

HOUSE BILL 2286

By Hackworth

AN ACT to amend Tennessee Code Annotated, Title 68,
Chapter 11, Part 10, relative to vulnerable
persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-1001, is amended by deleting subsections (a) and (b) in their entireties and substituting instead the following:

(a) The department of health shall establish and maintain a registry containing the names of any persons who have been determined by Tennessee government agencies or any state or federal court or any administrative bodies to have abused, neglected, misappropriated or exploited the property of vulnerable individuals.

(b) The names and information contained in this registry shall be available for public inspection as provided by this chapter.

SECTION 2. Tennessee Code Annotated, Section 68-11-1004(a), is amended by deleting subdivisions (2) and (3) and substituting instead the following:

(2) "Exploitation" means, in cases that are investigated by the department of human services, the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(3) "Misappropriation" means any taking, possession or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or which constitute a violation of a fiduciary duty of a caretaker of a vulnerable person.

(4) "Offense against a vulnerable person" means any act that constitutes abuse, neglect, misappropriation or exploitation of the property of a vulnerable person even if

such act does not constitute a criminal act, or any crime the elements of which constitute abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person; and

(5) "Property" means all interests of any type in real property, and any interests of any type in personal property whether in monies or financial instruments of any type, goods, furnishings, and similar property; provided, however, that for purposes of reporting to the registry established by this part, property shall only consist of funds paid by a governmental agency to an "adult" as defined in T.C.A. § 71-6-102, if the report of abuse, neglect, misappropriation or exploitation is investigated by the department of human services pursuant to Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated.

(6) "Vulnerable person" means anyone who:

(A) Is under eighteen (18) years of age; or

(B) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect or misappropriation or exploitation of property and is or has been:

(i) The subject of any report of harm, abuse, neglect, or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to title 37, chapter 1, parts 1 or 6, title 71, chapter 6, part 1, or pursuant any other provision of law or regulation; or

(ii) Receiving protective services from a state agency pursuant to law; or

(iii) The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property; or

(iv) In the care of either a state agency, an entity that is licensed or regulated by a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or

(v) Receiving services in the person's home from any agency licensed or regulated by or contracted to a state agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.

SECTION 3. Tennessee Code Annotated, Section 68-11-1004(b)(1), is amended by adding the language "or exploitation" immediately following the language "or misappropriation" wherever it appears in subdivision (b)(1).

SECTION 4. Tennessee Code Annotated, Section 68-11-1004(b), is amended by deleting subdivision (3) of subsection (b) in its entirety and by substituting instead the following:

(3) Notification shall include the individual's last known mailing address, and the agency's definition of abuse, neglect, misappropriation or exploitation of property that it used in making the determination, and any other information that the department determines is necessary to adequately identify such individual for purposes of administrative hearings provided by this part, or to adequately identify such individual when inquiry to the registry is made.

SECTION 5. Tennessee Code Annotated, Section 68-11-1004, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) Upon receiving the notification set out in subsection (b) or (c), the department shall, in addition to entering the individual's name on the registry, also maintain and make available upon request, the name of the reporting agency and the applicable definition of abuse, neglect, misappropriation or exploitation of property supplied by that agency. The individual's name, once entered on the registry, shall remain on the registry, except as provided in subsection (g), even if the individual meets the requirements of any criminal disposition, and regardless of any expunction that may be ordered by any court or that may take place by operation of law in connection with such criminal disposition; provided, however, that any expunction reported to the department shall result in the removal from the registry of everything regarding the criminal disposition, except the individual's name, and the department shall destroy any other documentation of the criminal disposition; provided, further, however, that if a person is reported by any state agency pursuant to the provisions of this part, the identification of such individual as a perpetrator of abuse, neglect, misappropriation or exploitation of a vulnerable person shall not be subject to removal based upon expunction of a criminal disposition.

SECTION 6. Tennessee Code Annotated, Section 68-11-1004(e), is amended by adding the language, "or any fact issue related to the correct identity of such individual" immediately following the language "hearing conclusions were made" in the second sentence.

SECTION 7. Tennessee Code Annotated, Section 68-11-1004, is amended by adding the following language as a new subsection (h):

(h) A state agency that has placed a person in the registry pursuant to this part may recommend to the department the removal of such person's name if:

(1) It finds that the placement of the person's name on the registry was in error; or

(2)

(A) An advisory group convened by the state agency composed of persons with experience in the subject matter areas of the agency's work, or who by experience or education, the agency determines are qualified to provide recommendations to the agency regarding a person's likelihood of committing further acts or omissions that led to the person's placement on the registry determines, based upon evidence presented to such group, that removal of the person from the registry is clearly warranted, then such group may recommend in writing to the agency a waiver and removal of such person from the registry.

(B) The final decision regarding the recommendation for removal from the registry shall be made by the state agency and the recommendation shall be reduced to writing, giving the agency's reasons for such decision, and sent to the person seeking the waiver.

(C) If the decision is to remove the person from the registry, the recommendation shall be sent to the department and such person's name shall be removed by the department.

(D) If the person seeking a waiver is dissatisfied with the determination made by the state agency, the person shall be permitted to appeal. The appeal shall be conducted as a contested case hearing pursuant to the Uniform Administrative Procedures Act compiled in §§ 4-5-301 et seq.

(E) The decision and the written recommendations of the advisory group and the state agency shall be open for public inspection.

SECTION 8. Tennessee Code Annotated, Section 68-11-1006, is amended by deleting subsections (a) and (b) in their entireties and substituting instead the following:

(a) Any:

(1) State agency under title 33, 37, 68 or 71 that provides licensing authority over any entity subject to subdivision (2) or that provides care for persons subject to this part;

(2) Entity licensed by a state agency as defined in subdivision (a)(1); or

(3) Entity with a contract between that entity and a state agency, as defined in subdivision (a)(1) and that provides care for persons subject to this part;

shall determine whether any prospective employee or volunteer person engaged in providing services to persons subject to this part is listed on the registry before such person is permitted to be employed or provide volunteer services.

(b) No employee or volunteer who is listed on the registry may be hired or otherwise permitted to provide such regulatory oversight or services.

SECTION 9. Tennessee Code Annotated, Section 68-11-1008(a), is amended by adding the language “or exploitation” immediately following the word “misappropriation”.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.