

2017 SENATE HUMAN SERVICES

SB 2335

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2335
1/30/2017
Job Number 27567

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to endangerment or exploitation of a vulnerable adult; and to provide a penalty.

Minutes:

Attachments: 1

Chair J. Lee: Brought the hearing to order. All members were present.

Senator Heckaman, District 23: Testified to introduced the bill. The insurance department will explain the bill.

Sara Behrens, Legal Counsel, North Dakota Insurance Department: (1:20-5:10) See Attachment #1 for testimony in favor of the bill as amended.

Senator Anderson: Do you see any conflicts between this bill and SB 2322? Do we pass them both or do we amend something into the other one?

Sara Behrens: I think the 2 bills will work together. The only change is if you wanted them to be identical on the age, then one could be changed to make those identical. However, they do have different purposes and I think the fact that there might be some slight differences in exploitation or requirements, that are mainly due to those different purposes; one is civil and one is criminal and I do not see any conflict.

Senator Anderson: You mentioned an amendment, where is it?

Sara Behrens: I know that the amendment was done on Friday. I was told by legislative counsel that it was here and ready for this morning. I think Chair Lee went to find it. We would support it not amended as well, but we think that the amendments are a good idea and it would make the bill a little more concrete and broad to encompass these situations.

Senator Heckaman: When you have in your testimony that 23 states utilize an age with no additional qualifiers, can you tell me how that would read for them?

Sara Behrens: For those states, they use a variety of terms to identify these victims, they use vulnerable adult, elder, person who is aged, etc. The definition would then be "means an individual this age or order", then they'll have "or other groups" like we would have here that would encompass those who are disabled or have those impairments.

V-Chair Larsen: No further testimony. Closed the hearing on SB 2335.

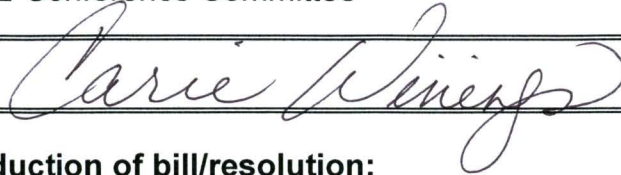
2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2335
1/30/2017
Job Number 27575

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to endangerment or exploitation of a vulnerable adult; and to provide a penalty.

Minutes:

Attachments: 1

Chair J. Lee: Opened SB 2335 for committee discussion. **See Attachment #1** for amendment proposed. (Asked Sara Behrens to the podium to answer some questions.) Do you see any challenges for us in having 60 in this one and 65 in the securities legislation? You and I were talking with Greg about the benefits of possibly having all of the ages the same, but they are really not the same in every way. Tell us what you think.

Sara Behrens: The reason we went with 60, and this stems from when we came and testified for committee work and Senator Larsen brought up the fact that people are mostly doing this type of consultation on Medicare and estate planning before the age of 65, and that's why we went with 60 instead of 65. For the purpose of criminal statutes, then that is going to encompass not just the financial planning aspect but other situations in the insurance but further out from that. We would be able to encompass a lot more people than if we had 65.

Chair J. Lee: (Asked the committee to take a look at the amendments.) On page 2, lines 11-17, we have changed it to eligible adults. When it says "at least 60", that is just permitting a window between 60 and 65.

Senator Heckaman: Even under that same place where it says 60, and you go to the next line, where it says an individual 18 years of age or over, and there are a lot of different qualifiers there; a lot of what's in there who has a physical or mental limitation, that might cover all ages. Maybe we've got everything covered.

Chair J. Lee: The amendment takes lines 11-17 out.

Sara Behrens: The purpose of that was for the uniformity in SB 2322, the eligible adults, vulnerable adult as defined in Title 50. That's why we went with that language.

Chair J. Lee: It seems to me that the things that are mentioned in lines 11-17 are important too.

