

SENATE No. 2213

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Wednesday, November 15, 2017

The committee on Children, Families and Persons with Disabilities to whom was referred the petition (accompanied by bill, Senate, No. 64) of Michael O. Moore, Linda Dean Campbell, Jack Lewis, Danielle W. Gregoire and other members of the General Court for legislation to establish a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability,- reports the accompanying bill (Senate, No. 2213).

For the committee,
Joan B. Lovely

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An Act to establish a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter nineteen B of the general laws is hereby amended by inserting at
2 the end thereof the following new section:-

3 Section 21. (1) the following definitions shall

4 “Abuse” means an act or omission of a caretaker which results in serious physical or
5 serious emotional injury or abuse per se to a person with an intellectual or developmental
6 disability; provided, however, that no person shall be considered to be abused for the sole reason
7 that such person is being furnished or relies upon treatment in accordance with the tenets and
8 teachings of a church or religious denomination by a duly accredited practitioner thereof.

9 “Abuser” means a person whose name is listed on the Massachusetts disability abuse
10 registry.

11 “Caretaker” means any person employed by a provider licensed by the department
12 pursuant to sections fifteen and fifteen A of chapter nineteen B of the general laws, or

13 commonwealth department of developmental services employee, that provides services or
14 supports to a person with an intellectual or developmental disability

15 “Commissioner” means the commissioner of the department of developmental services

16 “Department” means the department of developmental services

17 “Registry” means the Massachusetts disability abuse registry

18 (2) Creation of a disability abuse registry

19 The department shall, subject to appropriation, establish and maintain a registry of
20 abusers, against whom a substantiated finding of abuse of a person with an intellectual or
21 developmental disability has been issued by the disabled persons protection commission in
22 accordance with chapter nineteen C of the general laws, or a substantiated finding under 115
23 CMR 9.00 including that of financial exploitation of a person with an intellectual or
24 developmental disability has been issued by the department, to be known as the Massachusetts
25 disability abuse registry.

26 The department shall, in accordance with section two of chapter thirty A of the general
27 laws and subject to appropriation, adopt regulations consistent with this section. Said regulations
28 shall include procedures and standards for the placement of a caretaker’s name on the registry,
29 and the process for the notification to the caretaker of the right to appeal the finding that the
30 caretaker meets the criteria for placement of his or her name on the registry.

31 The Department’s rules and regulations shall provide for a hearing before the
32 Massachusetts division of administrative law appeals, and pursuant to subsection one of chapter
33 thirty A of the general laws.

34 (3) Registration Process

35 After the conclusion of any appeal process at the agency that substantiated a finding of
36 abuse of a person with an intellectual or developmental disability by a caretaker, or a
37 substantiated finding of financial exploitation of a person with an intellectual or developmental
38 disability by a caretaker and after notice and an opportunity for a hearing on the placement of his
39 or her name on the registry, the department shall enter the abuser's name on the registry.

40 (4) Requirement to check registry

41 Prior to hiring an individual seeking employment, a provider shall determine whether the
42 applicant's name appears on the registry.

43 The department shall notify a provider that currently employs an abuser upon the entry of
44 his or her name in the registry

45 (5) Prohibition of hiring persons listed on the registry

46 No service provider shall hire or knowingly employ an individual whose name appears
47 on the registry, or, if an alternative sanction was imposed, that individual shall not be hired or
48 employed until the terms of such section have been fulfilled.

49 The department shall promulgate regulations to ensure service provider compliance with
50 this subsection

51 The department shall establish penalties for providers who fail to meet the requirements
52 of this subsection, including, but not limited to monetary fines, loss or downgrade of state
53 certification, and forfeiture of state contracts.

54 (6) Whistleblower Protections

55 The protections established in section 185, of chapter 149, of the General Laws shall
56 apply to any employee of a licensed service provider who reports an instance of abuse, or
57 participates in any aspect of a relevant investigation.

58 (7) Access to the registry

59 The information maintained in the registry, including the record of its proceedings, shall
60 not be considered a public record under clause twenty-six, of section seven, of chapter four of the
61 general laws. The division of administrative law appeals and the department shall keep
62 confidential and may only disseminate information contained in the registry to a provider for
63 consideration of a current employee or an applicant for employment to provide direct care to
64 persons with intellectual or developmental disability; or to a law enforcement agency; or the
65 attorney general; or appropriate district attorney; or agency of the commonwealth that has
66 jurisdiction over the victim, the matter under investigation, or jurisdiction over professional
67 misconduct for possible prosecution or the imposition of remedial or disciplinary measures in
68 accordance with the requirements of any applicable law or regulation.

69 (8) Registry oversight

70 Annually, the secretary of health and human services shall initiate an audit of the
71 disability abuse registry to ensure compliance with this section, including that all substantiated
72 findings by the disabled persons protection commission were added to the registry and proper
73 notification was made to relevant providers, and

74 SECTION 2. Section five of chapter nineteen C of the general laws, is hereby amended
75 by inserting at the end thereof, the following new subsection:

76 (6) immediately upon issuance of an investigation report substantiating abuse of a person
77 with an intellectual disability or developmental disability, the commission shall submit all
78 relevant information to the Massachusetts disability abuse registry

79 SECTION 3. Section 4H of chapter seven of the general laws, is hereby amended by
80 inserting, in line 81, after the fourth paragraph, the following new paragraph:-

81 In accordance with section 21 of chapter 19B, caretakers who have been determined to
82 meet the criteria for placement of their names on the Massachusetts disability abuse registry shall
83 be entitled to a hearing before the Massachusetts division of administrative law appeals.

84 SECTION 4. Section 9B of chapter 30 of the general laws is hereby amended by
85 inserting, in line 32, after the phrase “chapter one hundred and fifty E” the following new
86 phrase:-

87 “or Massachusetts disability abuse registry proceedings under chapter seven, section four
88 H”