

SENATE BILL NO. 408

INTRODUCED BY CHRISTIAENS

IN THE SENATE

FEBRUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 23, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 25, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 97; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 7, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *408*
2 INTRODUCED BY *Christians*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
5 ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT;
6 SPECIFYING ACTS FOR WHICH CONTRACTED SERVICE PROVIDERS ARE
7 NOT LIABLE; CLARIFYING THE DEFINITION OF NEGLECT; PROVIDING
8 FOR THE DUTIES OF ADULT PROTECTIVE SERVICE TEAMS; AND
9 AMENDING SECTIONS 52-3-803 AND 52-3-805, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Service providers not
13 responsible for certain omissions. A person who provides
14 services to an older person or a developmentally disabled
15 person pursuant to a contract with the state is responsible
16 only for the deprivation of those services required to be
17 provided by the contract.

18 Section 2. Section 52-3-803, MCA, is amended to read:

19 "52-3-803. Definitions. As used in this part, the
20 following definitions apply:

21 (1) "Abuse" means the infliction of physical or mental
22 injury or the deprivation of food, shelter, clothing, or
23 services necessary to maintain the physical or mental health
24 of an older person or a developmentally disabled person
25 without lawful authority. A declaration made pursuant to

1 50-9-103 constitutes lawful authority.

2 (2) "Developmentally disabled person" means a person 18
3 years of age or older who is developmentally disabled as
4 defined in 53-20-102.

5 (3) "Exploitation" means the unreasonable use of an
6 older person or a developmentally disabled person, ~~his~~ the
7 person's money, or ~~his~~ the person's property to the
8 advantage of another by means of duress, menace, fraud, or
9 undue influence.

10 (4) "Incapacitated person" has the meaning given in
11 72-5-101.

12 (5) "Long-term care facility" means a facility defined
13 in 50-5-101.

14 (6) "Mental injury" means an identifiable and
15 substantial impairment of an older person's intellectual or
16 psychological functioning or well-being.

17 (7) "Neglect" means the failure of a guardian, employee
18 of a public or private residential institution, facility,
19 home, or agency, or any other person legally responsible in
20 a residential setting for an older person's or a
21 developmentally disabled person's welfare to provide, to the
22 extent of legal responsibility, food, shelter, clothing, or
23 services necessary to maintain the physical or mental health
24 of the older person or the developmentally disabled person.

25 (8) "Older person" means a person who is at least 60

years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect ~~himself~~ the person from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 3. Section 52-3-805, MCA, is amended to read:

"52-3-805. **Adult protective service teams.** The county attorney or the department of family services may shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or ~~his~~ a designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or ~~his~~ a designee, who is an attorney. When the team considers a matter involving a developmentally disabled person, the team must also include a provider of

developmental disability services other than the provider involved in the matter under review and a representative of the developmental disabilities division of the department of social and rehabilitation services. The department or a county attorney may not bring a criminal prosecution against a person pursuant to this part unless the team recommends the prosecution."

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 3, part 8, and the provisions of Title 52, chapter 3, part 8, apply to [section 1].

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

SENATE BILL NO. 408

INTRODUCED BY CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT;
~~SPECIFYING ACTS FOR WHICH CONTRACTED SERVICE PROVIDERS ARE~~
~~NOT LIABLE~~; CLARIFYING THE DEFINITION OF NEGLECT; PROVIDING
FOR THE MEMBERSHIP AND DUTIES OF ADULT PROTECTIVE SERVICE
TEAMS; AND AMENDING SECTIONS 52-3-803 AND 52-3-805, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Service providers not--~~
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~~services to an older person or a developmentally disabled~~
~~person pursuant to a contract with the state is responsible~~
~~only for the deprivation of those services required to be~~
~~provided by the contract.~~

Section 1. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the
following definitions apply:

(1) "Abuse" means the infliction of physical or mental
injury or the deprivation of food, shelter, clothing, or
services necessary to maintain the physical or mental health
of an older person or a developmentally disabled person
without lawful authority. A declaration made pursuant to

50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18
years of age or older who is developmentally disabled as
defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an
older person or a developmentally disabled person, his the
person's money, or his the person's property to the
advantage of another by means of duress, menace, fraud, or
undue influence.

(4) "Incapacitated person" has the meaning given in
72-5-101.

(5) "Long-term care facility" means a facility defined
in 50-5-101.

(6) "Mental injury" means an identifiable and
substantial impairment of an older person's intellectual or
psychological functioning or well-being.

(7) "Neglect" means the failure of a guardian, employee
of a public or private residential institution, facility,
home, or agency, or any other person legally responsible in
a residential setting for an older person's or a
developmentally disabled person's welfare to provide, to the
extent of legal responsibility, food, shelter, clothing, or
services necessary to maintain the physical or mental health
of the older person or the developmentally disabled person.