Sara Behrens: Vulnerable Adults in Chapter 50-25.2 is defined as "an adult who has a substantial mental or functional impairment". An adult includes a minor emancipated by marriage. You are going to cover anyone 18 and older with that substantial mental or functional impairment and anyone under the age of 18 who has been emancipated by marriage.

Chair J. Lee: So we don't need to include these specifics.

Sara Behrens: It should cover that broad range of impairments. This allows it to be more uniform and consistent across all the bills. Now we have vulnerable adult citing back to Title 50 in the securities chapter, criminal code, and then it will be consistent over to 50 and then the other places where these things are mentioned.

Senator Anderson: If we want that person in between 18 and 60 included under a different category we should actually change the definition in 50-25.2-01 instead of including different language here correct?

Chair J. Lee: We don't want to be limiting in 50 either. Its broader in in the current definition.

Sara Behrens: That is correct. If you want it more limited for the criminal code, then you'd want to do it in SB 2335. It was a little wordier, but I think this will cover same individuals.

Chair J. Lee: Everything else in the amendment is just moving to the word eligible until you get to the very last one and then we are back to the very same definition in 50-25.2-01, replacing the section which is listed in line 12 on page 4.

Sara Behrens: Then we are including undue influence. That is something that many states in their criminal codes, within these sections, do include undue influence to encompass those individuals who are more, not impaired, but may be in a situation where they are lonely and more likely to be exploited because they do not have those close family member and friends.

Senator Anderson: Moved Amendment 17.0974.01001.

Vice Chair Larsen: Seconded.

Senator Clemens: How do the amendments, lines 11-17, tie in with Subsection B and C?

Chair J. Lee: B and C were eliminated so we have a new C, which is the undue influence section on your amendment.

Senator Anderson: The reason for that undue influence is that it was covered under definition that added in 50-25.201; which is the definition she read. Consequently, then we no longer need that 2nd part on page 2. That includes those people.

Chair J. Lee: I still think he is right that we don't have a B.

Sara Behrens: B is still there; A is caregiver, B is eligible adult, C is undue influence.

A roll call vote was taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Vice Chair Larsen: Moved a Do Pass.

Senator Piepkorn: Seconded.

A roll call vote was taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Sen. Kreun will carry the bill.

January 30, 2017

CM
1/30/17
1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335

Page 1, line 3, after "to" insert "the definition and"

Page 1, line 3, replace "a vulnerable" with "an eligible"

Page 1, line 8, overstrike "a"

Page 1, line 8, overstrike "vulnerable"

Page 1, line 9, after "elderly" insert "an eligible"

Page 1, line 11, overstrike "a"

Page 1, line 11, overstrike "vulnerable"

Page 1, line 11, after "elderly" insert "an eligible"

Page 1, line 15, overstrike "**a vulnerable**" and insert immediately thereafter "an eligible"

Page 1, line 17, overstrike the second "a"

Page 1, line 18, overstrike "vulnerable"

Page 1, line 18, after "elderly" insert "an eligible"

Page 1, line 19, overstrike "a"

Page 1, line 19, overstrike "vulnerable"

Page 1, line 20, after "elderly" insert "an eligible"

Page 1, line 22, overstrike "a"

Page 1, line 22, overstrike "vulnerable"

Page 1, line 22, after "elderly" insert "an eligible"

Page 2, replace lines 11 through 17 with:

"Eligible adult" means an individual who is at least sixty years of age or a vulnerable adult as defined in section 50-25.2-01.

- c. "Undue influence" means the use of a position of trust and confidence with an eligible adult to exploit or take advantage of that eligible adult through actions or tactics, including emotional, psychological, or legal manipulation."

