A bill for an act

relating to civil actions; providing certain remedies for neglect, abuse, and other actions against incapacitated and vulnerable adults; proposing coding for new law in Minnesota Statutes, chapter 604.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[604.19] DUTY TO AN INCAPACITATED OR VULNERABLE ADULT; FINANCIAL EXPLOITATION; CIVIL PENALTIES.**

Subdivision 1. **Definitions.** (a) The terms defined in this subdivision have the meanings given for purposes of this section.

(b) "De facto conservator" means any person who takes possession of the estate of an incapacitated or vulnerable adult, without right or lawful authority.

(c) "De facto guardian" means any person who takes possession of the person of an incapacitated or vulnerable adult, without right or lawful authority.

(d) "Deception" includes but is not limited to:

(1) creating or confirming a false impression in an incapacitated or vulnerable adult's mind;

(2) failing to correct a false impression that the person is responsible for creating or confirming in an incapacitated or vulnerable adult's mind;

(3) making a promise to an incapacitated or vulnerable adult that the person does not intend to perform or that the person knows will not or cannot be performed. A person's failure to perform a promise is not by itself sufficient proof that the person did not intend to perform the promise;

(4) misrepresenting or concealing a material fact that relates to the terms of a contract or an agreement that the person enters into with the incapacitated or vulnerable

adult or that relates to the existing or preexisting condition of any of the property involved in a contract or an agreement; or

(5) using any material misrepresentation, false pretense, or false promise to induce, encourage, or solicit an incapacitated or vulnerable adult to enter into a contract or an agreement.

(e) "Enterprise" means any corporation, partnership, association, labor union, or other legal entity, or any group of persons associated in fact although not a legal entity, which is involved with providing care to, or found to have involved the assets or property of, an incapacitated or vulnerable adult.

(f) "Exploitation" means the illegal or improper use of an incapacitated or vulnerable adult or resources for another's profit or advantage.

(g) "Incapacitated" has the meaning given in section 524.5-102, subdivision 6.

(h) "Informed consent" means any of the following:

(1) a written expression by the person that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health and that the person specifically expresses that the services be withdrawn;

(2) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health as permitted by an order of a court of competent jurisdiction;

(3) a health care declaration made pursuant to chapter 145C; or

(4) consent by another person under a durable power of attorney relating to health care services to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health.

(i) "Intimidation" includes threatening to deprive an incapacitated or vulnerable adult of food, nutrition, shelter, necessary medication, medical treatment, insurance coverage, or necessary finances.

(j) "Neglect" means a pattern of conduct without the person's informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health.

(k) "Position of trust and confidence" includes but is not limited to:

(1) one who has assumed a duty to provide care to an incapacitated or vulnerable adult;

(2) a joint tenant or a tenant in common with an incapacitated or vulnerable adult; or

(3) one who is in a fiduciary relationship with an incapacitated or vulnerable adult including a de facto guardian or de facto conservator.

(l) "Vulnerable adult" means an individual who is 18 years of age or older who is unable to protect himself or herself from abuse, neglect, or exploitation by others because of a physical or mental impairment.

Subd. 2. **Duties; liability.** A person who causes or permits the life of an adult to be endangered or that person's health to be injured or endangered by neglect is subject to civil remedies under this section if the person has been employed to provide care, has assumed a position to provide care acting as a de facto guardian or de facto conservator, or has been appointed by a court as a guardian or conservator to provide care to an incapacitated or vulnerable adult.

A person who is in a position of trust and confidence to an incapacitated or vulnerable adult shall act for the benefit of that person to the same extent as a trustee pursuant to section 501B.81. A person who is in a position of trust and confidence and who by intimidation or deception knowingly takes control, title, use, or management of an incapacitated or vulnerable adult's asset real or personal property with the intent to permanently deprive that person of the asset or property is liable under this section.

Subd. 3. **Exclusion.** An adult is not abused, neglected, or in need of protective services for the sole reason that the adult relies on treatment from a recognized religious method of healing in lieu of medical treatment.

Subd. 4. **Standing; assignment.** An incapacitated or vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse, or exploitation may file an action in district court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care, or that has been appointed by a court to provide care to the incapacitated or vulnerable adult for having caused or permitted endangerment or injury. An interested person or a person who is a spouse, personal representative, child, adopted child, sibling, any other immediate family member, a guardian as provided under section 524.5-313, or conservator as provided under section 524.5-417 may commence a civil action in district court or probate court to obtain remedies on behalf of the incapacitated or vulnerable adult. The rights of the person to commence an action may be assigned to another party with the showing of a sworn assignment duly executed and filed with the court at the commencement of the action or at the time of the assignment.

Subd. 5. **Statute of limitations; survivability of action.** An action under this section may be commenced within three years after discovery of the cause of action, and the cause of action or the right to bring a cause of action shall not be limited, affected, or extinguished by the death of the incapacitated or vulnerable adult. Causes of action

time-barred by the limitation period applicable on the day before the effective date of this section are revived and may be brought until one year after the effective date of this section.

Subd. 6. **Remedies.** (a) Prior to a determination of liability, relief may include, but is not limited to, entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers, and the enforcement of constructive trusts, as the court deems proper.

(b) After a determination of liability, relief may include, but is not limited to:

(1) an award in an amount up to three times the amount of monetary damages suffered by an incapacitated or vulnerable adult;

(2) punitive damages;

(3) ordering any person to divest any direct or indirect interest the person has in an enterprise;

(4) imposing reasonable restrictions, including permanent injunctions, on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor or conduct;

(5) ordering dissolution or reorganization of any enterprise; and

(6) awarding costs and reasonable attorney fees, including reasonable expert witness fees or consultant fees, to persons injured by the conduct described in this section.

(c) A person who violates this section forfeits all benefits with respect to the estate of the deceased incapacitated or vulnerable adult, including an intestate share, an elective share, an omitted spouse's share, an omitted child's share, a homestead allowance, an exempt property allowance, and a family allowance. If the incapacitated or vulnerable adult died intestate, the decedent's intestate estate passes as if the person who committed the violation disclaimed that person's intestate share.

(d) A civil action under this section does not preclude seeking relief under other civil or criminal law.

Subd. 7. **Effect of criminal conviction.** A defendant convicted in any criminal proceeding regarding incidents that are alleged to be a violation of this section is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this section.

EFFECTIVE DATE. This section is effective August 1, 2009.