

HB0218S01 compared with HB0218

~~{deleted text}~~ shows text that was in HB0218 but was deleted in HB0218S01.

inserted text shows text that was not in HB0218 but was inserted into HB0218S01.

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Representative Brian S. King proposes the following substitute bill:

REPORTING REQUIREMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends reporting requirements regarding abuse, neglect, ~~{and}~~or exploitation of certain individuals.

Highlighted Provisions:

This bill:

~~{~~ → defines terms;

‡ ▶ ~~{modifies}~~amends the reporting requirement for the suspected abuse, neglect, ~~{and}~~or exploitation of a vulnerable adult;

~~{~~ → ~~provides certain exceptions to the reporting requirement for the abuse, neglect, and exploitation of a vulnerable adult;~~

‡ ▶ addresses civil and criminal liability for ~~{failure to notify}~~reporting, or failing to report, suspected abuse, neglect, or exploitation of a vulnerable adult to Adult

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Protective Services or the nearest police officer or law enforcement agency;

- ▶ ~~{modifies}~~ amends the reporting requirement for the suspected abuse ~~{and}~~ or neglect of a child;

~~{~~ → ~~provides certain exceptions to the reporting requirement for the abuse and neglect of a child;~~

- ‡ ▶ addresses civil and criminal liability for ~~{failure}~~ reporting, or failing to ~~{notify}~~ report, suspected abuse or neglect of a child to the Division of Child and Family Services or the nearest police officer or law enforcement agency;
- ▶ makes it a crime for an individual to threaten, intimidate, or attempt to intimidate certain individuals when a report is made, or an investigation is being conducted, in regards to the abuse or neglect of a child;
- ▶ repeals a statute with a reporting requirement for abuse, neglect, or exploitation of a vulnerable adult; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-3-305, as last amended by Laws of Utah 2012, Chapter 328

62A-4a-403, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

REPEALS:

76-5-111.1, as last amended by Laws of Utah 2004, Chapter 50

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

Section 1. Section **62A-3-305** is amended to read:

62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

~~[(1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the~~

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nearest law enforcement agency. ~~When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.]~~

~~(1) {As used in this section:~~

~~—— (a) (i) "Assistance" means making a reasonable effort to report; Except as provided in Subsection (5)(b), if an individual has reason to believe that a vulnerable adult is, or has been, the subject of abuse, neglect, or exploitation, the individual shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services or to the nearest peace officer or law enforcement agency. f~~

~~—— (ii) "Assistance" does not include action that places the individual taking the action, or another individual, in danger.~~

~~—— (b) "Legal privilege" means any privilege designated by common law, statute, or rule of evidence.~~

~~—— (2) Except as provided in Subsection (5)(c), an individual shall provide assistance if the individual:~~

~~—— (a) (i) has personal knowledge that a vulnerable adult is the subject of abuse, neglect, or exploitation; or~~

~~—— (ii) observes that abuse, neglect, or exploitation of a vulnerable adult is occurring or has occurred; and~~

~~—— (b) is able to provide assistance for the vulnerable adult described in Subsection (2)(a). f~~

~~(f32) (a) If a peace officer or a law enforcement agency receives a report under Subsection (f21), the peace officer of the law enforcement agency shall immediately notify Adult Protective Services.~~

~~(b) Adult Protective Services and the peace officer or the law enforcement agency shall coordinate, as appropriate, efforts to investigate the report under Subsection (f21) and to provide protection to the vulnerable adult.~~

~~(2) (f43) When [the initial report or] a report under Subsection (f21), or a subsequent investigation by Adult Protective Services, indicates that a criminal offense may have occurred against a vulnerable adult:~~

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(a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and

(b) the law enforcement agency [~~may~~] shall initiate an investigation in cooperation with Adult Protective Services.

~~[(3) A person who in good faith makes a report or otherwise notifies a law enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.]~~

~~[(4) (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.]~~

~~[(b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.]~~

(4) An individual who in good faith makes a report under Subsection (1), or who otherwise notifies Adult Protective Services or a peace officer or law enforcement agency, is immune from civil and criminal liability in connection with the report or notification of suspected abuse, neglect, or exploitation of a vulnerable adult.

(5) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to ~~{provide assistance}~~ report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency under Subsection ~~(2)~~ (1).

(b) An individual is not guilty of violating Subsection (5)(a) if the individual ~~{reasonably believes another individual has, or likely has, already provided or is providing assistance to the vulnerable adult described in Subsection (2)(a).~~

~~———— (c) Subsection (5)(a) does not apply to the extent that an individual ~~{is prohibited from providing assistance by a legal privilege.~~~~

~~———— (6) reporting suspected abuse, neglect, or exploitation of a vulnerable adult under a privilege designated by common law, statute, or rule of evidence.~~

(c) Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (5)(a) as the basis for charging the individual with

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another offense.

