

CHAPTER 258

HUMAN SERVICES - SOCIAL SERVICES

HOUSE BILL 00-1343

BY REPRESENTATIVES Leyba, Bacon, Clarke, Coleman, Fairbank, Gagliardi, George, Gordon, Hagedorn, Keller, Mace, Miller, Mitchell, Plant, Saliman, Tapia, Tate, Tochtrop, Tupa, Veiga, Vigil, S. Williams, Windels, and Zimmerman;
also SENATORS Reeves, Epps, Hernandez, Linkhart, Martinez, Pascoe, Rupert, Sullivant, Tanner, Weddig, and Wham.

AN ACT

CONCERNING PROHIBITIONS AGAINST THE FINANCIAL EXPLOITATION OF AT-RISK ADULTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 3.1 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 2
FINANCIAL EXPLOITATION OF AT-RISK ADULTS

26-3.1-201. Short title. THIS PART 2 SHALL BE KNOWN AND MAY BE CITED AS THE "PROTECTION AGAINST FINANCIAL EXPLOITATION OF AT-RISK ADULTS ACT".

26-3.1-202. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS THAT FINANCIAL EXPLOITATION OF AT-RISK ADULTS IS AN AREA OF SIGNIFICANT CONCERN. AT-RISK ADULTS COMPRISE AN INCREASINGLY LARGE SEGMENT OF SOCIETY, AND THE FINANCIAL EXPLOITATION OF SUCH PERSONS IS OCCURRING AT AN EVER-INCREASING RATE. PERSONS COMMITTING FINANCIAL EXPLOITATION OF AT-RISK ADULTS MAY BE PERSONS KNOWN TO THE AT-RISK ADULT OR STRANGERS PERPETRATING FRAUDULENT SCHEMES. THE GENERAL ASSEMBLY FURTHER FINDS THAT CERTAIN PERSONS ARE IN UNIQUE POSITIONS TO ACQUIRE EARLY KNOWLEDGE OF FINANCIAL EXPLOITATION BY NOTICING INDICATORS SUCH AS SUDDEN CHANGES IN BANK ACCOUNT ACTIVITY OR BANKING PRACTICES; UNEXPLAINED WITHDRAWALS OR ATYPICAL TRANSACTIONS INVOLVING WITHDRAWALS; ABRUPT CHANGES TO WILLS OR OTHER FINANCIAL DOCUMENTS, REQUESTED BY THE AT-RISK ADULT; THE SUDDEN APPEARANCE OF PREVIOUSLY UNINVOLVED RELATIVES CLAIMING A RIGHT TO THE AT-RISK ADULT'S AFFAIRS AND POSSESSIONS; AND UNEXPLAINED, SUDDEN TRANSFERS OF ASSETS TO A FAMILY MEMBER OF THE AT-RISK ADULT OR ANOTHER PERSON

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OUTSIDE OF THE AT-RISK ADULT'S FAMILY. THEREFORE, THE GENERAL ASSEMBLY FINDS AND DETERMINES THAT IT IS APPROPRIATE TO URGE CERTAIN PERSONS WHO MAY BE IN SUCH A UNIQUE POSITION TO OBSERVE SUCH INDICATORS TO REPORT KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AT-RISK ADULTS FOR THE PROTECTION OF AT-RISK ADULTS AND SOCIETY.

26-3.1-203. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AT-RISK ADULT" MEANS AN INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO IS SUSCEPTIBLE TO FINANCIAL EXPLOITATION BECAUSE THE INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR THE INDIVIDUAL'S HEALTH, SAFETY, OR WELFARE OR LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING THE INDIVIDUAL'S PERSON OR AFFAIRS.

(2) "CARETAKER" MEANS A PERSON WHO IS RESPONSIBLE FOR THE CARE OF AN AT-RISK ADULT AS A RESULT OF A FAMILY OR LEGAL RELATIONSHIP, INCLUDING, BUT NOT LIMITED TO, A CONSERVATOR OR A GUARDIAN OR A PERSON WITH A FIDUCIARY DUTY TO AN AT-RISK ADULT.

