

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2741 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Collin Duel

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE
FOR

HOUSE BILL NO. 2741

By: Duel

FLOOR SUBSTITUTE

An Act relating to mental health; creating Neil's Law; enacting the Oklahoma Elder Exploitation and Abuse Act; declaring purpose and intent; defining terms; providing that civil actions may be filed in certain situations; providing venue provisions; providing relief that may be granted; providing who may bring a claim; authorizing the court to grant access to certain records; providing that claim survives death of vulnerable adult; providing that certain privileged relationships are not grounds for excluding evidence; providing for noncodification; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as "Neil's Law".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-101 of Title 43A, unless there is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma Elder
2 Exploitation and Abuse Act".

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 14-102 of Title 43A, unless
5 there is created a duplication in numbering, reads as follows:

6 A. The purpose of the Oklahoma Elder Exploitation and Abuse Act
7 is to promote the general welfare of all citizens by establishing a
8 civil action for incapacitated persons and vulnerable adults which
9 provides for the protection of their rights and affords them a right
10 of civil action against those who neglect, exploit, or abuse them.

11 B. The purpose of the Oklahoma Elder Exploitation and Abuse Act
12 is to allow incapacitated persons and vulnerable adults, through
13 their legal representatives, to pursue claims against persons who
14 neglect, exploit, or abuse the incapacitated person or vulnerable
15 adult if he or she lacks the capacity to pursue such claims on his
16 or her own behalf.

17 C. The Oklahoma Elder Exploitation and Abuse Act does not
18 preclude an individual's mandatory responsibility to report to Adult
19 Protective Services or law enforcement if there is reasonable cause
20 to believe a vulnerable adult is being abused, neglected, or
21 exploited.

22 D. It is the intent of the Oklahoma State Legislature:

23 1. That the district court shall exercise the authority
24 conferred by the Oklahoma Elder Exploitation and Abuse Act to

1 encourage the development of maximum self-reliance and independence
2 of incapacitated persons and vulnerable adults and make appointive
3 and other orders only to the extent necessitated by the mental and
4 adaptive limitations of other conditions of the incapacitated or
5 partially incapacitated person warranting the action; and

6 2. That in performing their duties and exercising their powers,
7 legal representatives bringing claims under this act for
8 incapacitated persons and vulnerable adults shall:

9 a. Assure, to the extent reasonably possible, that the
10 rights of the persons for whom they are appointed are
11 protected, and

12 b. Encourage, to the extent reasonably possible,
13 incapacitated persons and vulnerable adults to
14 participate to the maximum extent of their abilities
15 in all decisions which affect them concerning the
16 claims afforded them under this act.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 14-103 of Title 43A, unless
19 there is created a duplication in numbering, reads as follows:

20 A. When used in the Oklahoma Elder Exploitation and Abuse Act:

21 1. "Incapacitated person" means:

22 a. any person eighteen (18) years of age or older:

23 (1) who is impaired by reason of mental or physical
24 illness or disability, dementia or related

disease, developmental or intellectual disability
or other cause, and

(2) whose ability to receive and evaluate information
effectively or to make and to communicate
responsible decisions is impaired to such an
extent that such person lacks the capacity to
manage his or her financial resources or to meet
essential requirements for his or her mental or
physical health or safety without assistance from
others, or

b. a person for whom a guardian, limited guardian, or
conservator has been appointed pursuant to the
Oklahoma Guardianship and Conservatorship Act;

2. "Vulnerable adult" means an individual who is an
incapacitated person or who, because of physical or mental
disability, including persons with Alzheimer's disease or other
dementias, incapacity, or other disability, is substantially
impaired in the ability to provide adequately for the care or
custody of himself or herself, or is unable to manage his or her
property and financial affairs effectively, or to meet essential
requirements for mental or physical health or safety, or to protect
himself or herself from abuse, neglect, or exploitation without
assistance from others;

