

IN THE SENATE

SENATE BILL NO. 1028

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO VULNERABLE ADULTS; AMENDING SECTION 39-5301A, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING POLICY; AMENDING SECTION 39-5302, IDAHO  
3 CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION  
4 39-5303, IDAHO CODE, TO REVISE PROVISIONS REGARDING DUTY TO REPORT;  
5 AMENDING SECTION 39-5303A, IDAHO CODE, TO REVISE PROVISIONS REGARDING  
6 A LIMITED EXEMPTION FROM THE DUTY TO REPORT; AMENDING SECTION 39-5304,  
7 IDAHO CODE, TO REVISE PROVISIONS REGARDING REPORTING REQUIREMENTS,  
8 INVESTIGATION, AND EMERGENCY ACCESS; AMENDING SECTION 39-5305, IDAHO  
9 CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-5306, IDAHO CODE,  
10 TO REVISE PROVISIONS REGARDING CERTAIN SERVICES; AMENDING SECTION  
11 39-5307, IDAHO CODE, TO REVISE PROVISIONS REGARDING ACCESS TO RECORDS;  
12 AMENDING SECTION 39-5308, IDAHO CODE, TO REVISE PROVISIONS REGARDING  
13 INTERAGENCY COOPERATION; REPEALING SECTION 39-5309, IDAHO CODE, RELAT-  
14 ING TO COORDINATION OF SERVICES; AMENDING CHAPTER 53, TITLE 39, IDAHO  
15 CODE, BY THE ADDITION OF A NEW SECTION 39-5309, IDAHO CODE, TO ESTABLISH  
16 PROVISIONS REGARDING AUTHORITY OF THE DEPARTMENT OF HEALTH AND WELFARE,  
17 IMMUNITY FROM CERTAIN LIABILITY, EXCEPTIONS TO IMMUNITY, AND REPORTS  
18 MADE IN BAD FAITH, WITH MALICE, OR FALSELY; AMENDING SECTION 39-5310,  
19 IDAHO CODE, TO REVISE PROVISIONS REGARDING A REPORT TO LAW ENFORCEMENT  
20 AND TO PROVIDE A TIME LIMIT FOR CERTAIN NOTIFICATIONS; AND DECLARING AN  
21 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
22

23 Be It Enacted by the Legislature of the State of Idaho:

24 SECTION 1. That Section 39-5301A, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 39-5301A. DECLARATION OF POLICY. (1) It is the intent of the adult  
27 abuse, neglect, and exploitation act to authorize the fewest possible re-  
28 strictions on the exercise of personal freedom and religious beliefs consis-  
29 tent with a vulnerable adult's need for services and to empower vulnerable  
30 adults to protect themselves.

31 (2) The legislature recognizes that vulnerable adults sometimes  
32 experience difficulties managing their own affairs or are unable to pro-  
33 tect themselves from ~~abuse, neglect or exploitation~~ maltreatment. Often,  
34 vulnerable adults cannot find others who are able or willing to provide as-  
35 sistance.

36 (3) The commission is directed to investigate allegations of ~~abuse,~~  
37 ~~neglect, self-neglect or exploitation involving a vulnerable adult~~  
38 maltreatment, to make appropriate referrals to law enforcement, and to  
39 arrange for the provision of necessary services. Further, the commission  
40 shall honor a vulnerable adult's freedom of choice and right to self-deter-  
41 mination. When it becomes necessary for the commission to assist a vulnera-  
42 ble adult, actions shall be tempered by the requirements of due process and

1 must place the fewest possible restrictions on personal freedom. Services  
 2 provided under this ~~act~~ chapter are also intended to provide assistance to  
 3 ~~caregiving families experiencing difficulties in maintaining functionally~~  
 4 ~~impaired relatives~~ a caregiver to help maintain a vulnerable adult in the  
 5 household.

6 (4) In the process of carrying out its adult protective services re-  
 7 sponsibilities, the commission is directed to make effective use of multi-  
 8 disciplinary services available through any and all public agencies, commu-  
 9 nity-based organizations, and informal resources.

10 SECTION 2. That Section 39-5302, Idaho Code, be, and the same is hereby  
 11 amended to read as follows:

12 39-5302. DEFINITIONS. (1) For the purposes of this chapter:

13 ~~(1) "Abuse" means the intentional or negligent infliction of physical~~  
 14 ~~pain, injury or mental injury.~~

15 ~~(2) "Caretaker" means any individual or institution that is responsi-~~  
 16 ~~ble by relationship, contract, or court order to provide food, shelter or~~  
 17 ~~clothing, or medical or other life-sustaining necessities to a vulnerable~~  
 18 ~~adult.~~

19 (a) "Administrator" means the administrator of the Idaho commission on  
 20 aging appointed pursuant to section 67-5004, Idaho Code.

21 (b) "Adult" means a person aged eighteen (18) years or older.

22 (c) "Adult protective services" or "APS" means the legal and bureau-  
 23 cratic systems and protections safeguarding vulnerable adults through  
 24 investigation of APS reports alleging maltreatment and arrangements  
 25 for the provision of emergency, supportive, or prevention services nec-  
 26 essary to reduce or eliminate risk of harm.

27 (d) "APS report" means an allegation of maltreatment of a vulnerable  
 28 adult made to adult protective services.

