

ADULT PROTECTIVE SERVICES**AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Patricia W. Jones

This act repeals and reenacts Part 3, Abuse, Neglect, or Exploitation of Disabled Adult, of the Human Services Code. The act also amends the Utah Criminal Code. The act revises and clarifies the definition of certain terms and adds definitions for certain other terms. The act sets forth the purposes, powers, and duties of Adult Protective Services. The act modifies the mandatory reporting law and adds penalties for obstructing investigations and for threatening or intimidating reporters, victims, or witnesses. The act clarifies who may have access to reports and information in the possession of Adult Protective Services. The act provides notification and due process for a person identified as a perpetrator in a "substantiated" case of abuse, neglect, or exploitation, for employment and licensing purposes. The act provides that a vulnerable adult victim of abuse, neglect, or exploitation has a private right of action against the perpetrator and may also may recover attorneys fees and costs from the perpetrator. If exploitation occurred at a time when the vulnerable adult was an incapacitated person, or as the result of the misuse of a fiduciary power, the act provides that the perpetrator is liable for \$1,000 or actual treble damages, whichever is greater. The act clarifies provisions regarding various petitions that can be filed in district court by Adult Protective Services in behalf of vulnerable adults. The act clarifies that information and records relating to investigations by Adult Protective Services are protected records under Title 63, Chapter 2, Government Records Access and Management Act.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-2-304, as last amended by Chapters 232 and 335, Laws of Utah 2000

76-5-111, as last amended by Chapter 289, Laws of Utah 1997



28 ENACTS:

29 **62A-3-313**, Utah Code Annotated 1953

30 **62A-3-314**, Utah Code Annotated 1953

31 **62A-3-315**, Utah Code Annotated 1953

32 **62A-3-316**, Utah Code Annotated 1953

33 **62A-3-317**, Utah Code Annotated 1953

34 **62A-3-318**, Utah Code Annotated 1953

35 **62A-3-319**, Utah Code Annotated 1953

36 **62A-3-320**, Utah Code Annotated 1953

37 **62A-3-321**, Utah Code Annotated 1953

38 **62A-3-322**, Utah Code Annotated 1953

39 **62A-3-323**, Utah Code Annotated 1953

40 REPEALS AND REENACTS:

41 **62A-3-301**, as last amended by Chapter 43, Laws of Utah 2001

42 **62A-3-302**, as last amended by Chapter 130, Laws of Utah 1996

43 **62A-3-303**, as last amended by Chapter 130, Laws of Utah 1996

44 **62A-3-304**, as last amended by Chapter 43, Laws of Utah 2001

45 **62A-3-305**, as last amended by Chapter 130, Laws of Utah 1996

46 **62A-3-306**, as last amended by Chapter 39, Laws of Utah 1998

47 **62A-3-307**, as last amended by Chapter 130, Laws of Utah 1996

48 **62A-3-308**, as last amended by Chapter 130, Laws of Utah 1996

49 **62A-3-309**, as last amended by Chapter 130, Laws of Utah 1996

50 **62A-3-311**, as last amended by Chapters 130 and 248, Laws of Utah 1996

51 **62A-3-312**, as last amended by Chapter 130, Laws of Utah 1996

52 *Be it enacted by the Legislature of the state of Utah:*

53 Section 1. Section **62A-3-301** is repealed and reenacted to read:

54 **Part 3. Abuse, Neglect, or Exploitation of Vulnerable Adults**

55 **62A-3-301. Definitions.**

56 As used in this part:

57 (1) "Abandonment" means any knowing or intentional action or inaction, including
58 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the

59 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, medical,
60 or other health care.

61 (2) "Abuse" means:

62 (a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or
63 knowingly placing another in fear of imminent harm;

64 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
65 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders
66 or used as an unauthorized substitute for treatment, unless that conduct furthers the health and
67 safety of the adult;

68 (c) emotional or psychological abuse;

69 (d) sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

70 (e) deprivation of life sustaining treatment, except:

71 (i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

72 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

73 (3) "Adult" means a person who is 18 years of age or older.

74 (4) "Adult protection case file" means documents and information contained in the file
75 maintained by Adult Protective Services on a particular case, including any report or other
76 notification received by the division or Adult Protective Services.

77 (5) "Adult Protective Services" means the unit within the division responsible to
78 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective
79 services.

80 (6) "Caretaker" means any person, entity, corporation, or public institution that assumes
81 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,
82 medical or other health care, or other necessities. "Caretaker" includes a relative by blood or
83 marriage, a household member, a person who is employed or who provides volunteer work, or a
84 person who contracts or is under court order to provide care.

85 (7) "Counsel" means an attorney licensed to practice law in this state.

86 (8) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

87 (9) "Elder adult" means a person 65 years of age or older.

88 (10) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
89 risk of death or serious physical injury or is at risk of immediate, serious harm. Risk of immediate,

90 serious harm includes exploitation that results in the inability of a vulnerable adult to provide funds
91 for immediate needs, including food, shelter, and necessary medical care.

92 (11) "Emotional or psychological abuse" means intentional or knowing verbal or nonverbal
93 conduct directed at a vulnerable adult including ridiculing, intimidating, yelling, swearing,
94 threatening, isolating, coercing, harassing, or other forms of intimidating behavior that results or
95 could result in the vulnerable adult suffering mental anguish or emotional distress, including fear,
96 humiliation, degradation, agitation, confusion, or isolation.

97 (12) "Exploitation" means the offense described in Subsection 76-5-111(4).

98 (13) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
99 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
100 knowingly or intentionally.

101 (14) "Information System" has the meaning described in Section 62A-3-306.

102 (15) "Intimidation" means communication through verbal or nonverbal conduct which
103 threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision,
104 health care, or companionship, or which threatens isolation or abuse.

105 (16) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from
106 having contact with another person by:

107 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
108 contrary to the express wishes of the vulnerable adult, including communicating to a visitor that
109 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that
110 communication to be false;

111 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from
112 meeting with a visitor; or

113 (iii) making false or misleading statements to the vulnerable adult in order to induce the
114 vulnerable adult to refuse to receive communication from visitors or other family members.

115 (b) The term "isolation" does not include an act intended to protect the physical or mental
116 welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions
117 of a physician or other professional advisor of the vulnerable adult.

118 (17) "Lacks capacity to consent" has the meaning as provided in Section 76-5-111.

119 (18) "Licensing Information System" has the meaning described in Section 62A-3-307.

120 (19) "Neglect" means:

121 (a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
122 care, or dental, medical or other health care; or

123 (ii) failure to provide protection from health and safety hazards or maltreatment;

124 (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with
125 the degree of care that a reasonable person in a like position would exercise;

126 (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent,
127 resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other
128 services necessary to maintain the vulnerable adult's well being;

129 (d) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan
130 that causes or is likely to cause harm to the vulnerable adult;

131 (e) self-neglect by the vulnerable adult; or

132 (f) abandonment by a caretaker.

133 (20) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic
134 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a
135 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be
136 restored to a sound and healthy condition. Physical injury includes skin bruising, a dislocation,
137 physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition,
138 dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any
139 internal organ, or any other physical condition that imperils the health or welfare of a vulnerable
140 adult and is not a serious physical injury as defined in this section.