(3) "COUNTY DEPARTMENT" MEANS A COUNTY OR DISTRICT DEPARTMENT OF SOCIAL SERVICES.

(4) "FINANCIAL EXPLOITATION" MEANS THE ILLEGAL OR IMPROPER USE OF AN AT-RISK ADULT'S FINANCIAL RESOURCES FOR ANOTHER PERSON'S PROFIT OR ADVANTAGE.

(5) "FINANCIAL INSTITUTION" MEANS AN ORGANIZATION AUTHORIZED TO DO BUSINESS UNDER STATE OR FEDERAL LAWS PERTAINING TO FINANCIAL INSTITUTIONS AND INCLUDES, BUT IS NOT LIMITED TO, A BANK, TRUST COMPANY, BUILDING AND LOAN ASSOCIATION, SAVINGS AND LOAN COMPANY OR ASSOCIATION, AND CREDIT UNION.

(6) "PERSON" MEANS ONE OR MORE INDIVIDUALS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, ASSOCIATIONS, CORPORATIONS, LEGAL REPRESENTATIVES, TRUSTEES, RECEIVERS, OR THE STATE OF COLORADO, AND ALL POLITICAL SUBDIVISIONS AND AGENCIES THEREOF.

26-3.1-204. Reporting. (1) (a) ANY PERSON SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (1) WHO OBSERVES AN AT-RISK ADULT BEING SUBJECTED TO CIRCUMSTANCES OR CONDITIONS THAT MAY REASONABLY RESULT IN THE FINANCIAL EXPLOITATION OF THE AT-RISK ADULT OR WHO HAS REASONABLE CAUSE TO KNOW OR SUSPECT THAT AN AT-RISK ADULT HAS BEEN FINANCIALLY EXPLOITED IS STRONGLY URGED TO SUBMIT, WITHIN TWENTY-FOUR HOURS AFTER SUCH OBSERVATION OR AFTER OBTAINING SUCH REASONABLE CAUSE, AN ORAL REPORT OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION. SAID PERSON MAY SUBMIT THE REPORT TO THE COUNTY DEPARTMENT OF THE COUNTY IN WHICH THE AT-RISK ADULT RESIDES, IF KNOWN, OR, DURING NON-BUSINESS HOURS, TO THE LOCAL LAW ENFORCEMENT AGENCY FOR THE JURISDICTION IN WHICH THE AT-RISK ADULT RESIDES.

(b) THE FOLLOWING PERSONS ARE STRONGLY URGED TO REPORT KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AT-RISK ADULTS, AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (1):

(I) PHYSICIANS, SURGEONS, PHYSICIANS' ASSISTANTS, AND OSTEOPATHS, INCLUDING PHYSICIANS IN TRAINING;

(II) REGISTERED NURSES AND LICENSED PRACTICAL NURSES;

(III) HOSPITAL AND NURSING HOME PERSONNEL ENGAGED IN THE ADMISSION, CARE, OR TREATMENT OF PATIENTS;

(IV) DENTISTS;

(V) PSYCHOLOGISTS AND OTHER MENTAL HEALTH PROFESSIONALS;

(VI) SOCIAL WORK PRACTITIONERS;

(VII) LAW ENFORCEMENT OFFICIALS AND PERSONNEL;

(VIII) COURT-APPOINTED GUARDIANS AND CONSERVATORS;

(IX) PHARMACISTS;

(X) COMMUNITY-CENTERED BOARD STAFF;

(XI) PERSONNEL OF FINANCIAL INSTITUTIONS;

(XII) STATE AND LOCAL LONG-TERM CARE OMBUDSMEN;

(XIII) ANY CARETAKER, STAFF MEMBER, OR EMPLOYEE OF OR VOLUNTEER AT OR CONSULTANT FOR ANY LICENSED CARE FACILITY, OR NURSING FACILITY;

(XIV) ATTORNEYS, SO LONG AS SUCH REPORTING DOES NOT VIOLATE THE COLORADO RULES OF PROFESSIONAL CONDUCT.