Page 2, line 19, overstrike "a"

Page 2, line 19, overstrike "vulnerable"

Page 2, line 19, after "elderly" insert "an eligible"

Page 2, line 22, overstrike "vulnerable"

Page 2, line 23, after the first "elderly" insert "eligible"

1/30/17
2 of 3

Page 2, line 23, overstrike "vulnerable"

Page 2, line 23, after the second "elderly" insert "eligible"

Page 2, line 28, overstrike "**a vulnerable**" and insert immediately thereafter "**an eligible**"

Page 2, line 29, overstrike "a"

Page 2, line 29, overstrike "vulnerable"

Page 2, line 29, after "elderly" insert "an eligible"

Page 2, line 31, overstrike "vulnerable"

Page 2, line 31, after "elderly" insert "eligible"

Page 3, line 1, overstrike the first "or" and insert immediately thereafter an underscored comma

Page 3, line 1, after the first comma insert "or undue influence."

Page 3, line 2, overstrike "vulnerable"

Page 3, line 2, after "elderly" insert "eligible"

Page 3, line 3, overstrike "vulnerable"

Page 3, line 4, after "elderly" insert "eligible"

Page 3, line 5, overstrike "vulnerable"

Page 3, line 5, after "elderly" insert "eligible"

Page 3, line 6, overstrike "vulnerable"

Page 3, line 6, after "elderly" insert "eligible"

Page 3, line 9, overstrike "vulnerable"

Page 3, line 9, after "elderly" insert "eligible"

Page 3, line 10, overstrike "vulnerable"

Page 3, line 10, after "elderly" insert "eligible"

Page 3, line 12, overstrike "vulnerable"

Page 3, line 12, after "elderly" insert "eligible"

Page 3, line 13, overstrike "a"

Page 3, line 13, overstrike "vulnerable"

Page 3, line 13, after "elderly" insert "an eligible"

Page 3, line 25, overstrike "vulnerable"

Page 3, line 25, after "elderly" insert "eligible"

Page 3, line 29, overstrike "vulnerable"

Page 3, line 29, after "elderly" insert "eligible"

Page 4, line 1, overstrike "**a vulnerable**" and insert immediately thereafter "**an eligible**"

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1/30/17
3 of 3

Page 4, line 2, overstrike the second "a"

Page 4, line 2, overstrike "vulnerable"

Page 4, line 2, after "elderly" insert "an eligible"

Page 4, line 4, overstrike "vulnerable"

Page 4, line 4, after "elderly" insert "eligible"

Page 4, line 7, overstrike "vulnerable"

Page 4, line 7, after "elderly" insert "eligible"

Page 4, line 12, overstrike "12.1-31-07" and insert immediately thereafter "50-25.2-01"

Renumber accordingly

Date: 4/30 2017Roll Call Vote #: 12017 SENATE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 2335Senate Human Services Committee☐ SubcommitteeAmendment LC# or Description: 17.0974.01001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Anderson Seconded By Sen. Larsen

| Senators | Yes | No | Senators | Yes | No |
|----------------------------------|-----|----|--------------------------|-----|----|
| Senator Judy Lee (Chairman) | X | | Senator Joan Heckaman | X | |
| Senator Oley Larsen (Vice-Chair) | X | | Senator Merrill Piepkorn | X | |
| Senator Howard C. Anderson, Jr. | X | | | | |
| Senator David A. Clemens | X | | | | |
| Senator Curt Kreun | X | | | | |
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Total (Yes) 7 No 0Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1/30 2017Roll Call Vote #: 22017 SENATE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 2335Senate Human Services Committee☐ SubcommitteeAmendment LC# or Description: 17.0974.01001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____Motion Made By Sen. Larsen Seconded By Sen. Piepkorn

| Senators | Yes | No | Senators | Yes | No |
|----------------------------------|----------|----|--------------------------|----------|----|
| Senator Judy Lee (Chairman) | <u>X</u> | | Senator Joan Heckaman | <u>X</u> | |
| Senator Oley Larsen (Vice-Chair) | <u>X</u> | | Senator Merrill Piepkorn | <u>X</u> | |
| Senator Howard C. Anderson, Jr. | <u>X</u> | | | | |
| Senator David A. Clemens | <u>X</u> | | | | |
| Senator Curt Kreun | <u>X</u> | | | | |
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Total (Yes) 7 No 0Absent 0Floor Assignment Sen. Kreun

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2335: Human Services Committee (Sen. J. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 3, after "to" insert "the definition and"

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Page 4, line 12, overstrike "12.1-31-07" and insert immediately thereafter "50-25.2-01"

Renumber accordingly

2017 HOUSE JUDICIARY

SB 2335

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2335
3/20/2017
29444

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the definition and endangerment or exploitation of an eligible adult; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on SB 2335.

Senator Heckaman: Introduced the bill. The bill relates to criminal charges when vulnerable adults are exploited.

Sara Behrens, Legal Counsel, ND Insurance Department: (#1) Went through testimony. (1:48-6:30)

Representative Klemin: On disabled adult which is being moved out of here, it could be a vulnerable adult as defined. It also could be someone that just has a physical disability that could affect that person's normal activities of daily living. We are eliminating this whole class of people as I see it.

Sara Behrens: That is not our intention. I believe the way vulnerable adult is defined in Title 50 covers those individuals as well?

Representative Klemin: Looking at the definition it means an adult who has a substantial mental or functional impairment. Under disabled adult, you end up with functional impairment or is that a physical disability?

Sara Behrens: It was not our intention to remove those individuals.

Representative Klemin: I think unintentionally you have eliminated that class of people who are not mental incompetent or physically disabled. That may be fine if that was the intent.

Chairman K. Koppelman: It seems like we have various ages in bills. Is there a better way to do this?

Sara Behrens: We did try to be consistent. Other than the age the definition we placed in here is consistent with 2322; which referring back to title 50 brings all of them together. As far as the exploitation type of definition I think that definition has different purposes in different situations. There are different burdens of proof depending on which section you are in.

Chairman K. Koppelman: You are getting rid of the definition currently in 12.1.31-07 of vulnerable elderly adult.

Sara Behrens: That is correct. We did that to encompass more individuals to try and catch those that aren't diagnosed with mental or physical impairment. If they don't have that close family, they can be exploited by other individuals easier.

Chairman K. Koppelman: How does the definition of vulnerable adult in 50-25.201 differ from the definition of vulnerable elderly adult 12.1-31-07? You reference both in the bill.

Sara Behrens: I don't have the two in front of me. We added the age 60 as an eligible adult; because those individuals would not necessarily be abused, but they are at the age they could be.

Chairman K. Koppelman: So in that section it means a vulnerable adult who has a substantial mental or functional impairment?

Representative Klemin: The term functional impairment? What is it?

Sara Behrens: I can look into that to see if it is covering what we intended it to cover.

Chairman K. Koppelman: Getting back to the age issue. Should there be this or that standard and there is something else going on or just everybody in that age group is considered part of the pool?

Sara Behrens: I don't think it should be an and because at age 60 you are just in that eligible category. There does have to be additional circumstances. Just because you are age 60 doesn't mean that you are going be under this statute as someone who is being endangered or exploited. It means you are in that eligible category so if it were to happen there is something that can be done about it.

Chairman K. Koppelman: So it means an eligible adult who is at least 60 years old or a vulnerable adult as defined earlier. What if you are 59? If we are grabbing at an age aren't we missing the point?

Sara Behrens: We gave to pick some age. That age of 60 is the timing when individuals start to plan for retirement and Medicare and those things.

Representative Klemin: A vast majority of people who are 60 and then put in this category; now we are talking 20 years in jail in this bill, we can charge somebody with a crime? That is a big change from the existing law. Now it is a vulnerable adult and you are taking that part out. That is another big change?

Sara Behrens: It is at this point they are going to start working with Medicare, long term care and we had to choose an age to begin at.

Representative Klemin: This is the age people start getting involved at long term care you had to look at this stuff long before 60. If you are looking at Medicare, you have to be 66 to get Medicare; why would you go to an insurance advise then?

Sara Behrens: If you want to consider a different age that is fine with us. We do think it is important to have that age by itself or a vulnerable adult.

Representative Klemin: This bill is not just for insurance. It applies to that type of exploitation due to undo influence. Don't you have any other way to disciplining insurance agents that do this besides charging them with 20 years in prison?