141 (21) "Protected person" means a vulnerable adult for whom the court has ordered
142 protective services, including a vulnerable adult for whom emergency protective services have
143 been established under the provisions of this chapter.

144 (22) "Protective services" means any services provided by Adult Protective Services to a
145 vulnerable adult, either with the consent of the vulnerable adult or the vulnerable adult's guardian,
146 or by court order, if that adult has been abused, neglected, exploited, or is in a state of self-neglect;
147 protective services may include:

148 (a) an intake system for receiving and screening reports;

149 (b) investigation of referrals in accordance with statutory and policy guidelines;

150 (c) protective needs assessment;

151 (d) coordination and referral to community resources for services; or

152 (e) short-term, limited services including emergency shelter or respite when family or other
153 community resources are not available to provide protection.

154 (23) "Self-neglect" means the failure of a vulnerable adult to provide food, water,
155 medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain
156 the vulnerable adult's well being when that failure is the result of the adult's mental or physical
157 impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of
158 self-neglect.

159 (24) "Serious physical injury" has the meaning as provided in Section 76-5-111.

160 (25) "Substantiated" or "substantiation" means a finding, based upon a preponderance of
161 the evidence, that there is a reasonable basis to conclude that abuse, neglect, or exploitation
162 occurred, regardless of whether there is an identified perpetrator or current need for protective
163 services. If more than one allegation is made or identified during the course of the investigation,
164 any allegation determined to meet the criteria for substantiation requires a case finding of
165 "substantiated."

166 (26) "Undue influence" occurs when a person uses the person's role, relationship, or power
167 to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a
168 vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over
169 the decision making of the vulnerable adult.

170 (27) "Unsubstantiated" means a finding, based upon a preponderance of the evidence, that
171 there is insufficient evidence to conclude that abuse, neglect, or exploitation occurred.

172 (28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical
173 impairment which substantially affects that person's ability to:

174 (a) provide personal protection;

175 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

176 (c) obtain services necessary for health, safety, or welfare;

177 (d) carry out the activities of daily living;

178 (e) manage the adult's own resources; or

179 (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect,
180 or exploitation.

181 Section 2. Section **62A-3-302** is repealed and reenacted to read:

182 **62A-3-302. Presumption of harm.**

183 In instances of abuse of a vulnerable adult who is unable to express or demonstrate that the
184 adult has been harmed, the abuse is presumed to have caused harm.

185 Section 3. Section **62A-3-303** is repealed and reenacted to read:

186 **62A-3-303. Purpose of Adult Protective Services Program.**

187 Adult Protective Services shall investigate or cause to be investigated reports of alleged
188 abuse, neglect, or exploitation of vulnerable adults occurring in all settings and, where appropriate,
189 shall provide short-term, limited protective services with the permission of the affected vulnerable
190 adult or the guardian of the vulnerable adult. The division may promulgate rules and develop
191 procedures and policies to be used in reporting incidents of abuse, neglect, or exploitation, and in
192 investigating and providing protective services to the extent that funds are appropriated by the
193 Legislature.

194 Section 4. Section **62A-3-304** is repealed and reenacted to read:

195 **62A-3-304. Powers and duties of Adult Protective Services.**

196 (1) In addition to all other powers and duties that Adult Protective Services is given under
197 this part, Adult Protective Services:

198 (a) shall have access to facilities licensed by or contracting with either the department or
199 the Department of Health for the purpose of conducting investigations;

200 (b) has authority to receive, upon request, written statements, documents, exhibits, and
201 other items pertinent to an investigation including medical or financial records of a vulnerable
202 adult who is the subject of an investigation when:

203 (i) a release of information is provided by the vulnerable adult who does not lack capacity
204 to consent; or

205 (ii) a vulnerable adult lacks the capacity to consent, and an administrative subpoena has
206 been issued through Adult Protective Services;

207 (c) has authority to institute proceedings in a court of competent jurisdiction to seek relief
208 necessary to carry out the provisions of this chapter;

209 (d) has authority to require all persons, including family members of a vulnerable adult and
210 any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this
211 chapter including conducting investigations and providing protective services;

212 (e) may require all officials, agencies, departments, and political subdivisions of the state
213 to assist and cooperate within their jurisdictional power with the court, the division, and Adult

214 Protective Services in furthering the purposes of this chapter;

215 (f) may conduct studies and compile data regarding abuse, neglect and exploitation; and

216 (g) may issue reports and recommendations.

217 (2) A caretaker, facility, or other institution or person may not use its own confidentiality

218 standards as a basis for failure to:

219 (a) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this

220 chapter;

221 (b) cooperate with any Adult Protective Services investigation;

222 (c) provide Adult Protective Services with access to records or documents relating to the

223 vulnerable adult who is the subject of an investigation; or

224 (d) provide evidence in any judicial or administrative proceeding relating to a vulnerable

225 adult who is the subject of an investigation.

226 Section 5. Section **62A-3-305** is repealed and reenacted to read:

227 **62A-3-305. Reporting requirements.**

228 (1) Any person who has reason to believe that any vulnerable adult has been the subject

229 of abuse, neglect, or exploitation, shall immediately notify Adult Protective Services intake or the

230 nearest law enforcement agency. When the initial report is made to law enforcement, law

231 enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services

232 and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the

233 vulnerable adult.

234 (2) When the initial report or subsequent investigation by Adult Protective Services

235 indicates that a criminal offense may have occurred against a vulnerable adult, it shall notify the

236 nearest local law enforcement agency. That law enforcement agency shall initiate an investigation

237 in cooperation with Adult Protective Services.

238 (3) Anyone who in good faith makes a report or otherwise notifies a law enforcement

239 agency, the division, or Adult Protective Services of suspected abuse is immune from civil and

240 criminal liability in connection with the report or other notification.

241 (4) Any person who willfully fails to report suspected abuse, neglect, or exploitation of

242 a vulnerable adult is guilty of a class B misdemeanor.

243 (5) Under circumstances not amounting to a violation of Section 76-8-508, a person who

244 threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report,

245 a witness, the person who made the report, or any other person cooperating with an investigation
246 conducted pursuant to this chapter is guilty of a class B misdemeanor.

247 (6) The physician-patient privilege does not constitute grounds for excluding evidence
248 regarding a vulnerable adult's injuries, or the cause of those injuries, in any judicial or
249 administrative proceeding resulting from a report made in good faith pursuant to this part.

250 Section 6. Section **62A-3-306** is repealed and reenacted to read:

251 **62A-3-306. Adult protective services Information System.**

252 (1) The division shall maintain an Information System based on reports of vulnerable adult
253 abuse, neglect, or exploitation.

254 (2) The Information System shall include:

255 (a) the initial report information received under Section 62A-3-305;

256 (b) the name and identifying information regarding the abused, neglected, or exploited
257 vulnerable adult;

258 (c) information regarding whether or not the abuse, neglect, or exploitation was
259 substantiated or unsubstantiated;

260 (d) information regarding the alleged perpetrator; and

261 (e) any other information that may be helpful in furthering the purposes of this part, as
262 determined by the division.