(c) IN ADDITION TO THOSE PERSONS WHO ARE STRONGLY URGED UNDER PARAGRAPH (b) OF THIS SUBSECTION (1) TO REPORT KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT, ANY OTHER PERSON MAY REPORT SUCH KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT TO THE LOCAL LAW ENFORCEMENT AGENCY OR THE COUNTY DEPARTMENT OF THE JURISDICTION IN WHICH THE AT-RISK ADULT RESIDES. THE RECEIVING AGENCY SHALL PREPARE A WRITTEN REPORT WITHIN FORTY-EIGHT HOURS AFTER RECEIPT OF SUCH A REPORT.

(2) THE WRITTEN REPORT MADE BY A RECEIVING AGENCY PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION AT A MINIMUM SHALL INCLUDE:

(a) THE NAME AND ADDRESS OF THE AT-RISK ADULT;

(b) THE NAME AND ADDRESS OF THE AT-RISK ADULT'S CARETAKER, IF ANY;

- (c) THE AGE, IF KNOWN, OF SUCH AT-RISK ADULT;
- (d) THE NATURE AND EXTENT OF SUCH AT-RISK ADULT'S FINANCIAL INJURY, IF ANY;
- (e) THE NATURE AND EXTENT OF THE CONDITION OR CIRCUMSTANCE THAT IS LIKELY TO RESULT IN FINANCIAL EXPLOITATION; AND
- (f) ANY OTHER PERTINENT INFORMATION.

(3) A COPY OF THE WRITTEN REPORT PREPARED BY THE COUNTY DEPARTMENT IN ACCORDANCE WITH SUBSECTIONS (1) AND (2) OF THIS SECTION SHALL BE FORWARDED WITHIN TWENTY-FOUR HOURS AFTER RECEIPT OF AN ORAL REPORT MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE DISTRICT ATTORNEY'S OFFICE AND THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE AT-RISK ADULT RESIDES. A COPY OF THE WRITTEN REPORT PREPARED BY THE LOCAL LAW ENFORCEMENT AGENCY IN ACCORDANCE WITH SUBSECTIONS (1) AND (2) OF THIS SECTION SHALL BE FORWARDED WITHIN TWENTY-FOUR HOURS AFTER RECEIPT OF AN ORAL REPORT MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE COUNTY DEPARTMENT AND TO THE DISTRICT ATTORNEY'S OFFICE.

(4) NO PERSON, INCLUDING A PERSON SPECIFIED IN SUBSECTION (1) OF THIS SECTION, SHALL KNOWINGLY MAKE A FALSE REPORT OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION TO A COUNTY DEPARTMENT OR LOCAL LAW ENFORCEMENT AGENCY.

(5) ANY PERSON, EXCEPT A PERPETRATOR, COMPLICITOR, OR COCONSPIRATOR, WHO MAKES A REPORT PURSUANT TO THIS SECTION SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY ON ACCOUNT OF SUCH REPORT, TESTIMONY, OR PARTICIPATION IN MAKING SUCH REPORT, SO LONG AS SUCH ACTION WAS TAKEN IN GOOD FAITH AND NOT IN RECKLESS DISREGARD OF THE TRUTH OR IN VIOLATION OF SUBSECTION (4) OF THIS SECTION.

(6) NO PERSON SHALL TAKE ANY DISCRIMINATORY, DISCIPLINARY, OR RETALIATORY ACTION AGAINST ANY PERSON WHO, IN GOOD FAITH, MAKES A REPORT OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT.

