

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Federal and State Affairs** recommends **HB 2034** be amended on page 1, in line 5, before "Section" by inserting "New"; in line 7, before "Sec." by inserting "New";

On page 2, in line 37, before "Sec." by inserting "New";

On page 3, in line 15, before "Sec." by inserting "New"; in line 36, before "Sec." by inserting "New";

On page 4, in line 18, before "Sec." by inserting "New";

Also on page 4, in line 40, before "Sec." by inserting "New";

On page 5, following line 40, by inserting:

"(f) A supporter acting in good faith in accordance with the provisions of this act shall not be liable to either the principal or any third party for any injuries, damages or other losses arising from a decision made by a principal in which the supporter assisted the principal or was otherwise involved.";

Also on page 5, in line 41, before "Sec." by inserting "New";

On page 6, in line 25, before "Sec." by inserting "New"; in line 28, by striking "A person shall not use"; in line 29, by striking "as" and inserting "shall not constitute"; following line 36, by inserting:

"Sec. 10. K.S.A. 2018 Supp. 21-5417 is hereby amended to read as follows: 21-5417.

(a) Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment

upon a dependent adult or an elder person;

(2) taking the personal property or financial resources of a dependent adult or an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult or an elder person through:

(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult or elder person;

(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto;

(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto;~~or~~

(D) a violation of the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto; or

(E) a violation of the supported decision-making agreement act, section 1 et seq., and amendments thereto; or

(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such dependent adult or elder person.

(b) Mistreatment of a dependent adult or an elder person as defined in:

(1) Subsection (a)(1) is a severity level 5, person felony;

(2) subsection (a)(2) if the aggregate amount of the value of the personal property or financial resources is:

(A) \$1,000,000 or more is a severity level 2, person felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least \$1,500 but less than \$25,000 is a severity level 7, person felony;

(F) less than \$1,500 is a class A person misdemeanor, except as provided in subsection (b)(2) (G); and

(G) less than \$1,500 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of a violation of this section two or more times is a severity level 7, person felony; and

(3) subsection (a)(3) is a severity level 8, person felony.

(c) It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or an elder person as described in subsection (a)(2) that:

(1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;

(2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;

(3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or

(4) a court approved the transaction before the transaction occurred.

(d) No dependent adult or elder person is considered to be mistreated under subsection (a)(1) or (a)(3) for the sole reason that such dependent adult or elder person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult or elder person is a member or adherent.

(e) As used in this section:

(1) "Adequate consideration" means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.

(2) "Dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term shall include, but is not limited to, any:

(A) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;

(B) adult cared for in a private residence;

(C) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

(D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility licensed under K.S.A. 2018 Supp. 39-2001 et seq., and amendments thereto;

(E) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(3) "Elder person" means a person 60 years of age or older.

(f) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2018 Supp. 21-6418, and amendments thereto.

Sec. 11. K.S.A. 2018 Supp. 21-5417 is hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, after "adults" by inserting "; amending K.S.A. 2018 Supp. 21-5417 and repealing the existing section"; and the bill be passed as amended.

\_\_\_\_\_Chairperson