

Moved by McCrostie

Seconded by Zito(23)

IN THE HOUSE OF REPRESENTATIVES
HOUSE AMENDMENT TO H.B. NO. 404

AMENDMENT TO THE BILL

On page 1 of the printed bill, delete lines 7 through 33, and insert:

"SECTION 1. That Section 18-1505, Idaho Code, be, and the same is hereby amended to read as follows:

18-1505. ABUSE, EXPLOITATION OR NEGLECT OF A VULNERABLE ADULT -- FINANCIAL EXPLOITATION OF AN ELDER. (1) Any person who abuses or neglects a vulnerable adult under circumstances likely to produce great bodily harm or death is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar (\$25,000) fine.

(2) Any person who abuses or neglects a vulnerable adult under circumstances other than those likely to produce great bodily harm or death is guilty of a misdemeanor.

(3) Any person who exploits a vulnerable adult or any caregiver who financially exploits an elder is guilty of a misdemeanor, unless the monetary damage from such exploitation exceeds one thousand dollars (\$1,000), in which case the person is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar (\$25,000) fine.

(4) As used in this section:

(a) "Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury. Intentional abuse shall be punished under subsection (1) or (2) of this section depending upon the harm inflicted. Abuse by negligent infliction shall only be punished under subsection (2) of this section.

(b) "Caregiver" means any person who has undertaken the temporary or permanent care, custody, or physical control or supervision of, or who has a legal or contractual duty to care for the health, safety, and welfare of, an elder.

(c) "Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.

(d) "Elder" means a person who is sixty (60) years of age or older.

(ee) "Exploitation" or "exploit" means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

(f) "Financial exploitation" or "financially exploit" means the unauthorized taking, withholding, misappropriation, or use of an elder's money, real property, or personal property. "Financial exploitation"

1 may be committed by using coercion, manipulation, threats, intimidati-
 2 tion, misrepresentation, or undue influence and may include but not be
 3 limited to:

4 (i) Breaches of fiduciary relationships, such as the misuse of a
 5 power of attorney or the abuse of guardianship privileges, result-
 6 ing in the unauthorized appropriation, sale, or transfer of prop-
 7 erty;

8 (ii) The unauthorized taking of personal assets; or

9 (iii) The misappropriation, misuse, or unauthorized transfer of
 10 moneys belonging to the elder from a personal or joint account.

11 (dg) "Neglect" means failure of a caretaker to provide food, clothing,
 12 shelter or medical care to a vulnerable adult, in such a manner as to
 13 jeopardize the life, health or safety of the vulnerable adult.

14 (eh) "Vulnerable adult" means a person eighteen (18) years of age or
 15 older who is unable to protect himself from abuse, neglect or exploita-
 16 tion due to physical or mental impairment which affects the person's
 17 judgment or behavior to the extent that he lacks sufficient understand-
 18 ing or capacity to make or communicate or implement decisions regarding
 19 his person, funds, property or resources.

20 (5) Nothing in this section shall be construed to mean a person is
 21 abused, neglected or exploited for the sole reason he is relying upon treat-
 22 ment by spiritual means through prayer alone in accordance with the tenets
 23 and practices of a recognized church or religious denomination; nor shall
 24 the provisions of this section be construed to require any medical care or
 25 treatment in contravention of the stated or implied objection of such a per-
 26 son.

27 (6) Nothing in this section shall be construed to mean that an employer
 28 or supervisor of a person who abuses, exploits or neglects a vulnerable
 29 adult, or a caregiver who financially exploits an elder, may be prosecuted
 30 unless there is direct evidence of a violation of this statute by the em-
 31 ployer or supervisor.

32 SECTION 2. That Section 18-1505A, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 18-1505A. ABANDONING A VULNERABLE ADULT. (1) Any person who abandons
 35 a vulnerable adult, as that term is defined in section 18-1505, Idaho Code,
 36 in deliberate disregard of the vulnerable adult's safety or welfare, regard-
 37 less of whether the vulnerable adult suffered physical harm from the act of
 38 abandonment, shall be guilty of a felony and shall be imprisoned in the state
 39 prison for a period not in excess of five (5) years, or by a fine not exceed-
 40 ing five thousand dollars (\$5,000), or by both such fine and imprisonment.
 41 It shall not be a defense to prosecution under the provisions of this section
 42 that the perpetrator lacked the financial ability or means to provide food,
 43 clothing, shelter or medical care reasonably necessary to sustain the life
 44 and health of a vulnerable adult.

45 (2) As used in this section "abandon" means the desertion or willful
 46 forsaking of a vulnerable adult by any individual, caretaker as defined by
 47 subsection (4) (bc) of section 18-1505, Idaho Code, or entity which has as-
 48 sumed responsibility for the care of the vulnerable adult by contract, re-

1 ceipt of payment of care, any relationship arising from blood or marriage
2 wherein the vulnerable adult has become the dependent of another or by order
3 of a court of competent jurisdiction; provided that abandon shall not mean
4 the termination of services to a vulnerable adult by a physician licensed un-
5 der chapter 18, title 54, Idaho Code, or anyone under his direct supervision,
6 where the physician determines, in the exercise of his professional judg-
7 ment, that termination of such services is in the best interests of the pa-
8 tient."

9 CORRECTION TO TITLE

10 On page 1, delete lines 2 through 5, and insert:

11 "RELATING TO CRIMES AND PUNISHMENT; AMENDING SECTION 18-1505, IDAHO CODE, TO
12 PROVIDE FOR THE OFFENSE OF FINANCIAL EXPLOITATION OF AN ELDER, TO DEFINE
13 TERMS, AND TO PROVIDE IMMUNITY FOR CERTAIN PERSONS; AND AMENDING SEC-
14 TION 18-1505A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE."