

## **The Law and You**

### **New Statute on Abuse, Neglect and Exploitation of Seniors**

Earlier this year, our State Legislature repealed and then passed a new statute to better protect seniors. Representative Pat Jones sponsored House Bill 25, and it passed overwhelmingly in the House and Senate. Governor Leavitt signed the bill in March.

Bill 25 is primarily aimed at giving authority to Adult Protective Services to protect seniors and certain impaired adults.

The Bill, however, also permits the victim of abuse and exploitation to bring a private lawsuit against the abuser or exploiter.

Originally, Bill 25 included a right by the abused or exploited adult to recover in a lawsuit his or her attorney fees. But, certain lobbyists killed that provision. Hopefully, such a provision will be added to the Statute in the future. Being able to recover attorney fees is the only way most seniors can afford a lawsuit to recover their assets or vindicate the abuse or exploitation suffered by them.

The Statute provides greater enforcement authority and powers to protect vulnerable adults. Briefly, a "vulnerable adult" is defined by the Statute as a senior adult, 65 years or older. It also includes any adult 18 years or older who

*has a mental or physical impairment which substantially affects the adult's ability to:*

*provide personal protection;  
provide necessities such as food, shelter, clothing, or health care;  
carry out the activities of daily living; or  
manage the adult's resources.*

The term "abuse" as used in the Statute includes many acts that cause harm to a vulnerable adult. The full text of the Statute cannot be fully included in this column, but

the elements of abuse include:

*knowingly or intentionally causing harm;  
unreasonable use of restraints;  
inappropriate use of medications;  
emotional or psychological abuse; or  
sexual offenses.*

The Statute also prohibits the isolation of a vulnerable adult. The term "isolation" means to knowingly prevent a vulnerable adult from having contact with other persons. Unfortunately, it is fairly common for a child who is the caretaker of a parent to prevent visits by other children with the parent. The Statute may reduce the occurrences of such deplorable actions.

Exploitation against vulnerable adults is another offense the Statute is intended to prevent through criminal penalties. A person commits the offense of exploitation of a vulnerable adult when that person is in a position of trust and confidence or has a business relationship with the vulnerable adult and

*obtains or uses the adult's property for someone other than the vulnerable adult;  
improperly uses or manages the resources of the adult for the profit of someone other than the vulnerable adult;  
improperly uses the adult's power of attorney or guardianship for the profit of someone other than the vulnerable adult; or  
commits sexual exploitation of the adult.*

Depending on the value of the property exploited, the offense may be a felony or a misdemeanor. However, if such exploitation is done *intentionally or knowingly*, it is always a felony.

Another important aspect of the Statute is

the reporting requirement:

*Any 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 or the nearest law enforcement agency.*

Failure to willfully report the suspected abuse or exploitation of a vulnerable adult is a class B Misdemeanor. On the other hand, a person who in good faith reports suspected abuse or exploitation is immune from civil and criminal liability in connection with the report or notification. And, the identity of the person reporting is generally not released except at the discretion of Adult Protective Services. However, a person's identity is disclosed.

The Statute should benefit all seniors and other adults who are impaired. It should also give comfort to family members who suspect someone is abusing or exploiting their parent or other loved one. The Statute provides sufficient authority and enforcement powers to Adult Protective Services and to county and district attorneys rescue an abused adult.

For those wishing to obtain more detailed information, Bill 25 is mostly coded in § 62A-3-301-321 and § 76-5-111, Utah Code Annotated. And, you might thank your representative and senator for supporting and passing HB 25.

**YOUR QUESTIONS:** Do you have a particular question that you would like answered? To better serve the regular readers of this The Law and You Column, please direct your questions in writing to Michael A. Jensen, attorney at Law, PO Box 571708, Salt Lake City, Utah 84157. From time to time, I will attempt to answer some of those questions.