information is guilty of a serious misdemeanor. A serious
18 misdemeanor is punishable by confinement for no more than one
19 year and a fine of at least \$250 but not more than \$1,500.
20 Additionally, a person who knowingly, but without criminal
21 purpose, communicates or seeks to communicate dependent adult
22 abuse information except as provided by law, is guilty of a
23 simple misdemeanor. A simple misdemeanor is punishable by
24 confinement for no more than 30 days or a fine of at least \$50
25 but not more than \$500 or by both.

26
27
28
29
30
31
32
33
34
35