263 (3) The records and information contained in the Information System are protected records
264 under Title 63, Chapter 2, Government Records Access and Management Act. However,
265 notwithstanding the provisions of Title 63, Chapter 2, Government Records Access and
266 Management Act, information and records contained in the Information System and in the adult
267 protection case file are not open to public inspection. Pertinent parts of the Information System
268 and the adult protection case file shall be made available to law enforcement agencies, the attorney
269 general's office, and county or district attorney's offices and may be made available, at the
270 discretion of the division, to:

271 (a) subjects of a report as follows:

272 (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or
273 that adult's attorney or legal guardian; and

274 (ii) a person identified in a report as having abused, neglected, or exploited a vulnerable
275 adult, or that person's attorney; and

- 276 (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:
277 (i) an employee of the department who is responsible for the evaluation or assessment of
278 an adult protection case file;
279 (ii) a multidisciplinary team approved by the division to assist Adult Protective Services
280 in the evaluation, assessment, and disposition of a vulnerable adult case;
281 (iii) an authorized person or agency providing services to or responsible for the care,
282 treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when
283 in the opinion of the division that information will assist in the protection of or provide other
284 benefits to the victim;
285 (iv) a licensing authority for a facility, program, or person providing care to a victim
286 named in a report;
287 (v) the person or entity that reported the abuse, neglect, or exploitation, as considered
288 necessary on an individual case basis by the division; and
289 (vi) legally authorized protection and advocacy agencies when they represent a victim or
290 have been requested by the division to assist on a case.

291 Section 7. Section **62A-3-307** is repealed and reenacted to read:

292 **62A-3-307. Licensing Information System.**

- 293 (1) Adult Protective Services shall maintain, as a subpart of the Information System
294 described in Section 62A-3-306, information to be used solely for licensing purposes. The
295 Licensing Information System shall contain substantiated findings of the specific types of
296 vulnerable adult abuse, neglect, or exploitation, described in Subsection (4), after notice and an
297 opportunity to challenge have been provided under Section 62A-3-308.
298 (2) In addition to persons who have received a notice of substantiation by Adult Protective
299 Services and have had an opportunity to challenge that substantiation, the Licensing Information
300 System may also contain the name of a person who:
301 (a) was not sent a notice of substantiation by Adult Protective Services because that
302 person's location was not available on the Information System;
303 (b) was sent a notice of substantiation that was returned to the division or to Adult
304 Protective Services as undeliverable, in order to alert the division of the need to afford that person
305 an opportunity to challenge the finding of vulnerable adult abuse, neglect, or exploitation before
306 any adverse action would be taken, beyond delaying the person's licensing application; or

307 (c) has any criminal conviction with regard to, or has entered a guilty plea related to,
308 neglect, physical abuse, sexual abuse, or exploitation of any person.

309 (3) The Licensing Information System shall only be accessible to:

310 (a) the department's Office of Licensing, in order to determine whether an employee of the
311 department or a person associated with a licensed provider of services who provides direct care
312 to vulnerable adults has a substantiated finding of abuse, neglect, or exploitation relevant to the
313 employment activities of that person;

314 (b) the Bureau of Licensing within the Department of Health, as provided in Section
315 26-21-9.5, in order to determine whether a person associated with a covered health care facility
316 that provides direct care to vulnerable adults has a substantiated finding of vulnerable adult abuse,
317 neglect, or exploitation if identification as a possible perpetrator is relevant to the employment
318 activities of that person; and

319 (c) the Division of Occupational and Professional Licensing, when the person has applied
320 to, or is licensed by, that division.

321 (4) (a) For purposes of the Licensing Information System only, the term "substantiated"
322 requires a finding that there is a preponderance of evidence to conclude that a person with the
323 mental capacity to be employed as a caregiver or employee of any agency serving vulnerable adults
324 has committed one or more of the following specific, limited types of vulnerable adult abuse,
325 neglect, or exploitation:

326 (i) physical injury or serious physical injury;

327 (ii) neglect, not including self-neglect, resulting in serious physical injury or physical
328 injury;

329 (iii) exploitation; or

330 (iv) a sexual offense, as described in Title 76, Chapter 5, Offenses Against the Person.

331 (b) For purposes of the Licensing Information System only, the term "substantiated" does
332 not include:

333 (i) a person's conduct that:

334 (A) is justified under Section 76-2-401;

335 (B) constituted the use of reasonable and necessary physical restraint or force in
336 self-defense, or that was otherwise appropriate to the circumstances to obtain possession of a
337 weapon or other dangerous object in the possession of or under the control of an adult; or

338 (C) was reasonable and necessary to protect the vulnerable adult or another person from
339 physical injury; or

340 (ii) failure to administer prescribed or recommended medication or to follow a course of
341 treatment prescribed or recommended by a health care provider, as defined in Section 78-14-3.

342 (c) Subsection (4)(b)(ii) does not apply in circumstances where a delay in the prescribed
343 or recommended medical treatment may result in death, permanent loss of body function, or
344 significant physical or mental impairment of the vulnerable adult. Additionally, if Adult Protective
345 Services has reason to believe that any person is making medical recommendations to a vulnerable
346 adult concerning the administration of medication, and that person is not licensed as a health care
347 provider, as defined in Section 78-14-3, Adult Protective Services may report that person to the
348 appropriate licensing authority.

349 Section 8. Section **62A-3-308** is repealed and reenacted to read:

350 **62A-3-308. Opportunity to challenge a finding of vulnerable adult abuse, neglect, or**
351 **exploitation for licensing purposes.**

352 (1) (a) The division or Adult Protective Services shall send a written notice of agency
353 action under Section 63-46b-3, by certified mail, of its finding of substantiation to a person, if at
354 the conclusion of an investigation the opinion of Adult Protective Services is that there is a
355 preponderance of evidence to conclude that the person committed any one or more of the specific,
356 limited types of vulnerable adult abuse, neglect, or exploitation described in Subsection
357 62A-3-307(4) that would be included in the Licensing Information System.

358 (b) If the alleged perpetrator is under the age of 18, the division or Adult Protective
359 Services shall:

360 (i) make reasonable efforts to identify and locate the alleged perpetrator's parent or
361 guardian; and

362 (ii) send a written notice to each parent or guardian identified and located under
363 Subsection (1)(b)(i) who lives at a different address, unless there is good cause, as defined by rule,
364 for not sending a notice to that parent or guardian.

365 (c) Nothing in this section may be construed as affecting:

366 (i) the manner in which the division or Adult Protective Services conducts an
367 investigation; or

368 (ii) the use or effect, in any other setting, of:

369 (A) an initial finding of substantiation of vulnerable adult abuse, neglect, or exploitation
370 at the completion of an investigation; or

371 (B) the term "substantiated" as used in any other provision of the code.