Sara Behrens: The only thing we can do now is take action against their insurance license.

Representative Maragos: What is the official age of an adult in our state. From 18-60 are you aware of anywhere else that covers those that are not 60 or 65?

Sara Behrens: Between 18-60 they would be covered by the definition of vulnerable adult. There would be criminal abilities under this.

Chairman K. Koppelman: Maybe it would be better to describe the circumstance instead of their age? Maybe it would be better to describe the circumstance?

Sara Behrens: The concern then is you are limited it to circumstance? We don't want to have those individuals not be covered. That is why the age and the age we chose.

Chairman K. Koppelman: Nor do you want a 55-year-old under those circumstances not have some protection.

Susan Beeler, Mandan, Morton County: This would have given our family protection. If you change the circumstances, then you would have to prove that circumstance. If you added in a care giver that would have probably helped us in our situation.

Chairman K. Koppelman: Maybe if you would say someone who is vulnerable and financial exploited?

Susan Beeler: We had our situation with a caregiver; so that is for intent for financial exploitation.

Opposition: None

Neutral: None

Hearing closed.

House Judiciary Committee

SB 2335

March 20, 2017

Page 4

Subcommittee: Chairman: Rep Klemin: Rep. Vetter: Rep. Nelson

Due by Wednesday.

Minutes of the

(~~HOUSE~~) (SENATE) BILL NO. 2335 SUBCOMMITTEE OF THE

House Judiciary STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: 3/21/17

Time meeting called to order: 4:30 pm

Members present: Klein, Vetter, M. Nelson

Others present (may attach attendance sheet):

Karen Tyler, Securities Commissioner
Sara Behrens, Attorney, ND Insurance Dept.

Topics discussed:

Financial exploitation of vulnerable
adults, undue influence, and
criminal penalties.

Motion and vote:

Motion to recommend amendments
by Rep. Nelson. Second by Rep.
Vetter. Motion passed 3-0

Time of adjournment: 4:45

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2335
3/27/2017
29696

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the definition and endangerment or exploitation of an eligible adult; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the meeting on SB 2335.

Representative Klemin: (#1) Went over proposed amendment. The first one we had had to do with the transaction or disbursement of funds while the DHS and the securities commissioner try to figure out if there is financial exploitation or not. Some of those situations can result in tax consequences when you sell off your stock or high fees to somebody who might be involved. This one is the criminal side of it. This is the one that was brought in by the insurance department. We are going to just change page 2, line 11 eligible adult; and individual who is sixty to sixty-five. Otherwise eligible adult is defined the same way. It is putting undue influence in the law here and this is the wordage that is well used by the courts in determining whether someone has abused it.

Chairman K. Koppelman: These bills streamline the language in law in these various areas. This changes them from disabled to vulnerable elderly to an eligible adult?

Representative Klemin: This eligible adult is defined the same way in that first bill too.

Representative Vetter: My concern was what if you are the favorite son or daughter and they want to give you everything? It does spell a lot of the different things you have to watch for. You have to be doing something to be proven guilty of this one.

Motion Made to Amend the bill by Rep. Klemin; Seconded by Representative Maragos:

Discussion:

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Satrom; Seconded by Rep. Maragos

Discussion:

Roll Call Vote: 12 Yes 1 No 2 Absent Carrier: Rep. Klemin

Closed.

