

1.1 moves to amend H.F. No. 424 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. **[604.21] DUTY TO AN INCAPACITATED OR VULNERABLE**
1.4 **ADULT; EXPLOITATION.**

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

1.7 (b) "Deception" includes but is not limited to:

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

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

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

1.16 (4) misrepresenting or concealing a material fact that relates to the terms of a
1.17 contract or an agreement that the person enters into with the incapacitated or vulnerable
1.18 adult or that relates to the existing or preexisting condition of any of the property involved
1.19 in a contract or an agreement; or

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

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

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

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

2.4 (f) "Informed consent" means any of the following:

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

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

2.12 (3) a health care directive made pursuant to chapter 145C or a living will executed
2.13 under chapter 145B.

2.14 (g) "Interested person" has the meaning given in section 524.5-102, subdivision 7.

2.15 (h) "Intimidation" includes, but is not limited to, threatening to deprive an
2.16 incapacitated or vulnerable adult of food, nutrition, shelter, necessary medication, medical
2.17 treatment, insurance coverage, or necessary finances.

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

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

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

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

2.25 (3) one who is in a fiduciary relationship with an incapacitated or vulnerable adult,
2.26 including a person who has assumed the role of guardian or conservator without legal
2.27 authority.

2.28 (k) "Vulnerable adult" has the meaning given in section 609.232, subdivision 11.

2.29 Subd. 2. **Duties; liability.** A person who causes or permits the life of an
2.30 incapacitated or vulnerable adult to be endangered or that adult's health to be injured or
2.31 endangered by neglect is subject to civil remedies under this section if the person has been
2.32 employed to provide care, has been appointed by a court as a guardian or conservator to
2.33 provide care, or has assumed a position to provide care, including acting as a guardian or
2.34 conservator without legal authority to do so, to an incapacitated or vulnerable adult.

2.35 A person who is in a position of trust and confidence to an incapacitated or
2.36 vulnerable adult shall act for the benefit of that adult to the same extent required of a

3.1 trustee pursuant to chapter 501B. A person who is in a position of trust and confidence and
3.2 who by intimidation or deception knowingly takes control, title, use, or management of an
3.3 incapacitated or vulnerable adult's assets or real or personal property with the intent to
3.4 permanently deprive that person of the asset or property is liable under this section.

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

3.8 Subd. 4. **Standing; assignment.** An incapacitated or vulnerable adult whose life or
3.9 health is being or has been endangered or injured by neglect, abuse, or exploitation may
3.10 file an action in district court against any person or enterprise that has been employed to
3.11 provide care, that has assumed a legal duty to provide care, or that has been appointed
3.12 by a court to provide care to the incapacitated or vulnerable adult for having caused or
3.13 permitted endangerment or injury. An interested person may commence a civil action
3.14 in district court or probate court to obtain remedies on behalf of the incapacitated or
3.15 vulnerable adult. The rights of the person to commence an action may be assigned to
3.16 another party with the showing of a sworn assignment duly executed and filed with the
3.17 court at the commencement of the action or at the time of the assignment.

3.18 Subd. 5. **Statute of limitations; survivability of action.** An action under this
3.19 section may be commenced within three years after discovery of the facts giving rise to
3.20 the cause of action, and the cause of action or the right to bring a cause of action shall
3.21 not be limited, affected, or extinguished by the death of the incapacitated or vulnerable
3.22 adult. Causes of action time-barred by the limitation period applicable on the day before
3.23 the effective date of this section are revived and may be brought until one year after
3.24 the effective date of this section.

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

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

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

3.33 (2) punitive damages;

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

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

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

4.5 (6) awarding costs and reasonable attorney fees, including reasonable expert witness
4.6 fees or consultant fees, to a prevailing party in an action under this section.

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

4.13 (d) A civil action under this section does not preclude other remedies that may
4.14 be provided by law.

4.15 **EFFECTIVE DATE.** This section is effective August 1, 2012."

4.16 Amend the title accordingly