372 (2) The written notice described in Subsection (1) shall comply under Section 63-46b-3
373 and shall also state that:

374 (a) Adult Protective Services has conducted an investigation regarding vulnerable adult
375 abuse, neglect, or exploitation;

376 (b) Adult Protective Services found, at the conclusion of the investigation, that there was,
377 in the opinion of the division, a preponderance of evidence to conclude that one or more specific
378 types of vulnerable adult abuse, neglect, or exploitation occurred;

379 (c) facts gathered by the division support that finding;

380 (d) without a successful challenge carried out pursuant to the terms of this section the
381 person receiving the notice may be disqualified from adopting a child or working for or being
382 licensed by:

383 (i) the department;

384 (ii) a human services licensee;

385 (iii) a child or adult care provider or program; and

386 (iv) a covered licensed health care facility as defined in Section 26-21-9.5;

387 (e) the alleged perpetrator has the right to request:

388 (i) a copy of the division's finding; and

389 (ii) an opportunity to challenge the division's finding; and

390 (f) failure to request an opportunity to challenge the finding within 30 days of the date the
391 notice was mailed will result in an unappealable finding of substantiation of vulnerable adult
392 abuse, neglect, or exploitation, unless the alleged perpetrator can show good cause for why
393 compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

394 (3) (a) An alleged perpetrator may make a request to challenge a finding of substantiation
395 within 30 days of:

396 (i) the mailing date of the written notice under this section;

397 (ii) a finding by a court of competent jurisdiction, based on the same underlying facts
398 which the division relied upon in making a finding of substantiation, that:

399 (A) vulnerable adult abuse, neglect, or exploitation did not occur; or

400 (B) the alleged perpetrator was not responsible for the vulnerable adult abuse, neglect, or
401 exploitation that did occur; or

402 (iii) the alleged perpetrator's receiving a dismissal of criminal charges based on the same
403 underlying facts which the division relied upon.

404 (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown
405 that compliance was virtually impossible or unreasonably burdensome.

406 (c) The division may approve or deny a request made under Subsection (3)(a).

407 (d) If the division denies the request or fails to act within 30 days after receiving a request
408 submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold a hearing
409 pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

410 (4) (a) In a hearing held pursuant to Subsection (3)(d), the division shall prove by a
411 preponderance of the evidence that there is a reasonable basis to conclude that:

412 (i) vulnerable adult abuse, neglect, or exploitation occurred; and

413 (ii) the person was substantially responsible for the abuse, neglect, or exploitation that
414 occurred.

415 (b) The administrative hearing officer may make its determination under Subsection (4)(a)
416 based solely on the out-of-court statement of the vulnerable adult that the officer finds to be
417 reliable under the standards set forth in:

418 (i) Utah Rules of Criminal Procedure, Rule 15.5;

419 (ii) the Utah Rules of Evidence; or

420 (iii) Utah case law.

421 (5) (a) Except as provided in Subsection (5)(b), an alleged perpetrator may not make a
422 request to challenge a finding under Subsection (3)(a) if, at any time, a court of competent
423 jurisdiction has made a determination based on the same underlying facts which the division relied
424 upon that:

425 (i) vulnerable adult abuse, neglect, or exploitation occurred;

426 (ii) the alleged perpetrator was substantially responsible for the abuse, neglect, or
427 exploitation that occurred; and

428 (iii) the alleged perpetrator:

429 (A) was a party to the proceeding; or

430 (B) had notice of the proceeding, and was provided a meaningful opportunity to challenge

431 the facts underlying the court's determination.

432 (b) The division shall remove a person's name from the Licensing Information System,
433 unless the division provides new notice under Subsection (1)(a) and an opportunity to be heard
434 under Subsection (3)(a), when a court of competent jurisdiction:

435 (i) enters a finding of not guilty;

436 (ii) dismisses the information or indictment after compliance with the requirements of a
437 diversion agreement under Section 77-2-6; or

438 (iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the successful
439 completion of a plea in abeyance agreement.

440 (c) Any adjudicative proceeding under this section may be stayed during the time a related
441 judicial action is pending.

442 (6) Nothing in this section may affect the inclusion or exclusion of a report or finding of
443 vulnerable adult abuse, neglect, or exploitation from access by the division, its employees, and
444 Adult Protective Services' workers to that part of the Information System used solely for the
445 purposes of adult protective services.

446 (7) An alleged perpetrator who, after receiving notice, fails to challenge a finding of
447 vulnerable adult abuse, neglect, or exploitation may, nevertheless, request the opportunity to
448 challenge the finding under this section:

449 (a) if, since the time that the alleged perpetrator received notice, state law has been
450 amended to permit a broader use of or access to licensing information; and

451 (b) before the finding may be used against the alleged perpetrator in connection with the
452 broader use or access.

453 Section 9. Section **62A-3-309** is repealed and reenacted to read:

454 **62A-3-309. Anonymity of reporter.**

455 The identity of any person reporting or otherwise giving notice of allegations of abuse,
456 neglect, or exploitation of a vulnerable adult may not be released to any person other than
457 employees of the division, except as provided in Sections 62A-3-306 and 62-3-307.

458 Section 10. Section **62A-3-311** is repealed and reenacted to read:

459 **62A-3-311. Requests for information.**

460 Requests for information contained in an adult protection case file shall be made in writing
461 to Adult Protective Services. Requests should indicate the specific information requested and the

462 reason for the request. Notwithstanding the provisions of Title 63, Chapter 2, Government
463 Records Access and Management Act, nothing may be released in response to a request except as
464 provided in this part.

465 Section 11. Section **62A-3-312** is repealed and reenacted to read:

466 **62A-3-312. Penalty for unauthorized release of information.**

467 Any person who willfully permits or aids and abets the release of any report, part of a
468 report, or other information in violation of this part is guilty of a class B misdemeanor.

469 Section 12. Section **62A-3-313** is enacted to read:

470 **62A-3-313. Protective services voluntary unless court ordered.**

471 (1) Vulnerable adults who receive protective services under this part shall do so knowingly
472 or voluntarily or upon district court order.

473 (2) Protective services may be provided without a court order for a vulnerable adult who
474 does not lack the capacity to consent and who requests or knowingly or voluntarily consents to
475 those services. Protective services may also be provided for a vulnerable adult whose guardian
476 consents to those services. When short-term, limited protective services are provided, the division
477 and the recipient, or the recipient's guardian, shall execute a written agreement setting forth the
478 purposes and limitations of the services to be provided. If consent is subsequently withdrawn by
479 the recipient, the recipient's guardian, or the court, services, including any investigation, shall
480 cease.

481 (3) The court may order protective services to be provided to a vulnerable adult who does
482 not consent or who lacks the capacity to consent to services in accordance with this part.

483 Section 13. Section **62A-3-314** is enacted to read:

484 **62A-3-314. Costs incurred for the provision of protective services.**

485 Costs incurred in providing protective services are the responsibility of the vulnerable adult
486 when:

487 (1) the vulnerable adult is financially able to pay for those services, according to rates
488 established by the division, and that payment is provided for as part of the written agreement for
489 services described in Section 62A-3-313;

490 (2) the vulnerable adult to be protected is eligible for those services from another
491 governmental agency; or

492 (3) the court appoints a guardian or conservator and orders that the costs be paid from the

493 vulnerable adult's estate.

494 Section 14. Section **62A-3-315** is enacted to read:

495 **62A-3-315. Photographing, video, and audio taping.**

496 In order to document or preserve information regarding the alleged abuse, neglect, or
497 exploitation of a vulnerable adult, if the vulnerable adult consents or lacks the capacity to consent
498 law enforcement or Adult Protective Services investigators may take, or cause to be taken,
499 photographs or video tape recordings of the trauma or injury visible on the vulnerable adult, or
500 audio or video tape accounts of the alleged abuse, neglect, or exploitation.

