

House Bill 2109

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Health Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies certain provisions related to employees of residential facilities serving individuals with alcohol or drug dependence to exclude them from criminal records check requirement, exempt them from elder abuse reporting requirements and reinstate exemption from disqualification due to conviction of specified crimes.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to employees of residential facilities; creating new provisions; amending ORS 124.050 and
3 443.004; repealing section 15, chapter 93, Oregon Laws 2010; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 124.050 is amended to read:

6 124.050. As used in ORS 124.050 to 124.095:

7 (1) "Abuse" means one or more of the following:

8 (a) Any physical injury to an elderly person caused by other than accidental means, or which
9 appears to be at variance with the explanation given of the injury.

10 (b) Neglect.

11 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal
12 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

13 (d) Willful infliction of physical pain or injury upon an elderly person.

14 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
15 163.465 or 163.467.

16 (f) Verbal abuse.

17 (g) Financial exploitation.

18 (h) Sexual abuse.

19 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
20 the person.

21 (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of
22 restraint prescribed by a licensed physician and any treatment activities that are consistent with
23 an approved treatment plan or in connection with a court order.

24 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
25 visions of ORS 441.640 to 441.665.

26 (3) "Facility" means:

27 (a) A long term care facility as that term is defined in ORS 442.015.

28 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an
29 assisted living facility.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (c) An adult foster home as that term is defined in ORS 443.705.
- 2 (4) "Financial exploitation" means:
- 3 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
- 4 elderly person or a person with a disability.
- 5 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully
- 6 take or appropriate money or property of the person if the person would reasonably believe that the
- 7 threat conveyed would be carried out.
- 8 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
- 9 count held jointly or singly by an elderly person or a person with a disability.
- 10 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-
- 11 tively for the support and maintenance of the person.
- 12 (5) "Intimidation" means compelling or deterring conduct by threat.
- 13 (6) "Law enforcement agency" means:
- 14 (a) Any city or municipal police department.
- 15 (b) Any county sheriff's office.
- 16 (c) The Oregon State Police.
- 17 (d) Any district attorney.
- 18 (7) "Neglect" means:
- 19 (a) Failure to provide the care, supervision or services necessary to maintain the physical and
- 20 mental health of an elderly person that may result in physical harm or significant emotional harm
- 21 to the elderly person; or
- 22 (b) The failure of a caregiver to make a reasonable effort to protect an elderly person from
- 23 abuse.
- 24 (8) "Person with a disability" means a person described in:
- 25 (a) ORS 410.040 (7)(b)(A) or (C); or
- 26 (b) ORS 410.715.
- 27 (9) "Public or private official" means:
- 28 (a) Physician, naturopathic physician, osteopathic physician, chiropractor, physician assistant
- 29 or podiatric physician and surgeon, including any intern or resident.
- 30 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 31 or employee of an in-home health service.
- 32 (c) Employee of the Department of Human Services or community developmental disabilities
- 33 program.
- 34 (d) Employee of the Oregon Health Authority, county health department or community mental
- 35 health program.
- 36 (e) Peace officer.
- 37 (f) Member of the clergy.
- 38 (g) Regulated social worker.
- 39 (h) Physical, speech or occupational therapist.
- 40 (i) Senior center employee.
- 41 (j) Information and referral or outreach worker.
- 42 (k) Licensed professional counselor or licensed marriage and family therapist.
- 43 (L) Any public official who comes in contact with elderly persons in the performance of the
- 44 official's official duties.
- 45 (m) Firefighter or emergency medical technician.