3. "Caretaker" means a person who has:

- a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
- b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act;

4. "Abuse" means causing or permitting:

- a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, mental anguish or personal degradation, or
- b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult;

5. "Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

1 6. "Financial neglect" means repeated instances by a caretaker,
2 or other person, who has assumed the role of financial management,
3 of failure to use the resources available to restore or maintain the
4 health and physical well-being of a vulnerable adult, including, but
5 not limited to:

6 a. squandering or negligently mismanaging the money,
7 property, or accounts of a vulnerable adult,

8 b. refusing to pay for necessities or utilities in a
9 timely manner, or

10 c. providing substandard care to a vulnerable adult
11 despite the availability of adequate financial
12 resources;

13 7. "Neglect" means:

14 a. the failure to provide protection for a vulnerable
15 adult who is unable to protect his or her own
16 interest,

17 b. the failure to provide a vulnerable adult with
18 adequate shelter, nutrition, health care, or clothing,
19 or

20 c. negligent acts or omissions that result in harm or the
21 unreasonable risk of harm to a vulnerable adult
22 through the action, inaction, or lack of supervision
23 by a caretaker providing direct services;
24

1 8. "Personal degradation" means a willful act by a caretaker
2 intended to shame, degrade, humiliate or otherwise harm the personal
3 dignity of a vulnerable adult, or where the caretaker knew or
4 reasonably should have known the act would cause shame, degradation,
5 humiliation or harm to the personal dignity of a reasonable person.
6 Personal degradation includes the taking, transmitting, or display
7 of an electronic image of a vulnerable adult by a caretaker, where
8 the caretaker's actions constitute a willful act intended to shame,
9 degrade, humiliate or otherwise harm the personal dignity of the
10 dependent adult, or where the caretaker knew or reasonably should
11 have known the act would cause shame, degradation, humiliation or
12 harm to the personal dignity of a reasonable person. Personal
13 degradation does not include:

- 14 a. the taking, transmission or display of an electronic
15 image of a vulnerable adult for the purpose of
16 reporting vulnerable adult abuse to law enforcement,
17 the Department of Human Services or other regulatory
18 agency that oversees caretakers or enforces abuse or
19 neglect laws or rules,
- 20 b. the taking, transmission or display of an electronic
21 image of a vulnerable adult for the purpose of
22 treatment or diagnosis, or

1 c. the taking, transmission or display of an electronic
2 image of a vulnerable adult as part of an ongoing
3 investigation;

4 9. "Sexual abuse" means:

5 a. oral, anal, or vaginal penetration of a vulnerable
6 adult by or through the union with the sexual organ of
7 a caretaker or other person providing services to the
8 vulnerable adult, or the anal or vaginal penetration
9 of a vulnerable adult by a caretaker or other person
10 providing services to the vulnerable adult with any
11 other object, or

12 b. for the purpose of sexual gratification, the touching,
13 feeling or observation of the body or private parts of
14 a vulnerable adult by a caretaker or other person
15 providing services to the vulnerable adult, or

16 c. indecent exposure by a caretaker or other person
17 providing services to the vulnerable adult;

18 10. "Indecent exposure" means forcing or requiring a vulnerable
19 adult to:

20 a. look upon the body or private parts of another person
21 or upon sexual acts performed in the presence of the
22 vulnerable adult, or

23 b. touch or feel the body or private parts of another;
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1 11. "Sexual exploitation" includes, but is not limited to, a
2 caretaker's causing, allowing, permitting or encouraging a
3 vulnerable adult to engage in prostitution or in the lewd, obscene,
4 or pornographic photographing, filming or depiction of the
5 vulnerable adult as those acts are defined by state law; and

6 12. "Verbal abuse" means the use of words, sounds, or other
7 communication including, but not limited to, gestures, actions or
8 behaviors, by a caretaker or other person providing services to a
9 vulnerable adult that are likely to cause a reasonable person to
10 experience humiliation, intimidation, fear, shame or degradation.