~~(7) (a) Except as provided in Subsection (7)(c), Subsections (2) and (5)(a) do not create an independent basis for civil liability for failure to provide the assistance described in Subsection (2).~~

~~— (b) The fact that an individual is charged with, or convicted of, an offense under Subsection (5)(a) may not be used to establish that the individual violated a duty on which a claim for personal injuries may be based.~~

~~(c) 6) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to ~~provide assistance~~ report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency, under Subsection ~~(2) 1~~, is subject to a private right of action and liability for the abuse, neglect, or exploitation of a vulnerable adult that is committed by the individual who was not ~~provided assistance under this section.~~~~

~~— (5) 8) reported to Adult Protective Services or to the nearest peace officer or law enforcement agency.~~

~~(5) 7) Under circumstances not amounting to a violation of Section 76-8-508, [a person who] an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report ~~— a witness, the {} person who made the report~~ under Subsection (1), the individual who provided assistance made the report under Subsection ~~(2) 1~~, a witness, or any other person cooperating with an investigation conducted ~~[pursuant to]~~ in accordance with this chapter is guilty of a class B misdemeanor.~~

~~(9) 8) The physician-patient privilege does not constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any judicial or administrative proceeding resulting from a report under Subsection (2) 1.~~

~~(6) (10) 9) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.~~

Section 2. Section **62A-4a-403** is amended to read:

62A-4a-403. Reporting requirements -- Investigation -- Penalty -- Legal privileges -- Liability.

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~~[(1)(a) Except as provided in Subsection (2), when any individual, including an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, that individual shall immediately report the alleged abuse or neglect to the nearest peace officer, law enforcement agency, or office of the division.]~~

~~[(b)(i) Upon receipt of a report described in Subsection (1)(a)]~~

~~(1) As used in this section:~~

~~—— (a) (i) "Assistance" means making a reasonable effort to report to the division or the nearest peace officer or law enforcement agency.~~

~~—— (ii) "Assistance" does not include action that places the individual taking the action, or another individual, in danger.~~

~~—— (b) "Legal privilege" means any privilege designated by common law, statute, or rule of evidence.~~

~~—— (2) } Except as provided in Subsections (~~(4)~~3) and (6)(~~(c)~~b), if an individual, including an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act, shall provide assistance if the individual:~~

~~—— (a) (i) } has personal knowledge reason to believe that a child is, or has been, the subject of abuse or neglect ; or~~

~~—— (ii) observes that }, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, the individual shall immediately report the suspected abuse or neglect {of a child is occurring or has occurred; and~~

~~—— (b) is able to provide assistance for the child described in Subsection (2)(a):~~

~~—— (3) to the division or to the nearest peace office or law enforcement agency.~~

~~(2) (a) (i) If a peace officer or a law enforcement agency receives a report under Subsection (~~(2)~~1), the peace officer or law enforcement agency shall immediately notify the nearest office of the division.~~

~~(ii) [If an initial report of abuse or neglect is made to the division] If the division receives a report under Subsection (~~(2)~~1), the division shall immediately notify the appropriate local law enforcement agency.~~

~~[(c)] (b) (i) The division shall, in addition to the division's own investigation in~~

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accordance with Section 62A-4a-409, coordinate with law enforcement on investigations by law enforcement undertaken to investigate ~~[a report described in Subsection (1)(a)]~~ the report of abuse or neglect under Subsection (1)(a).

(ii) If law enforcement undertakes an investigation of a ~~[report described in Subsection (1)(a)]~~ report under Subsection (1)(a), the law enforcement agency undertaking the investigation shall provide a final investigatory report to the division upon request.

~~(2)~~ ~~(4)(3)~~ Subject to Subsection ~~(3)~~ ~~(5)(4)~~, the ~~[notification]~~ reporting requirement described in Subsection ~~(1)(a)~~ (1)(a) does not apply to a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:

(a) the perpetrator made the confession directly to the member of the clergy; and

(b) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

~~(3)~~ ~~(5)(4)~~ (a) When a member of the clergy receives information about abuse or neglect from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse or neglect from the confession of the perpetrator.

(b) Exemption of the reporting requirement for a member of the clergy does not exempt the member of the clergy from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

(5) An individual who in good faith makes a report under Subsection (1), or who otherwise notifies the division or a peace officer or law enforcement agency, is immune from civil and criminal liability in connection with the report or notification of suspected abuse or neglect of a child.

(6) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to ~~provide assistance~~ report suspected abuse or neglect of a child under Subsection ~~(2)(1)~~ (1).

(b) An individual is not guilty of violating Subsection (6)(a) if the individual ~~reasonably believes another individual has, or likely has, already provided or is providing assistance to the child described in Subsection (2)(a).~~

~~(c) Subsection (6)(a) does not apply to the extent that an individual~~ is prohibited from

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~~{providing assistance by a legal privilege.~~

~~(d) reporting suspected abuse or neglect of a child under a privilege designated by common law, statute, or rule of evidence.~~

(c) Notwithstanding any contrary provision of law, a prosecutor may not use an individual's violation of Subsection (6)(a) as the basis for charging the individual with another offense.

~~(7) {(a) Subsections (2) and (6)(a) do not create an independent basis for civil liability for failure to provide the assistance described in Subsection (2):~~

~~(b) The fact that} Under circumstances not amounting to a violation of Section 76-8-508, an individual is {charged with, or convicted of, an offense} guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a child who is the subject of a report under Subsection (6)1}{(a) may not be used to establish that}, the individual {violated a duty on which a claim for personal injuries may be based} who made the report under Subsection (1), a witness, or any other person cooperating with an investigation conducted in accordance with this chapter.~~

Section 3. Repealer.

This bill repeals:

Section 76-5-111.1, Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.