(7) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (7), SUBSECTIONS (1), (2) AND (3) OF THIS SECTION, AND 26-3.1-205 (2), REPORTS OF THE KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT, INCLUDING THE NAME AND ADDRESS OF ANY AT-RISK ADULT, MEMBER OF SAID ADULT'S FAMILY, OR INFORMANT AND ANY OTHER IDENTIFYING INFORMATION CONTAINED IN SUCH REPORTS, SHALL BE CONFIDENTIAL AND SHALL NOT BE PUBLIC INFORMATION.

(b) DISCLOSURE OF THE NAME AND ADDRESS OF AN AT-RISK ADULT OR MEMBER OF SAID ADULT'S FAMILY OR OTHER IDENTIFYING INFORMATION CONTAINED IN A REPORT SHALL BE PERMITTED ONLY WHEN AUTHORIZED BY A COURT FOR GOOD CAUSE. THE COURT SHALL NOT PROHIBIT SUCH DISCLOSURE WHEN A CRIMINAL COMPLAINT, INFORMATION, OR INDICTMENT BASED ON THE REPORT IS FILED.

(c) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBSECTION (7) IS GUILTY OF A CLASS 2 PETTY OFFENSE AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED

BY A FINE OF NOT MORE THAN THREE HUNDRED DOLLARS.

26-3.1-205. Investigations of financial exploitation. (1) THE COUNTY DEPARTMENT OR LAW ENFORCEMENT AGENCY RECEIVING A REPORT OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT SHALL MAKE A THOROUGH INVESTIGATION IMMEDIATELY UPON RECEIPT OF THE REPORT. THE IMMEDIATE CONCERN OF THE INVESTIGATION SHALL BE THE FINANCIAL PROTECTION OF THE AT-RISK ADULT. THE INVESTIGATION, AT A MINIMUM, SHALL INCLUDE A FACE-TO-FACE INTERVIEW OF THE AT-RISK ADULT ALLEGED TO HAVE BEEN EXPLOITED. THE COUNTY DEPARTMENT SHALL ARRANGE FOR ITS INVESTIGATION TO BE CONDUCTED BY PERSONS TRAINED TO CONDUCT INVESTIGATIONS OF FINANCIAL EXPLOITATION OF AT-RISK ADULTS.

(2) IT IS THE GENERAL ASSEMBLY'S INTENT THAT, IN EACH COUNTY OF THE STATE, LAW ENFORCEMENT AGENCIES, COUNTY DEPARTMENTS, AND ANY OTHER AGENCIES RESPONSIBLE UNDER FEDERAL LAW OR THE LAWS OF THIS STATE TO INVESTIGATE EXPLOITATION OF AT-RISK ADULTS DEVELOP AND IMPLEMENT COOPERATIVE AGREEMENTS TO COORDINATE THE INVESTIGATIVE DUTIES OF THE AGENCIES AND THAT THE FOCUS OF SUCH AGREEMENTS SHALL BE TO ENSURE THE BEST FINANCIAL PROTECTION FOR AT-RISK ADULTS. THE AGREEMENTS SHALL PROVIDE FOR SPECIAL REQUESTS BY ONE AGENCY FOR ASSISTANCE FROM ANOTHER AGENCY AND FOR JOINT INVESTIGATIONS. THE AGREEMENTS SHALL FURTHER PROVIDE THAT EACH AGENCY SHALL MAINTAIN THE CONFIDENTIALITY OF THE FINANCIAL INFORMATION EXCHANGED PURSUANT TO SUCH JOINT INVESTIGATIONS.

(3) IT IS THE GENERAL ASSEMBLY'S FURTHER INTENT TO ENCOURAGE THE AT-RISK ADULT PROTECTION TEAMS CREATED PURSUANT TO SECTION 26-3.1-103 (3) TO EXPAND THEIR PURPOSES TO INCLUDE A REVIEW OF THE PROCESSES USED TO INVESTIGATE REPORTS OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AT-RISK ADULTS, A REVIEW OF THE PROVISION OF SERVICES, IF ANY, GIVEN TO SUCH ADULTS, AN ENCOURAGEMENT OF INTERAGENCY COOPERATION CONCERNING FUNCTIONS RELATED TO FINANCIAL EXPLOITATION OF AT-RISK ADULTS, AND A PROVISION OF COMMUNITY EDUCATION IN IDENTIFYING AND PREVENTING THE FINANCIAL EXPLOITATION OF AT-RISK ADULTS.