- 1 (n) Psychologist.
- 2 (o) Provider of adult foster care or an employee of the provider.
- 3 (p) Audiologist.
- 4 (q) Speech-language pathologist.
- 5 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
- 6 medical services, assistance with bathing or personal hygiene or any other service essential to the
- 7 well-being of an elderly person.
- 8 (11)(a) "Sexual abuse" means:
- 9 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
- 10 consenting to a sexual act under ORS 163.315;
- 11 (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-
- 12 rial or language;
- 13 (C) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
- 14 son served by the facility or caregiver;
- 15 (D) Any sexual contact between an elderly person and a relative of the elderly person other
- 16 than a spouse; or
- 17 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 18 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a
- 19 paid caregiver who is the spouse of the elderly person.
- 20 (12) "Sexual contact" has the meaning given that term in ORS 163.305.
- 21 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly
- 22 person or a person with a disability through the use of:
- 23 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- 24 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
- 25 sexual comments.
- 26 **SECTION 2.** ORS 443.004, as amended by section 13, chapter 93, Oregon Laws 2010, is amended
- 27 to read:
- 28 **443.004. (1) As used in this section:**
- 29 (a) **"Adult foster home" has the meaning given that term in ORS 443.705.**
- 30 (b) **"Home care worker" has the meaning given that term in ORS 410.600.**
- 31 (c) **"Home health agency" has the meaning given that term in ORS 443.005.**
- 32 (d) **"In-home care agency" has the meaning given that term in ORS 443.305.**
- 33 (e) **"Peer support specialist" means a person who:**
- 34 **(A) Is providing peer support services as defined by the Oregon Health Authority by rule;**
- 35 **(B) Is under the supervision of a qualified clinical supervisor;**
- 36 **(C) Has completed training required by the authority; and**
- 37 **(D) Is currently receiving or has formerly received mental health services, or is in re-**
- 38 **covery from a substance use disorder and meets the abstinence requirements for staff pro-**
- 39 **viding services in alcohol or other drug treatment programs.**
- 40 (f) **"Residential facility" has the meaning given that term in ORS 443.400.**
- 41 (g) **"Residential treatment facility" has the meaning given that term in ORS 443.400.**
- 42 (h) **"Residential treatment home" has the meaning given that term in ORS 443.400.**
- 43 [(1)] (2) The Department of Human Services or the Oregon Health Authority shall complete a
- 44 criminal records check under ORS 181.534 on:
- 45 (a) An employee of a residential facility, adult foster home, in-home care agency or home health

1 agency;

2 (b) Any individual who is paid directly or indirectly with public funds who has or will have
 3 contact with a recipient of home health, in-home care or support services or a resident of an adult
 4 foster home or a residential facility; and

5 (c) A home care worker registering with the Home Care Commission or renewing a registration
 6 with the Home Care Commission.

7 **(3) Subsection (2) of this section does not apply to an employee of a residential treatment**
 8 **facility or a residential treatment home that is licensed under ORS 443.415 to provide for**
 9 **individuals with alcohol or drug dependence.**

10 [(2)] (4) Public funds may not be used to support, in whole or in part, the employment in any
 11 capacity having contact with a recipient of home health, in-home care or support services or a res-
 12 ident of a residential facility or an adult foster home, of an individual who has been convicted:

13 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
 14 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
 15 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,
 16 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017,
 17 167.054 or 167.057;

18 (b) Of a crime listed in ORS 181.594;

19 (c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
 20 stance;

21 (d) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
 22 (c) of this subsection; or

23 (e) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a
 24 crime described in paragraphs (a) to (d) of this subsection.

25 [(3)] (5) Subsection [(2)] (4) of this section does not apply to:

26 (a) A peer support specialist[.]; **or**

27 **(b) An employee of a residential treatment facility or a residential treatment home that**
 28 **is licensed under ORS 443.415 to provide for individuals with alcohol or drug dependence.**

29 [(4)] (6) If the department or authority has a record of substantiated abuse committed by an
 30 employee or potential employee of a home health agency, in-home care agency, adult foster home
 31 or residential facility, regardless of whether criminal charges were filed, the department or author-
 32 ity shall notify, in writing, the employer and the employee or potential employee.

33 [(5) *As used in this section:*]

34 [(a) *“Adult foster home” has the meaning given that term in ORS 443.705.*]

35 [(b) *“Home care worker” has the meaning given that term in ORS 410.600.*]

36 [(c) *“Home health agency” has the meaning given that term in ORS 443.005.*]

37 [(d) *“In-home care agency” has the meaning given that term in ORS 443.305.*]

38 [(e) *“Peer support specialist” means a person who:*]

39 [(A) *Is providing peer support services as defined by the authority by rule;*]

40 [(B) *Is under the supervision of a qualified clinical supervisor;*]

41 [(C) *Has completed training required by the authority; and*]

42 [(D) *Is currently receiving or has formerly received mental health services, or is in recovery from*
 43 *a substance use disorder and meets the abstinence requirements for staff providing services in alcohol*
 44 *or other drug treatment programs.*]

45 [(f) *“Residential facility” has the meaning given that term in ORS 443.400.*]

1 **SECTION 3. Section 15, chapter 93, Oregon Laws 2010, is repealed.**

2 **SECTION 4. (1) If this 2011 Act does not become effective until after July 1, 2011, section**
3 **3 of this 2011 Act (repealing section 15, chapter 93, Oregon Laws 2010) is repealed.**

4 **(2) If this 2011 Act does not become effective until after July 1, 2011, this 2011 Act shall**
5 **be operative retroactively to July 1, 2011.**

6 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
8 **on its passage.**

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