

# HB0267S01 compared with HB0267

~~{deleted text}~~ shows text that was in HB0267 but was deleted in HB0267S01.

inserted text shows text that was not in HB0267 but was inserted into HB0267S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Rebecca Chavez-Houck proposes the following substitute bill:

## AGING AND ADULT SERVICES AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rebecca ~~{Chavez-Houck}~~Chavez-Houck**

Senate Sponsor: \_\_\_\_\_

---

### LONG TITLE

#### General Description:

This bill amends Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult.

#### Highlighted Provisions:

This bill:

- ~~{~~ → defines "limited capacity";
- † → clarifies and modifies the powers and duties of Adult Protective Services; ~~{~~
- ~~gives Adult Protective Services access to a vulnerable adult's records if, for a vulnerable adult who lacks or has limited capacity to consent, Adult Protective Services issues an administrative subpoena;}~~ and
- ▶ makes the vulnerable adult database and the adult protection case file available to city attorneys.

## HB0267S01 compared with HB0267

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

- ~~{ 62A-3-301, as last amended by Laws of Utah 2012, Chapter 149~~
- ~~‡ 62A-3-303, as last amended by Laws of Utah 2008, Chapter 91~~
- ~~62A-3-312, as last amended by Laws of Utah 2008, Chapters 91 and 382~~

---

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

Section 1. Section ~~{62A-3-301}~~ 62A-3-303 is amended to read:

~~{ 62A-3-301. Definitions.~~

~~As used in this part:~~

~~(1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care;~~

~~(2) "Abuse" means:~~

~~(a) knowingly or intentionally:~~

~~(i) attempting to cause harm;~~

~~(ii) causing harm; or~~

~~(iii) placing another in fear of harm;~~

~~(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;~~

~~(c) emotional or psychological abuse;~~

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

~~or~~

~~(e) deprivation of life sustaining treatment, or medical or mental health treatment, except:~~

~~(i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act, or~~

## HB0267S01 compared with HB0267

- ~~—— (ii) when informed consent, as defined in Section 76-5-111, has been obtained.~~
- ~~—— (3) "Adult" means a person who is 18 years of age or older.~~
- ~~—— (4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.~~
- ~~—— (5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.~~
- ~~—— (6) "Capacity to consent" means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services.~~
- ~~—— (7) "Caretaker" means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities.~~
- ~~—— (8) "Counsel" means an attorney licensed to practice law in this state.~~
- ~~—— (9) "Database" means the statewide database maintained by the division under Section 62A-3-311.1.~~
- ~~—— (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.~~
- ~~—— (11) "Elder adult" means a person 65 years of age or older.~~
- ~~—— (12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.~~
- ~~—— (13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.~~
  - ~~—— (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.~~
  - ~~—— (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:
    - ~~—— (i) engage in the conduct; or~~
    - ~~—— (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.~~~~
- ~~—— (14) "Exploitation" means an offense described in Subsection 76-5-111(4) or Section~~

## HB0267S01 compared with HB0267

~~76-5b-202:~~

~~———— (15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.~~

~~———— (16) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.~~

~~———— (17) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.~~

~~———— (18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:~~

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

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

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

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

~~———— (19) "Lacks capacity to consent" is as defined in Section 76-5-111.~~

~~———— (20) "Limited capacity to consent" means that an adult's ability to understand, communicate, or make decisions regarding the nature and consequences of the adult's life or property due to a mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause is limited in one or more, but not all, functional areas, consistently or during identified times of day.~~

~~———— [(20)] (21) (a) "Neglect" means:~~

~~———— (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,~~

## HB0267S01 compared with HB0267

~~shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or~~

~~—— (B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;~~

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

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

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

~~—— (v) self-neglect by the vulnerable adult; or~~

~~—— (vi) abandonment by a caretaker.~~

~~—— (b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.~~

~~—— [(21) ] (22) "Physical injury" includes the damage and conditions described in Section 76-5-111.~~

~~—— [(22) ] (23) "Protected person" means a vulnerable adult for whom the court has ordered protective services.~~

~~—— [(23) ] (24) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.~~

~~—— [(24) ] (25) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.~~

~~—— [(25) ] (26) "Serious physical injury" is as defined in Section 76-5-111.~~

~~—— [(26) ] (27) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.~~

~~—— [(27) ] (28) "Undue influence" occurs when a person uses the person's role, relationship,~~

## HB0267S01 compared with HB0267

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

~~———— [(28)] (29) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:~~

- ~~———— (a) provide personal protection;~~
- ~~———— (b) provide necessities such as food, shelter, clothing, or mental or other health care;~~
- ~~———— (c) obtain services necessary for health, safety, or welfare;~~
- ~~———— (d) carry out the activities of daily living;~~
- ~~———— (e) manage the adult's own financial resources; or~~
- ~~———— (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.~~

~~———— [(29)] (30) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.~~

~~———— Section 2. Section **62A-3-303** is amended to read:~~

### ‡ **62A-3-303. Powers and duties of Adult Protective Services.**

In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:

- (1) shall maintain an intake system for receiving and screening reports;
- (2) shall investigate ~~[reports]~~ referrals that meet the intake criteria;
- (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;

~~[(3)]~~ (4) shall perform assessments based on protective needs ~~[assessments]~~ and risks for a vulnerable adult who is the subject of a report;

~~[(4)]~~ (5) ~~[may coordinate with, or make referrals to, community resources]~~ may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;

~~[(5)]~~ (6) may provide short-term limited services to a vulnerable adult~~[- on a temporary basis,]~~ when family or community resources are not available to provide for the protective needs of the vulnerable adult;

~~[(6)]~~ (7) shall have access to facilities licensed by, or ~~[contracting]~~ contracted with, the

## HB0267S01 compared with HB0267

department or the Department of Health for the purpose of conducting investigations;

~~[(7)]~~ (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:

(a) for a vulnerable adult who does not lack ~~[the]~~ capacity to consent, ~~{or who does not have limited capacity to consent, }~~ the vulnerable adult signs a release of information; or

(b) for a vulnerable adult who lacks ~~[the]~~ capacity to consent, ~~{or has limited capacity to consent, }~~ an administrative subpoena is issued by Adult Protective Services;

~~[(8)]~~ (9) may ~~[institute]~~ initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;

~~[(9)]~~ (10) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;

~~[(10)]~~ (11) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;

~~[(11)]~~ (12) may conduct studies and compile data regarding abuse, neglect, and exploitation; and

~~[(12)]~~ (13) may issue reports and recommendations.

Section ~~{3}~~2. Section **62A-3-312** is amended to read:

### **62A-3-312. Access to information in database.**

The database and the adult protection case file:

(1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, and county or district attorney's offices;

(2) shall be released as required under Subsection 63G-2-202(4)(c); and

(3) may be made available, at the discretion of the division, to:

(a) subjects of a report as follows:

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

(ii) a person identified in a report as having abused, neglected, or exploited a

## HB0267S01 compared with HB0267

vulnerable adult, or that person's attorney; and

(b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

(i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;

(ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;

(iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;

(iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and

(v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:

(A) the Office of Public Guardian, created in Section 62A-14-103; and

(B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

†

### Legislative Review Note

~~as of 12-6-13 2:21 PM~~

~~Office of Legislative Research and General Counsel~~