3/27/17 DP

17.0974.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Klemin
March 27, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2335

Page 2, line 11, replace "sixty" with "sixty-five"

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2335

House Judiciary Committee

☒ Subcommittee

Amendment LC# or Description: Page 2, line 11, replace "sixty" with "sixty five"

Recommendation: ☒ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Nelson Seconded By Rep. Vetter

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-------------------------------------|----|-----------------|-------------------------------------|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | <input checked="" type="checkbox"/> | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | <input checked="" type="checkbox"/> | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | <input checked="" type="checkbox"/> | | | | |
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0
Total (Yes) 3 No 0

Absent _____

Floor Assignment Rep. _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/27
Roll Call Vote 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO SB2335

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.0974.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Klemm Seconded By Rep. Maragos

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemm | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paup | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voie Vote Carried

Date: 3/27
Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2335

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Satrom Seconded By Rep Maragos

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | ✓ | | Rep. Hanson | ✓ | |
| Vice Chairman Karls | ✓ | | Rep. Nelson | ✓ | |
| Rep. Blum | ✓ | | | | |
| Rep. Johnston | ✓ | | | | |
| Rep. Jones | ✓ | | | | |
| Rep. Klemin | ✓ | | | | |
| Rep. Magrum | ✓ | ✓ | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Paur | ✓ | | | | |
| Rep. Roers-Jones | ✓ | | | | |
| Rep. Satrom | ✓ | | | | |
| Rep. Simons | ✓ | | | | |
| Rep. Vetter | ✓ | | | | |

Total (Yes) 12 No 1

Absent 2

Floor Assignment : Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2335, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2335
was placed on the Sixth order on the calendar.

Page 2, line 11, replace "sixty" with "sixty-five"

Renumber accordingly

2017 TESTIMONY

SB 2335

SB 2335
Attach #1
1/30

SENATE BILL NO. 2335

Presented by: Sara Behrens
Legal Counsel
North Dakota Insurance Department

Before: Senate Human Services Committee
Senator Judy Lee, Chairwoman

Date: January 30, 2017

TESTIMONY

Good Morning Madam Chair and members of the committee. My name is Sara Behrens and I am Legal Counsel for the North Dakota Insurance Department. I appear before you in support of Senate Bill No. 2335, as amended.

This bill would provide the ability to protect a greater number of individuals from abuse and exploitation. It would allow an individual to be prosecuted for endangering or exploiting someone who is 60 years of age or older regardless of whether the victim has been determined by a doctor to be mentally or physically impaired or committed to a care facility.

The North Dakota Insurance Department has encountered this situation and attended trainings regarding elder abuse. We have two investigators who are law enforcement officers. Approximately two years ago, one of our investigators had a case wherein an insurance agent took advantage of one of his clients, a 92-year-old woman. The victim did not have close family and had been doing business with the insurance agent for a number of years. The insurance agent had financial troubles and, over the course of three years, received over \$100,000 from the victim. He would send her greeting cards, 93 were recovered after her death, in which he would tell her how wonderful she was and how he was thankful she was in his life. He would then casually include details about things such as a broken down car and then how he would be okay though

2335
#1
1/30

because of friends like her. She would then give him money. A specialist in elder abuse agreed that this was clear exploitation, however, did not fall under current laws.

Because this woman had no mental or physical impairment diagnosed by a doctor, we were unable to prove exploitation. All we were able to do was take regulatory action concerning his insurance producer license

Senate Bill No. 2335 does two main things: First, it adds a definition for "eligible adult" which is defined as an individual age 60 years or older or a vulnerable adult as defined in Section 50-25.2-01. This will allow prosecution for endangerment and exploitation of a victim who is exploited despite not having a diagnosed mental or physical impairment. This definition tracks with the definition found in Senate Bill No. 2322 with the only difference being the age of eligibility. Referring to Chapter 50-25.2's definition of vulnerable adult also brings some consistency among the various statutes referring to these types of victims. I researched other states' criminal laws on this topic and found that 23 states utilize an age with no additional qualifiers. Ten states set that age at 60, ten at 65, two at 70 and one at 62.

Second, it adds "undue influence" as a means of exploitation and includes a definition. This accounts for those cases, such as the 92-year-old woman in our case, who are not mentally or physically impaired, but who, because of loneliness or other situations, are preyed upon through emotional and psychological manipulation.

Making these changes to current law will allow criminal prosecution of those cases that currently are not accounted for under the law. While an eligible adult will be anyone age 60 or over, that individual will also have to be endangered or exploited and that endangerment or exploitation will have to be proved beyond a reasonable doubt in order for a violation of this section of the law to occur.