(8) "Older person" means a person who is at least 60

years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect himself the person from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 2. Section 52-3-805, MCA, is amended to read:

"52-3-805. Adult protective service teams. (1) The county attorney or the department of family services may shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or his a designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his a designee, who is an attorney.

(2) When the team considers a matter involving a

developmentally disabled person ADULT IN THE CARE OF A PERSON PROVIDING DEVELOPMENTAL DISABILITIES SERVICES, the team must also include a provider of developmental disability services other than the provider involved in the matter under review and a representative of the developmental disabilities division of the department of social and rehabilitation services. THE TEAM SHALL MAKE A REPORT TO THE COUNTY ATTORNEY THAT CONTAINS A RECOMMENDATION CONCERNING ANY CRIMINAL PROSECUTION TO BE BROUGHT PURSUANT TO THIS PART. The department or a county attorney may not bring a criminal prosecution against a person pursuant to this part unless the team recommends MAKES A RECOMMENDATION CONCERNING the prosecution."

~~NEW-SECTION--Section-4--Codification-----instruction---
{Section-1}-is-intended-to-be-codified-as-an-integral-part
of--Title-52--chapter-3--part-8--and-the-provisions-of-Title
52--chapter-3--part-8--apply-to-{section-1}-~~

-End-

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Service providers are not responsible for certain omissions. A person who provides services to an older person or a developmentally disabled person pursuant to a contract with the state is responsible only for the deprivation of those services required to be provided by the contract.~~

Section 1. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to

50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, his the person's money, or his the person's property to the advantage of another by means of duress, menace, fraud, or undue influence.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide, to the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

(8) "Older person" means a person who is at least 60

1 years of age. For purposes of prosecution under 52-3-825(2),
 2 the person 60 years of age or older must be unable to
 3 protect himself the person from abuse, neglect, or
 4 exploitation because of a mental or physical impairment or
 5 because of frailties or dependencies brought about by
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7 (9) "Physical injury" means death, permanent or
 8 temporary disfigurement, or impairment of any bodily organ
 9 or function."

10 **Section 2.** Section 52-3-805, MCA, is amended to read:

11 "52-3-805. Adult protective service teams. (1) The
 12 county attorney or the department of family services may
 13 shall convene one or more temporary or permanent
 14 interdisciplinary adult protective service teams. These
 15 teams may shall assist in assessing the needs of,
 16 formulating and monitoring a treatment plan for, and
 17 coordinating services to older persons who are victims of
 18 abuse, neglect, or exploitation. The supervisor of adult
 19 protective services of the department of family services or
 20 his a designee shall serve as the team's coordinator.
 21 Members must include a social worker, a member of a local
 22 law enforcement agency, a representative of the medical
 23 profession, and a county attorney or his a designee, who is
 24 an attorney.

25 (2) When the team considers a matter involving a

1 developmentally disabled person ADULT IN THE CARE OF A
 2 PERSON PROVIDING DEVELOPMENTAL DISABILITIES SERVICES, the
 3 team must also include a provider of developmental
 4 disability services other than the provider involved in the
 5 matter under review and a representative of the
 6 developmental disabilities division of the department of
 7 social and rehabilitation services. THE TEAM SHALL MAKE A
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 9 CONCERNING ANY CRIMINAL PROSECUTION TO BE BROUGHT PURSUANT
 10 TO THIS PART. The department or a county attorney may not
 11 bring a criminal prosecution against a person pursuant to
 12 this part unless the team recommends MAKES A RECOMMENDATION
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14 NEW-SECTION.--Section-4.--Codification-----instruction---
 15 {Section-1}-is-intended-to-be-codified-as-an--integrat--part
 16 of--Title-527-chapter-37-part-87-and-the-provisions-of-Title
 17 527-chapter-37-part-87-apply-to-{section-1}-

-End-

HOUSE STANDING COMMITTEE REPORT

March 24, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 408 (third reading copy -- blue) be concurred in as amended .

Signed: Russell C. Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Sayles

1. Page 4, lines 10 through 13.

Strike: "The" on line 10 through the end of line 13

-END-

HOUSE

SB 408

661624SC.Hpf

Committee Vote:
Yes 18, No 2.

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person-pursuant-to-a-contract-with-the-state-is--responsible
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~~NEW SECTION. Section 4. Codification instruction. {Section 1} is intended to be codified as an integral part of Title 52, chapter 37, part 87, and the provisions of Title 52, chapter 37, part 87, apply to {section 1}.~~

-End-