11 B. Nothing in this section shall be construed to mean a
12 vulnerable adult is abused or neglected for the sole reason the
13 vulnerable adult, in good faith, selects and depends upon spiritual
14 means alone through prayer, in accordance with the practices of a
15 recognized religious method of healing, for the treatment or cure of
16 disease or remedial care, or a caretaker or other person
17 responsible, in good faith, is furnishing such vulnerable adult
18 spiritual means alone through prayer, in accordance with the tenets
19 and practices of a recognized church or religious denomination, for
20 the treatment or cure of disease or remedial care in accordance with
21 the practices of or express consent of the vulnerable adult.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 14-104 of Title 43A, unless
24 there is created a duplication in numbering, reads as follows:

1 A. A claim for elder neglect, exploitation, or abuse, as
2 prescribed in this section, may be brought in any district court
3 within the county in the State of Oklahoma in which the vulnerable
4 adult lives or maintains his or her residence or was living at the
5 time of the act or omission giving rise to the claim.

6 B. A person who commits neglect or financial neglect against a
7 vulnerable adult, proven by a preponderance of the evidence, shall
8 be liable for actual damages in an amount that compensates the
9 vulnerable adult for the loss he or she has incurred as a result
10 thereof and shall be liable for punitive damages as Oklahoma law
11 otherwise allows.

12 C. A person who commits exploitation or abuse of a vulnerable
13 adult, proven by a preponderance of the evidence, shall be liable
14 for damages three (3) times the actual damages incurred by the
15 vulnerable adult as a result thereof and shall be liable for
16 punitive damages as Oklahoma law otherwise allows.

17 D. The prevailing party in the claims prescribed in subsections
18 B and C of this section shall be entitled to recover reasonable
19 attorney fees and costs.

20 E. The claims prescribed in this section shall follow and
21 otherwise be subject to the general laws governing civil claims
22 under Oklahoma law, including, without limitation, the provisions
23 found in Titles 12 and 23 of the Oklahoma Statutes.

1 F. The claims provided for by this section may be brought by
2 the vulnerable adult or on behalf of the vulnerable adult by his or
3 her guardian, limited guardian, conservator, agent under an
4 appropriate power of attorney, duly appointed representative of the
5 estate of the vulnerable adult, if deceased, or other legal
6 representative approved by the court.

7 G. In addition to any other documents or records to which the
8 vulnerable adult or his or her legal representative may be entitled
9 in pursuit of the claim or claims prescribed in this section, the
10 court may authorize or direct the vulnerable adult and his or her
11 legal representative access to and copies of financial, legal,
12 mental health, and physical health records of the vulnerable adult
13 in the possession of any physician, hospital, other health care
14 provider, firm, financial institution, lawyer, accountant,
15 counselor, broker, caregiver, corporation, other business entity, or
16 other facility or party. These records, upon order of the court,
17 shall be produced within ten (10) days, unless the court orders a
18 shorter time, and the records shall not be disclosed for any purpose
19 other than the purpose for which they have been obtained.

20 H. The claims provided for in this section survive the death of
21 the vulnerable adult.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 14-105 of Title 43A, unless
24 there is created a duplication in numbering, reads as follows:

1 The district court in which a claim authorized in this act is
2 filed may, upon proper application, issue a restraining order or
3 other injunctive relief to prohibit any further violation of this
4 act, regardless of the existence of any other remedy at law and in
5 addition thereto.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 14-106 of Title 43A, unless
8 there is created a duplication in numbering, reads as follows:

9 Subject to a specific court order, the physician-patient
10 privilege nor spousal privilege shall be grounds for excluding
11 evidence regarding the neglect, exploitation, or abuse of a
12 vulnerable adult or the cause thereof in any judicial proceeding
13 arising under this act.

14 SECTION 8. This act shall become effective November 1, 2023.

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