In conclusion, I respectfully request a "do pass" recommendation from this committee on Senate Bill No. 2335. I am happy to take any questions.

January 27, 2017

#1
1/30

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335

Page 1, line 3, after "to" insert "the definition and"

Page 1, line 3, replace "a vulnerable" with "an eligible"

Page 1, line 8, overstrike "a"

Page 1, line 8, overstrike "vulnerable"

Page 1, line 9, after "elderly" insert "an eligible"

Page 1, line 11, overstrike "a"

Page 1, line 11, overstrike "vulnerable"

Page 1, line 11, after "elderly" insert "an eligible"

Page 1, line 15, overstrike "**a vulnerable**" and insert immediately thereafter "an eligible"

Page 1, line 17, overstrike the second "a"

Page 1, line 18, overstrike "vulnerable"

Page 1, line 18, after "elderly" insert "an eligible"

Page 1, line 19, overstrike "a"

Page 1, line 19, overstrike "vulnerable"

Page 1, line 20, after "elderly" insert "an eligible"

Page 1, line 22, overstrike "a"

Page 1, line 22, overstrike "vulnerable"

Page 1, line 22, after "elderly" insert "an eligible"

Page 2, replace lines 11 through 17 with:

""Eligible adult" means an individual who is at least sixty years of age or a vulnerable adult as defined in section 50-25.2-01.

c. "Undue influence" means the use of a position of trust and confidence with an eligible adult to exploit or take advantage of that eligible adult through actions or tactics, including emotional, psychological, or legal manipulation."

Page 2, line 19, overstrike "a"

Page 2, line 19, overstrike "vulnerable"

Page 2, line 19, after "elderly" insert "an eligible"

Page 2, line 22, overstrike "vulnerable"

Page 2, line 23, after the first "elderly" insert "eligible"

Page 2, line 23, overstrike "vulnerable"

Page 2, line 23, after the second "elderly" insert "eligible"

Page 2, line 28, overstrike "**a vulnerable**" and insert immediately thereafter "an eligible"

Page 2, line 29, overstrike "a"

Page 2, line 29, overstrike "vulnerable"

Page 2, line 29, after "elderly" insert "an eligible"

Page 2, line 31, overstrike "vulnerable"

Page 2, line 31, after "elderly" insert "eligible"

Page 3, line 1, overstrike the first "or" and insert immediately thereafter an underscored comma

Page 3, line 1, after the first comma insert "or undue influence,"

Page 3, line 2, overstrike "vulnerable"

Page 3, line 2, after "elderly" insert "eligible"

Page 3, line 3, overstrike "vulnerable"

Page 3, line 4, after "elderly" insert "eligible"

Page 3, line 5, overstrike "vulnerable"

Page 3, line 5, after "elderly" insert "eligible"

Page 3, line 6, overstrike "vulnerable"

Page 3, line 6, after "elderly" insert "eligible"

Page 3, line 9, overstrike "vulnerable"

Page 3, line 9, after "elderly" insert "eligible"

Page 3, line 10, overstrike "vulnerable"

Page 3, line 10, after "elderly" insert "eligible"

Page 3, line 12, overstrike "vulnerable"

Page 3, line 12, after "elderly" insert "eligible"

Page 3, line 13, overstrike "a"

Page 3, line 13, overstrike "vulnerable"

Page 3, line 13, after "elderly" insert "an eligible"

Page 3, line 25, overstrike "vulnerable"

Page 3, line 25, after "elderly" insert "eligible"

Page 3, line 29, overstrike "vulnerable"

Page 3, line 29, after "elderly" insert "eligible"

Page 4, line 1, overstrike "**a vulnerable**" and insert immediately thereafter "an eligible"

Page 4, line 2, overstrike the second "a"

Page 4, line 2, overstrike "vulnerable"

Page 4, line 2, after "~~elderly~~" insert "an eligible"

Page 4, line 4, overstrike "vulnerable"