501 Section 15. Section **62A-3-316** is enacted to read:

502 **62A-3-316. Peace officers authority to transport.**

503 (1) A peace officer may remove and transport, or cause to have transported, a vulnerable
504 adult to an appropriate medical or shelter facility, if the officer has probable cause to believe that
505 by reason of abuse, neglect, or exploitation there exists emergency exigent circumstances and:

506 (a) the vulnerable adult will suffer serious physical injury or death if not immediately
507 placed in a safe environment;

508 (b) the vulnerable adult refuses to consent or lacks the capacity to consent; and

509 (c) there is not time to notify interested parties or to apply for a warrant or other court
510 order.

511 (2) The peace officer shall notify Adult Protective Services within four hours of
512 transporting a vulnerable adult to a medical or shelter facility. Adult Protective Services or the
513 division shall file a petition with the court for an emergency protective order under Section
514 62A-3-322 within 24 hours after being notified, not including Saturdays, Sundays, and legal
515 holidays.

516 Section 16. Section **62A-3-317** is enacted to read:

517 **62A-3-317. Enforcement by division -- Duty of county or district attorney.**

518 (1) It is the duty of the county or district attorney, as appropriate under Sections 17-18-1,
519 17-18-1.5, and 17-18-1.7, to assist and represent the division and to initiate legal proceedings to
520 protect vulnerable adults and take appropriate action to prosecute the alleged offenders.

521 (2) When the county or district attorney fails to act upon the request of the division to
522 provide legal assistance within 30 days of the request, the division may request the attorney general
523 to act and, in the attorney general's discretion, the attorney general may assume the responsibilities

524 and carry the action forward in place of the county or district attorney.

525 Section 17. Section **62A-3-318** is enacted to read:

526 **62A-3-318. Private right of action -- Treble damages -- Attorneys fees.**

527 (1) A vulnerable adult who suffers harm or financial loss as a result of abuse, neglect, or
528 exploitation has a private right of action against the perpetrator.

529 (2) If the court finds that the exploitation occurred at a time when the vulnerable adult was
530 an incapacitated person, as defined in Section 75-1-201, or as the result of the misuse of a power
531 of attorney, trust, or other contractual instrument granting fiduciary powers to the perpetrator, the
532 perpetrator is liable to the vulnerable adult for \$1,000 or treble actual damages, whichever is
533 greater.

534 (3) If the vulnerable adult prevails in a civil action brought under this section, the
535 vulnerable adult shall be entitled also to recover from the perpetrator reasonable attorneys' fees,
536 including contingent fees under a contingent fee contract, court costs, and reasonable fees for the
537 services of a guardian or conservator, if any, including the Office of Public Guardian, attributable
538 to the litigation of the claim brought under this section.

539 (4) Upon the death of a vulnerable adult, any cause of action under this section shall
540 constitute an asset of the estate of the vulnerable adult.

541 Section 18. Section **62A-3-319** is enacted to read:

542 **62A-3-319. Venue for protective services proceedings.**

543 Venue for all proceedings for protective services under this chapter is in the county where
544 the vulnerable adult resides or is present.

545 Section 19. Section **62A-3-320** is enacted to read:

546 **62A-3-320. Petition by division for protective services.**

547 (1) If the division determines that a vulnerable adult is in need of protective services but
548 lacks the capacity to consent to protective services, the division may petition the district court for
549 an order authorizing the division to provide protective services. The petition shall include:

550 (a) the name, address, and age of the adult who is the subject of the petition;

551 (b) the reasonably ascertainable names and addresses of the spouse, parents, adult children,
552 and caretaker of the adult who is the subject of the petition;

553 (c) the name and address of any court appointed guardian or conservator for the adult;

554 (d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in

555 need of protective services; and

556 (e) specific facts sufficient to show that the vulnerable adult lacks the capacity to consent.

557 (2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At
558 least ten days' notice of the petition and the hearing shall be given to the adult who is the subject
559 of the petition and to each other person identified in Subsection (1)(b) or (c).

560 (3) The notice shall be in plain language and large type, at least 14 font. The notice shall
561 indicate the time and place of the hearing, the possible adverse consequences to the adult, and a
562 list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served
563 personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker,
564 and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if
565 they cannot be found within the state, and to other persons shall be given by first-class mail,
566 postage prepaid.

567 (4) The adult who is the subject of the petition shall have the right to be present at the
568 hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless
569 a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be
570 presumed by nonappearance of the adult, but shall be determined by the court on the basis of
571 evidence provided to the court.

572 (5) The adult who is the subject of the petition may be examined by a licensed physician
573 appointed by the court, who shall submit a written report to the court. The adult may be
574 interviewed by a visitor, as defined in Section 75-5-308, appointed by the court, who shall submit
575 a written report to the court. The visitor may also interview knowledgeable persons at the division
576 and others who have knowledge of the adult who is the subject of the petition.

577 (6) The adult who is the subject of the petition has the right to be represented by counsel
578 at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint
579 counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition
580 unless the adult is indigent.

581 (7) The adult who is the subject of the petition is entitled to present evidence and to
582 cross-examine witnesses, including any court-appointed physician and visitor. The issues may be
583 determined at a closed hearing if the adult who is the subject of the petition so requests.

584 (8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code,
585 Section 20. Section 62A-3-321 is enacted to read:

586 **62A-3-321. Court order for protective services -- Review.**

587 (1) Only upon court order may involuntary protective services be provided to a vulnerable
588 adult who lacks the capacity to consent to services.

589 (2) The court may order protective services if it is satisfied that the adult who is the subject
590 of the petition under Section 62A-3-320 lacks the capacity to consent to services and is in need of
591 protective services. The court shall specifically state the purpose, extent, and limitations of the
592 protective services, including specific findings of fact and conclusions of law. The court shall
593 fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult,
594 consistent with the welfare, safety, and best interests of the adult.

595 (3) Any party to the proceedings may petition the court for modification or dissolution of
596 the order at any time upon a showing of a material change in circumstances. Any protected person
597 has the right to petition the court for a rehearing within ten days after the date the order was
598 entered.

599 Section 21. Section **62A-3-322** is enacted to read:

600 **62A-3-322. Petition for emergency order.**

601 (1) Upon petition therefor, if the court finds that the subject of the petition is a vulnerable
602 adult, that the adult has no court-appointed guardian or the guardian is not effectively performing
603 the guardian's duties, that an emergency exists, and that the welfare, safety, or best interests of the
604 adult require immediate action, the court may, without notice, order appropriate protective
605 services. The order shall specifically designate the protective services which are being approved,
606 together with supporting facts.

607 (2) Protective services authorized in an emergency order may not include hospitalization,
608 nursing or custodial care, or a change in residence, unless the court specifically finds that the action
609 is necessary and authorizes the specific protective services in the order.