(4) NOTWITHSTANDING ANY PROVISION OF SECTION 24-72-204, C.R.S., OR SECTION 11-6-113, C.R.S., OR ANY OTHER APPLICABLE LAW, CONCERNING THE CONFIDENTIALITY OF FINANCIAL RECORDS, TO THE CONTRARY, AGENCIES INVESTIGATING THE FINANCIAL EXPLOITATION OF AN AT-RISK ADULT SHALL BE PERMITTED TO INSPECT ALL RECORDS OF THE AT-RISK ADULT ON WHOSE BEHALF THE INVESTIGATION IS BEING CONDUCTED, INCLUDING THE AT-RISK ADULT'S FINANCIAL RECORDS, UPON WRITTEN CONSENT OF THE AT-RISK ADULT.

26-3.1-206. Informed consent form. UPON REQUEST, A FINANCIAL INSTITUTION SHALL OFFER ANY ADULT OVER THE AGE OF SIXTY OR ANY AT-RISK ADULT WITH AN ACCOUNT AT SUCH INSTITUTION THE OPTION OF SIGNING AN INFORMED CONSENT FORM PRIOR TO ANY REPORT OF FINANCIAL EXPLOITATION, FOR PLACEMENT IN THE ACCOUNT HOLDER'S FILE OR RECORD MAINTAINED BY THE FINANCIAL INSTITUTION. THE INFORMED CONSENT FORM SHALL WAIVE CONFIDENTIALITY LIMITATIONS RELATED TO AN ACCOUNT HOLDER'S FINANCIAL RECORDS MAINTAINED AT THE FINANCIAL INSTITUTION FOR THE LIMITED PURPOSE OF ALLOWING THE FINANCIAL

INSTITUTION, THE COUNTY DEPARTMENT, AND A LOCAL LAW ENFORCEMENT AGENCY ACCESS TO THE ACCOUNT HOLDER'S RECORDS FOR THE LIMITED PURPOSE OF INVESTIGATING KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT.

26-3.1-207. Training. THE GENERAL ASSEMBLY STRONGLY ENCOURAGES TRAINING THAT FOCUSES ON DETECTING FINANCIAL EXPLOITATION, CONSISTENT WITH THE IDENTIFIERS OF FINANCIAL EXPLOITATION STATED IN SECTION 26-3.1-202, FOR THOSE PERSONS WHO ARE URGED BY SECTION 26-3.1-204 (1) TO REPORT KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN AT-RISK ADULT AND CIRCUMSTANCES OR CONDITIONS THAT MIGHT REASONABLY RESULT IN FINANCIAL EXPLOITATION OF AN AT-RISK ADULT.

26-3.1-208. Rules. THE STATE BOARD OF HUMAN SERVICES SHALL PROMULGATE RULES FOR THE IMPLEMENTATION OF THIS PART 2.

SECTION 2. 26-3.1-101 (4) (c), Colorado Revised Statutes, is amended to read:

26-3.1-101. Definitions. As used in this article, unless the context otherwise requires:

(4) "Mistreatment" means an act or omission which threatens the health, safety, or welfare of an at-risk adult, as such term is defined in subsection (1) of this section, or which exposes the adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the adult. "Mistreatment" includes, but is not limited to:

(c) Exploitation which is the illegal or improper use of an at-risk adult ~~or the at-risk adult's resources~~ for another person's ~~profit~~ or advantage.

SECTION 3. Effective date - applicability. (1) This act shall take effect January 1, 2001, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Approved: May 26, 2000