Page 4, line 4, after "~~elderly~~" insert "eligible"

Page 4, line 7, overstrike "vulnerable"

Page 4, line 7, after "~~elderly~~" insert "eligible"

Page 4, line 12, overstrike "12.1-31-07" and insert immediately thereafter "50-25.2-01"

Renumber accordingly

#1
2335
3-20-17

SENATE BILL NO. 2335

Presented by: Sara Behrens
Legal Counsel
North Dakota Insurance Department

Before: House Judiciary Committee
Representative Kim Koppelman, Chairman

Date: March 20, 2017

TESTIMONY

Good Morning Chairman Koppelman and members of the committee. My name is Sara Behrens and I am Legal Counsel for the North Dakota Insurance Department. I appear before you in support of Senate Bill No. 2335.

This bill would provide the ability to protect a greater number of individuals from abuse and exploitation. It would allow an individual to be prosecuted for endangering or exploiting someone who is 60 years of age or older regardless of whether the victim has been determined by a doctor to be mentally or physically impaired or committed to a care facility.

The North Dakota Insurance Department has encountered this situation and attended trainings regarding elder abuse. We have two investigators who are law enforcement officers. Approximately two years ago, one of our investigators had a case wherein an insurance agent took advantage of one of his clients, a 92-year-old woman. The victim did not have close family and had been doing business with the insurance agent for a number of years. The insurance agent had financial troubles and, over the course of three years, received over \$100,000 from the victim. He would send her greeting cards, 93 were recovered after her death, in which he would tell her how wonderful she was and how he was thankful she was in his life. He would then casually include details about things such as a broken down car and then how he would be okay though

because of friends like her. She would then give him money. A specialist in elder abuse agreed that this was clear exploitation, however, did not fall under current laws.

Because this woman had no mental or physical impairment diagnosed by a doctor, we were unable to prove exploitation. All we were able to do was take regulatory action concerning his insurance producer license

Senate Bill No. 2335 does two main things: First, it adds a definition for “eligible adult” which is defined as an individual age 60 years or older or a vulnerable adult as defined in Section 50-25.2-01. This will allow prosecution for endangerment and exploitation of a victim who is exploited despite not having a diagnosed mental or physical impairment. This definition tracks with the definition found in Senate Bill No. 2322 with the only difference being the age of eligibility. SB 2335 defines an eligible adult as age 60; whereas, Senate Bill No. 2322 uses age 65. Age 60 is appropriate in this bill because it will protect those who are working with their insurance agents on preparing for Medicare eligibility. If it were age 65, in many cases we would be too late to prevent greater harm. Referring to Chapter 50-25.2’s definition of vulnerable adult also brings some consistency among the various statutes referring to these types of victims. I researched other states’ criminal laws on this topic and found that 23 states utilize an age with no additional qualifiers. Ten states set that age at 60, ten at 65, two at 70 and one at 62.

Second, it adds “undue influence” as a means of exploitation and includes a definition. This accounts for those cases, such as the 92-year-old woman in our case, who are not mentally or physically impaired, but who, because of loneliness or other situations, are preyed upon through emotional and psychological manipulation.

We spoke with the Attorney General’s office, the Elder Rights Program with the Aging Services Division of the Department of Human Services, and the Abused Adult Resource Center regarding this bill and they are all supportive.

Making these changes to current law will allow criminal prosecution of those cases that currently are not accounted for under the law. While an eligible adult will be anyone age 60 or over, that individual will also have to be endangered or exploited and that endangerment or exploitation will have to be proved beyond a reasonable doubt in order for a violation of this section of the law to occur.

In conclusion, I respectfully request a "do pass" recommendation from this committee on Senate Bill No. 2335. I am happy to take any questions.

17.0974.02001
Title.

Prepared by the Legislative Council staff for
Representative Klemin
March 22, 2017

#1
2335
3-27-17

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2335

Page 2, line 11, replace "sixty" with "sixty-five"

Renumber accordingly