610 (3) Protective services shall be provided through an emergency order for a period not to
611 exceed three business days, at which time the order shall expire unless a petition for guardianship,
612 conservatorship, or other protective services has been filed. If a petition for guardianship,
613 conservatorship, or other protective services is filed within the three-business-day period, the
614 emergency order may be continued for as long as 15 days from the date the last petition was filed,
615 to allow time for a hearing to determine whether the emergency order shall remain in effect.

616 (4) In its emergency order, the court may appoint the petitioner or another interested

617 person as temporary guardian, in accordance with Section 75-5-310.

618 (5) To implement an emergency order, the court may authorize forcible entry by a peace
619 officer into the premises where the protected person is residing only upon a showing that voluntary
620 access into the premises is not possible and that forcible entry is required.

621 Section 22. Section **62A-3-323** is enacted to read:

622 **62A-3-323. Petition for injunctive relief when caretaker refuses to allow services.**

623 (1) When a vulnerable adult is in need of protective services and the caretaker refuses to
624 allow the provision of those services, the division may petition the court for injunctive relief
625 prohibiting the caretaker from interfering with the provision of protective services.

626 (2) The division's petition under Subsection (1) shall allege facts sufficient to show that
627 the vulnerable adult is in need of protective services, that the vulnerable adult either consents or
628 lacks the capacity to consent to those services, and that the caretaker refuses to allow the provision
629 of those services or to order other appropriate relief.

630 (3) The court may, on appropriate findings and conclusions in accordance with Rule 65A,
631 Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the
632 provision of protective services.

633 (4) The petition under Subsection (1) may be joined with a petition under Section
634 62A-3-320 or Section 62A-3-322.

635 Section 23. Section **63-2-304** is amended to read:

636 **63-2-304. Protected records.**

637 The following records are protected if properly classified by a governmental entity:

638 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has
639 provided the governmental entity with the information specified in Section 63-2-308;

640 (2) commercial information or nonindividual financial information obtained from a person
641 if:

642 (a) disclosure of the information could reasonably be expected to result in unfair
643 competitive injury to the person submitting the information or would impair the ability of the
644 governmental entity to obtain necessary information in the future;

645 (b) the person submitting the information has a greater interest in prohibiting access than
646 the public in obtaining access; and

647 (c) the person submitting the information has provided the governmental entity with the

648 information specified in Section 63-2-308;

649 (3) commercial or financial information acquired or prepared by a governmental entity to
650 the extent that disclosure would lead to financial speculations in currencies, securities, or
651 commodities that will interfere with a planned transaction by the governmental entity or cause
652 substantial financial injury to the governmental entity or state economy;

653 (4) records the disclosure of which could cause commercial injury to, or confer a
654 competitive advantage upon a potential or actual competitor of, a commercial project entity as
655 defined in Subsection 11-13-3(3);

656 (5) test questions and answers to be used in future license, certification, registration,
657 employment, or academic examinations;

658 (6) records the disclosure of which would impair governmental procurement proceedings
659 or give an unfair advantage to any person proposing to enter into a contract or agreement with a
660 governmental entity, except that this subsection does not restrict the right of a person to see bids
661 submitted to or by a governmental entity after bidding has closed;

662 (7) records that would identify real property or the appraisal or estimated value of real or
663 personal property, including intellectual property, under consideration for public acquisition before
664 any rights to the property are acquired unless:

665 (a) public interest in obtaining access to the information outweighs the governmental
666 entity's need to acquire the property on the best terms possible;

667 (b) the information has already been disclosed to persons not employed by or under a duty
668 of confidentiality to the entity;

669 (c) in the case of records that would identify property, potential sellers of the described
670 property have already learned of the governmental entity's plans to acquire the property; or

671 (d) in the case of records that would identify the appraisal or estimated value of property,
672 the potential sellers have already learned of the governmental entity's estimated value of the
673 property;

674 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
675 compensated transaction of real or personal property including intellectual property, which, if
676 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of
677 the subject property, unless:

678 (a) the public interest in access outweighs the interests in restricting access, including the

679 governmental entity's interest in maximizing the financial benefit of the transaction; or

680 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the
681 value of the subject property have already been disclosed to persons not employed by or under a
682 duty of confidentiality to the entity;

683 (9) records created or maintained for civil, criminal, or administrative enforcement
684 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
685 release of the records:

686 (a) reasonably could be expected to interfere with investigations undertaken for
687 enforcement, discipline, licensing, certification, or registration purposes;

688 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
689 proceedings;

690 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

691 (d) reasonably could be expected to disclose the identity of a source who is not generally
692 known outside of government and, in the case of a record compiled in the course of an
693 investigation, disclose information furnished by a source not generally known outside of
694 government if disclosure would compromise the source; or

695 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,
696 policies, or orders not generally known outside of government if disclosure would interfere with
697 enforcement or audit efforts;

698 (10) records the disclosure of which would jeopardize the life or safety of an individual;

699 (11) records the disclosure of which would jeopardize the security of governmental
700 property, governmental programs, or governmental recordkeeping systems from damage, theft, or
701 other appropriation or use contrary to law or public policy;

702 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
703 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
704 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

705 (13) records that, if disclosed, would reveal recommendations made to the Board of
706 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board
707 of Pardons and Parole, or the Department of Human Services that are based on the employee's or
708 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

709 (14) records and audit workpapers that identify audit, collection, and operational

710 procedures and methods used by the State Tax Commission, if disclosure would interfere with
711 audits or collections;

712 (15) records of a governmental audit agency relating to an ongoing or planned audit until
713 the final audit is released;

714 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
715 litigation that are not available under the rules of discovery;

716 (17) records disclosing an attorney's work product, including the mental impressions or
717 legal theories of an attorney or other representative of a governmental entity concerning litigation;

718 (18) records of communications between a governmental entity and an attorney
719 representing, retained, or employed by the governmental entity if the communications would be
720 privileged as provided in Section 78-24-8;

721 (19) personal files of a legislator, including personal correspondence to or from a member
722 of the Legislature, but not correspondence that gives notice of legislative action or policy;

723 (20) (a) records in the custody or control of the Office of Legislative Research and General
724 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
725 contemplated course of action before the legislator has elected to support the legislation or course
726 of action, or made the legislation or course of action public; and

727 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of
728 Legislative Research and General Counsel is a public document unless a legislator submits the
729 "Request For Legislation" with a request that it be maintained as a protected record until such time
730 as the legislator elects to make the legislation or course of action public;

731 (21) research requests from legislators to the Office of Legislative Research and General
732 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response
733 to these requests;

734 (22) drafts, unless otherwise classified as public;

735 (23) records concerning a governmental entity's strategy about collective bargaining or
736 pending litigation;

737 (24) records of investigations of loss occurrences and analyses of loss occurrences that
738 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
739 Employers' Fund, or similar divisions in other governmental entities;

740 (25) records, other than personnel evaluations, that contain a personal recommendation

741 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal
742 privacy, or disclosure is not in the public interest;

743 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
744 resources that if known would jeopardize the security of those resources or of valuable historic,
745 scientific, educational, or cultural information;

746 (27) records of independent state agencies if the disclosure of the records would conflict
747 with the fiduciary obligations of the agency;

748 (28) records of a public institution of higher education regarding tenure evaluations,
749 appointments, applications for admissions, retention decisions, and promotions, which could be
750 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
751 Meetings, provided that records of the final decisions about tenure, appointments, retention,
752 promotions, or those students admitted, may not be classified as protected under this section;

