

1 ENGROSSED SENATE
2 BILL NO. 1287

By: Griffin of the Senate

3 and

4 Jordan of the House

5
6 An Act relating to vulnerable adult abuse; amending
7 43A O.S. 2011, Section 10-104, as amended by Section
8 3, Chapter 417, O.S.L. 2010, which relates to persons
9 required to report abuse; prohibiting forwarding of
10 certain findings; repealing 43A O.S. 2011, Section
11 10-104, as amended by Section 3, Chapter 332, O.S.L.
12 2003, which is a duplicate section and which relates
13 to persons required to report abuse; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-104, as
17 amended by Section 3, Chapter 417, O.S.L. 2010, is amended to read
18 as follows:

19 Section 10-104. A. Any person having reasonable cause to
20 believe that a vulnerable adult is suffering from abuse, neglect, or
21 exploitation shall make a report as soon as the person is aware of
22 the situation to:

- 23 1. The Department of Human Services; or
- 24 2. The municipal police department or sheriff's office in the
county in which the suspected abuse, neglect, or exploitation
occurred.

- 1 B. Persons required to make reports pursuant to this section
2 shall include, but not be limited to:
- 3 1. Physicians;
 - 4 2. Operators of emergency response vehicles and other medical
5 professionals;
 - 6 3. Social workers and mental health professionals;
 - 7 4. Law enforcement officials;
 - 8 5. Staff of domestic violence programs;
 - 9 6. Long-term care facility personnel, including staff of
10 nursing facilities, intermediate care facilities for persons with
11 mental retardation, assisted living facilities, and residential care
12 facilities;
 - 13 7. Other health care professionals;
 - 14 8. Persons entering into transactions with a caretaker or other
15 person who has assumed the role of financial management for a
16 vulnerable adult;
 - 17 9. Staff of residential care facilities, group homes, or
18 employment settings for individuals with developmental disabilities;
 - 19 10. Job coaches, community service workers, and personal care
20 assistants; and
 - 21 11. Municipal employees.

22 C. 1. If the report is not made in writing in the first
23 instance, as soon as possible after it is initially made by
24 telephone or otherwise, the report shall be reduced to writing by

1 the Department of Human Services, in accordance with rules
2 promulgated by the Commission for Human Services, or the local
3 municipal police or sheriff's department whichever entity received
4 the initial report. The report shall contain the following
5 information:

- 6 a. the name and address of the vulnerable adult,
- 7 b. the name and address of the caretaker, guardian, or
8 person having power of attorney over the vulnerable
9 adult's resources if any,
- 10 c. a description of the current location of the
11 vulnerable adult,
- 12 d. a description of the current condition of the
13 vulnerable adult, and
- 14 e. a description of the situation which may constitute
15 abuse, neglect or exploitation of the vulnerable
16 adult.

17 2. If federal law specifically prohibits the disclosure of any
18 of the information required by this subsection, that information may
19 be excluded from the report.

20 D. If the initial report is made to the local municipal police
21 department or sheriff's office, such police department or sheriff's
22 office shall notify, as soon as possible, the Department of Human
23 Services of its investigation.

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1 E. Any person who knowingly and willfully fails to promptly
2 report any abuse, neglect, or exploitation as required by the
3 provisions of subsection A of this section, upon conviction, shall
4 be guilty of a misdemeanor punishable by imprisonment in the county
5 jail for a term not exceeding one (1) year or by a fine of not more
6 than One Thousand Dollars (\$1,000.00), or by both such fine and
7 imprisonment.

8 F. 1. Any person participating in good faith and exercising
9 due care in the making of a report pursuant to the provisions of
10 this section shall have immunity from any civil or criminal
11 liability that might otherwise be incurred or imposed. Any such
12 participant shall have the same immunity with respect to
13 participation in any judicial proceeding resulting from the report.

14 2. The same immunity from any civil or criminal liability shall
15 also be extended to previous employers of a person employed to be
16 responsible for the care of a vulnerable adult, who in good faith
17 report to new employers or prospective employers of such caretaker
18 any misconduct of the caretaker including, but not limited to,
19 abuse, neglect or exploitation of a vulnerable adult, whether
20 confirmed or not.

21 G. Any person who willfully or recklessly makes a false report
22 shall be civilly liable for any actual damages suffered by the
23 person being reported and for any punitive damages set by the court
24 or jury which may be allowed in the discretion of the court or jury.

1 H. 1. Every physician or other health care professional making
2 a report concerning the abuse, neglect or exploitation of a
3 vulnerable adult, as required by this section, or examining a
4 vulnerable adult to determine the likelihood of abuse, neglect or
5 exploitation, and every hospital in which a vulnerable adult is
6 examined or treated for abuse, neglect or exploitation shall
7 disclose necessary health information related to the case and
8 provide, upon request by either the Department of Human Services or
9 the local municipal police or sheriff's department receiving the
10 initial report, copies of the results or the records of the
11 examination on which the report was based, and any other clinical
12 notes, x-rays or photographs and other health information which is
13 related to the case if:

- 14 a. the vulnerable adult agrees to the disclosure of the
15 health information, or
- 16 b. the individual is unable to agree to the disclosure of
17 health information because of incapacity; and
 - 18 (1) the requesting party represents that the health
19 information for which disclosure is sought is not
20 intended to be used against the vulnerable adult
21 in a criminal prosecution but to provide
22 protective services pursuant to the Protective
23 Services for Vulnerable Adults Act,

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1 (2) the disclosure of the information is necessary to
2 conduct an investigation into the alleged abuse,
3 neglect or exploitation of the vulnerable adult
4 subject to the investigation, and

5 (3) immediate enforcement activity that depends upon
6 the disclosure:

7 (a) is necessary to protect the health, safety
8 and welfare of the vulnerable adult because
9 of incapacity, or

10 (b) would be materially and adversely affected
11 by waiting until the vulnerable adult is
12 able to agree to the disclosure.

13 2. If federal law specifically prohibits the disclosure of any
14 of the information required by this subsection, that information may
15 be excluded from the disclosed health information.

16 I. After investigating the report, either the county office of
17 the Department of Human Services or the municipal police department
18 or sheriff's office, as appropriate, shall forward its findings to
19 the office of the district attorney in the county in which the
20 suspected abuse, neglect, or exploitation occurred. Unsubstantiated
21 findings and findings of self-neglect shall not be forwarded to the
22 office of the district attorney.

23 J. Any state or county medical examiner or physician who has
24 reasonable cause to suspect that the death of any vulnerable adult

1 may be the result of abuse or neglect as defined by Section 10-103
2 of this title shall make a report to the district attorney or other
3 law enforcement official of the county in which the death occurred.
4 The report shall include the name of the person making the report,
5 the name of the deceased person, the facts or other evidence
6 supporting such suspicion, and any other health information that may
7 be of assistance to the district attorney in conducting an
8 investigation into the matter.

9 K. No employer shall terminate the employment, prevent or
10 impair the practice or occupation of or impose any other sanction on
11 any employee solely for the reason that the employee made or caused
12 to be made a report or cooperated with an investigation pursuant to
13 the Protective Services for Vulnerable Adults Act. A court, in
14 addition to other damages and remedies, may assess reasonable
15 attorney fees against an employer who has been found to have
16 violated the provisions of this subsection.

17 SECTION 2. REPEALER 43A O.S. 2011, Section 10-104, as
18 amended by Section 3, Chapter 332, O.S.L. 2003, is hereby repealed.

19 SECTION 3. This act shall become effective November 1, 2016.
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