753 (29) records of the governor's office, including budget recommendations, legislative
754 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
755 policies or contemplated courses of action before the governor has implemented or rejected those
756 policies or courses of action or made them public;

757 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
758 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
759 recommendations in these areas;

760 (31) records provided by the United States or by a government entity outside the state that
761 are given to the governmental entity with a requirement that they be managed as protected records
762 if the providing entity certifies that the record would not be subject to public disclosure if retained
763 by it;

764 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
765 except as provided in Section 52-4-7;

766 (33) records that would reveal the contents of settlement negotiations but not including
767 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

768 (34) memoranda prepared by staff and used in the decision-making process by an
769 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other
770 body charged by law with performing a quasi-judicial function;

771 (35) records that would reveal negotiations regarding assistance or incentives offered by

772 or requested from a governmental entity for the purpose of encouraging a person to expand or
773 locate a business in Utah, but only if disclosure would result in actual economic harm to the person
774 or place the governmental entity at a competitive disadvantage, but this section may not be used
775 to restrict access to a record evidencing a final contract;

776 (36) materials to which access must be limited for purposes of securing or maintaining the
777 governmental entity's proprietary protection of intellectual property rights including patents,
778 copyrights, and trade secrets;

779 (37) the name of a donor or a prospective donor to a governmental entity, including a
780 public institution of higher education, and other information concerning the donation that could
781 reasonably be expected to reveal the identity of the donor, provided that:

782 (a) the donor requests anonymity in writing;

783 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
784 classified protected by the governmental entity under this Subsection (37); and

785 (c) except for public institutions of higher education, the governmental unit to which the
786 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
787 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
788 owned or controlled by the donor or his immediate family;

789 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

790 (39) a notification of workers' compensation insurance coverage described in Section
791 34A-2-205; ~~and~~

792 (40) the following records of a public institution of education, which have been developed,
793 discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:
794 unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative
795 works in process, scholarly correspondence, and confidential information contained in research
796 proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a
797 record[-]; ~~and~~

798 (41) information contained in the Information System and Licensing Information System
799 described in Sections 62A-3-306 and 62A-3-307.

800 Section 24. Section **76-5-111** is amended to read:

801 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

802 (1) As used in this section:

803 (a) "Abandonment" means a knowing or intentional action or inaction, including desertion,
 804 by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult
 805 without the means or ability to obtain necessary food, clothing, shelter, or medical or other health
 806 care.

807 [~~(a)~~] (b) "Abuse" means:

808 (i) attempting to cause harm, [~~or~~] intentionally or knowingly causing [physical] harm, or
 809 intentionally or knowingly placing another in fear of imminent harm;

810 [~~(ii) placing another in fear of imminent physical harm;~~]

811 [~~(iii)~~] (ii) causing physical injury [caused] by knowing or intentional acts or omissions;

812 [~~(iv) unlawful detention or unreasonable confinement;~~]

813 [~~(v) gross lewdness; or~~]

814 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that
 815 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders
 816 or used as an unauthorized substitute for treatment, unless that conduct furthers the health and
 817 safety of the adult;

818 [~~(vi)~~] (iv) deprivation of life-sustaining treatment, except:

819 (A) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

820 (B) when informed consent, as defined in this section, has been obtained.

821 [~~(b)~~] (c) "Business relationship" means a relationship between two or more individuals or
 822 entities where there exists an oral or written agreement for the exchange of goods or services.

823 [~~(c)~~] (d) "Caretaker" means any person ~~[, corporation, or public institution that has~~
 824 ~~assumed by relationship, contract, or court order]~~, entity, corporation, or public institution that
 825 assumes the responsibility to provide a [disabled or elder] vulnerable adult with care, food, shelter,
 826 clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a
 827 relative by blood or marriage, a household member, a person who is employed or who provides
 828 volunteer work, or a person who contracts or is under court order to provide care.

829 [~~(d)~~] (e) "Deception" means:

830 (i) a misrepresentation or concealment:

831 (A) of a material fact relating to services rendered, disposition of property, or use of
 832 property intended to benefit a [disabled or elder] vulnerable adult;

833 (B) of the terms of a contract or agreement entered into with a [disabled or elder]

834 vulnerable adult; or

835 (C) relating to the existing or preexisting condition of any property involved in a contract
836 or agreement entered into with a ~~[disabled or elder]~~ vulnerable adult; or

837 (ii) the use or employment of any misrepresentation, false pretense, or false promise in
838 order to induce, encourage, or solicit a ~~[disabled or elder]~~ vulnerable adult to enter into a contract
839 or agreement.

840 ~~[(e) "Disabled adult" means a person 18 years of age or older who is impaired because of
841 mental illness, mental deficiency, physical illness or disability, or other cause to the extent that the
842 person lacks sufficient understanding or capacity to make or communicate informed decisions
843 concerning his person, or is unable to care for his own personal safety or provide necessities such
844 as food, shelter, clothing, or medical care, without which physical injury or illness may occur. A
845 person who is, in good faith, under treatment solely of a spiritual means, through prayer, in
846 accordance with the tenets and practices of a recognized church or religious denomination, and by
847 an accredited practitioner thereof, shall not be considered a disabled adult for that reason alone.]~~

848 (f) "Elder adult" means a person ~~[who is]~~ 65 years of age or older.

849 (g) "Endeavor" means to attempt or try.

850 (h) "Exploitation" means the offense described in Subsection (4).

851 (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological
852 damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

853 ~~[(h)]~~ (j) "Informed consent" means:

854 (i) a written expression by the person or authorized by the person, stating that ~~[he]~~ the
855 person fully understands the potential risks and benefits of the withdrawal of food, water,
856 medication, medical services, shelter, cooling, heating, or other services necessary to maintain
857 minimum physical or mental health, and that ~~[he]~~ the person desires that the services be
858 withdrawn. A written expression is valid only if the person is of sound mind when the consent is
859 given, and the consent is witnessed by at least two individuals who do not benefit from the
860 withdrawal of services; or

861 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,
862 heating, or other services necessary to maintain minimum physical or mental health, as permitted
863 by court order.

864 ~~[(i)]~~ (k) "Intimidation" means communication ~~[by word or act to a disabled or elder adult~~

865 ~~that he will be deprived]~~ conveyed through verbal or nonverbal conduct which threatens
866 deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, [or medical
867 services, or that he will suffer physical violence] health care, or companionship, or which threatens
868 isolation or harm.

869 (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from
870 having contact with another person by:

871 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
872 contrary to the express wishes of the vulnerable adult, including communicating to a visitor that
873 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that
874 communication to be false;

875 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from
876 meeting with a visitor; or

877 (C) making false or misleading statements to the vulnerable adult in order to induce the
878 vulnerable adult to refuse to receive communication from visitors or other family members.

879 (ii) The term "isolation" does not include an act intended to protect the physical or mental
880 welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions
881 of a physician or other professional advisor of the vulnerable adult.

882 [(j)] (m) "Lacks capacity to consent" means an impairment by reason of mental illness,
883 developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs,
884 chronic intoxication, short-term memory loss, or other cause to the extent that a [disabled or elder]
885 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
886 concerning [his] the adult's person or property.

887 [(k)] (n) "Neglect" means:

888 (i) [the] failure of a caretaker to provide [habilitation, care,] nutrition, clothing, shelter,
889 supervision, [or medical] personal care, or dental or other health care, or failure to provide
890 protection from health and safety hazards or maltreatment; [or]

891 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with
892 the degree of care that a reasonable person in a like position would exercise;

893 [(i)] (iii) a pattern of conduct by a caretaker, without the [disabled or elder] vulnerable
894 adult's informed consent, resulting in deprivation of food, water, medication, [medical services]
895 health care, shelter, cooling, heating, or other services necessary to maintain [minimum physical

896 ~~or mental health.]~~ the vulnerable adult's well being:

897 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results
898 or could result in physical injury or physical harm; or

899 (v) abandonment by a caretaker.

900 [~~(t)~~] (o) "Physical injury" [~~means the impairment of physical condition and includes any~~]
901 includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue
902 must undergo a healing process in order to be restored to a sound and healthy condition, or damage
903 to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy
904 condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
905 impairment of physical function, a pressure [~~sores~~] sore, bleeding, malnutrition, dehydration,
906 [~~burns~~] a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal
907 organ, or any other physical condition that imperils the health or welfare of the [~~disabled or elder~~
908 vulnerable adult and [~~that~~] is not a serious physical injury as defined in this section.

909 [~~(m)~~] (p) "Position of trust and confidence" means the position of a person who:

910 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a [~~disabled or~~
911 ~~elder~~] vulnerable adult;

912 (ii) is a joint tenant or tenant in common with a [~~disabled or elder~~] vulnerable adult;

913 (iii) has a legal or fiduciary relationship with a [~~disabled or elder~~] vulnerable adult,

914 including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

915 (iv) is a caretaker of a [~~disabled or elder~~] vulnerable adult.

916 [~~(n)~~] (q) "Serious physical injury" means any physical injury or set of physical injuries that:

917 (i) seriously impairs a [~~disabled or elder~~] vulnerable adult's health;

918 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

919 (iii) involves physical torture or causes serious emotional harm to a [~~disabled or elder~~]
920 vulnerable adult; or

921 (iv) [~~creates~~] creates a reasonable risk of death.

922 [~~(o)~~] (r) "Sexual exploitation" means the production, distribution, possession, or
923 possession with the intent to distribute material or a live performance depicting a nude or partially
924 nude [~~disabled or elder~~] vulnerable adult who lacks the capacity to consent, for the purpose of
925 sexual arousal of any person.

926 (s) "Undue influence" occurs when a person uses the person's role, relationship, or power

927 to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a
 928 vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over
 929 the decision making of the vulnerable adult.

930 (t) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has
 931 a mental or physical impairment which substantially affects that person's ability to:

932 (i) provide personal protection;

933 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

934 (iii) obtain services necessary for health, safety, or welfare;

935 (iv) carry out the activities of daily living;

936 (v) manage the adult's own resources; or

937 (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect,
 938 or exploitation.

939 (2) Under any circumstances likely to produce death or serious physical injury, any person,
 940 including a caretaker, who causes a [~~disabled or elder~~] vulnerable adult to suffer serious physical
 941 injury or, having the care or custody of a [~~disabled or elder~~] vulnerable adult, causes or permits that
 942 adult's person or health to be injured, or causes or permits a [~~disabled or elder~~] vulnerable adult
 943 to be placed in a situation where [~~his~~] the adult's person or health is endangered, is guilty of the
 944 offense of aggravated abuse of a [~~disabled or elder~~] vulnerable adult as follows:

945 (a) if done intentionally or knowingly, the offense is a second degree felony;

946 (b) if done recklessly, the offense is third degree felony; and

947 (c) if done with criminal negligence, the offense is a class A misdemeanor.

948 (3) Under circumstances other than those likely to produce death or serious physical injury
 949 any person, including a caretaker, who causes a [~~disabled or elder~~] vulnerable adult to suffer
 950 [~~physical injury~~] harm, abuse, or neglect[;]; or, having the care or custody of a [~~disabled or elder~~]
 951 vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected,
 952 or causes or permits a [~~disabled or elder~~] vulnerable adult to be placed in a situation where [~~his~~]
 953 the adult's person or health is endangered, is guilty of the offense of abuse of a [~~disabled or elder~~]
 954 vulnerable adult as follows:

955 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

956 (b) if done recklessly, the offense is a class B misdemeanor; and

957 (c) if done with criminal negligence, the offense is a class C misdemeanor.

958 (4) (a) A person commits the offense of exploitation of a ~~[disabled or elder]~~ vulnerable
959 adult when the person:

960 (i) is in a position of trust and confidence, or has a business relationship, with the ~~[disabled~~
961 ~~or elder]~~ vulnerable adult or has undue influence over the vulnerable adult and knowingly, by
962 deception or intimidation, obtains or uses, or endeavors to obtain or use, the ~~[disabled or elder]~~
963 vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or
964 permanently deprive the ~~[disabled or elder]~~ vulnerable adult of the use, benefit, or possession of
965 ~~[his]~~ the adult's property, for the benefit of someone other than the ~~[disabled or elder]~~ vulnerable
966 adult;

967 (ii) knows or should know that the ~~[disabled or elder]~~ vulnerable adult lacks the capacity
968 to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or
969 using or endeavoring to obtain or use, the ~~[disabled or elder]~~ vulnerable adult's funds, assets, or
970 property with the intent to temporarily or permanently deprive the ~~[disabled or elder]~~ vulnerable
971 adult of the use, benefit, or possession of his property for the benefit of someone other than the
972 ~~[disabled or elder]~~ vulnerable adult;

973 (iii) unjustly or improperly uses or manages the resources of a ~~[disabled or elder]~~
974 vulnerable adult for the profit or advantage of someone other than the ~~[disabled or elder]~~
975 vulnerable adult;

976 (iv) unjustly or improperly uses a ~~[disabled or elder]~~ vulnerable adult's power of attorney
977 or guardianship for the profit or advantage of someone other than the ~~[disabled or elder]~~ vulnerable
978 adult;

979 (v) involves a ~~[disabled or elder]~~ vulnerable adult who lacks the capacity to consent in the
980 facilitation or furtherance of any criminal activity; or

981 (vi) commits sexual exploitation of a ~~[disabled or elder]~~ vulnerable adult.

982 (b) A person is guilty of the offense of exploitation of a ~~[disabled or elder]~~ vulnerable adult
983 as follows:

984 (i) if done intentionally or knowingly and the aggregate value of the resources used or the
985 profit made is or exceeds \$5,000, the offense is a second degree felony;

986 (ii) if done intentionally or knowingly and the aggregate value of the resources used or the
987 profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;

988 (iii) if done recklessly, the offense is a class A misdemeanor; or

989 (iv) if done with criminal negligence, the offense is a class B misdemeanor.
990 (5) It does not constitute a defense to a prosecution for any violation of this section that
991 the accused did not know the age of the victim.

**Legislative Review Note
as of 11-14-01 3:50 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Health and Human Services Interim Committee recommended this bill.