29 (e) "Caregiver" refers to a formal caregiver or an informal caregiver.

30 ~~(3) (f) "Commission" means the Idaho commission on aging, established~~  
 31 ~~pursuant to chapter 50, title 67, Idaho Code.~~

32 ~~(4) (g) "Department" means the Idaho department of health and welfare.~~

33 ~~(5) (h) "Emergency" means an exigent circumstance in which a vulnerable~~  
 34 ~~adult's health and safety is placed in imminent danger. Imminent dan-~~  
 35 ~~ger is when death or severe bodily injury could reasonably be expected~~  
 36 ~~to occur without intervention.~~

37 ~~(6) "Exploitation" means an action that may include, but is not limited~~  
 38 ~~to, the unjust or improper use of a vulnerable adult's financial power~~  
 39 ~~of attorney, funds, property, or resources by another person for profit~~  
 40 ~~or advantage.~~

41 (i) "Facility" means a health or treatment facility as defined in  
 42 statute or by the department, including:

43 (i) Certified family homes, as defined in section 39-3502, Idaho  
 44 Code;

45 (ii) Developmental disabilities facilities, as defined in sec-  
 46 tion 39-4604, Idaho Code;

47 (iii) Home health agencies, as defined in section 39-2402, Idaho  
 48 Code;

49 (iv) Hospitals, as defined in section 39-1301, Idaho Code;

1           (v) Intermediate care facilities for people with intellectual  
2           disabilities, as defined in section 39-1301, Idaho Code;

3           (vi) Residential care or assisted living facilities, as defined  
4           in section 39-3302, Idaho Code; and

5           (vii) Residential habilitation agencies.

6           (j) "Financial exploitation" means the illegal or improper use, con-  
7           trol over, or withholding of the property, income, resources, or trust  
8           funds of a vulnerable adult by any person or entity for profit or ad-  
9           vantage other than for the vulnerable adult's profit or advantage. The  
10           term "financial exploitation" includes but is not limited to:

11           (i) The use of deception, intimidation, or undue influence by a  
12           person or an entity in a position of trust and confidence with a  
13           vulnerable adult to obtain or use the property, income, resources,  
14           or trust funds of the vulnerable adult for the benefit of a person  
15           or an entity other than the vulnerable adult;

16           (ii) The breach of a fiduciary duty, including but not limited  
17           to the misuse of a power of attorney, trust, or guardianship ap-  
18           pointment that results in the unauthorized appropriation, sale,  
19           or transfer of the property, income, resources, belongings, or  
20           trust funds of the vulnerable adult for the benefit of a person or  
21           an entity other than the vulnerable adult; or

22           (iii) Obtaining or using a vulnerable adult's property, income,  
23           belongings, resources, or trust funds without lawful authority by  
24           a person or an entity who knows or clearly should know that the vul-  
25           nerable adult lacks the capacity to consent to the release or use  
26           of his property, income, belongings, resources, or trust funds.

27           (k) "Formal caregiver" means a person or an entity that accepts compen-  
28           sation to perform a service or services for a vulnerable adult. Compem-  
29           sation may be provided by an employer, the vulnerable adult, or someone  
30           acting in the interests of the vulnerable adult.

31           (l) "Human trafficking" means the recruitment, harboring, transporta-  
32           tion, provision, or obtaining of a person for labor or services through  
33           the use of force, fraud, or coercion, for the purpose of subjection to  
34           involuntary servitude, peonage, debt bondage, or slavery.

35           (m) "Infirmities of aging" means physical or mental deterioration as-  
36           sociated with advanced age or organic brain damage, or other physical,  
37           mental, or emotional dysfunction, such that the ability of an older  
38           adult to provide adequately for the adult's own care or protection is  
39           impaired.

40           (n) "Informal caregiver" means a person who provides support for a vul-  
41           nerable adult without expectation of compensation, goods, or services.

42           (o) "Investigation" means the evaluation of allegations conducted by a  
43           provider or the commission through interviews, observations, and exam-  
44           ination of information.

45           (p) "Legal representative" means a guardian, a conservator, an attor-  
46           ney, or an individual with power of attorney who has the legal obliga-  
47           tion to act for the benefit of another.

48           (q) "Licensed medical professional" means an individual practicing in  
49           a medical or medical-related field who is licensed, certified, or oth-  
50           erwise credentialed by the state of Idaho.

1 ~~(7)~~ (r) "Neglect" means failure of a ~~caretaker~~ caregiver to provide  
 2 food, clothing, shelter, or medical care reasonably necessary to sus-  
 3 tain the life and health of a vulnerable adult, or the failure of a  
 4 vulnerable adult to provide those services for himself, the absence of  
 5 which impairs or threatens sustainable life or health of a vulnerable  
 6 adult.

7 (s) "Older adult" means a person aged sixty-five (65) years or older.

8 (t) "Physical abuse" means the infliction of physical pain, injury, or  
 9 unjust chemical or physical restraint on a vulnerable adult or death  
 10 where:

11 (i) The vulnerable adult's condition or death is not justifiably  
 12 explained;

13 (ii) The history given concerning such condition or death is at  
 14 variance with the degree or type of the condition or death; or

15 (iii) Circumstances indicate that such condition or death may not  
 16 be the product of an accidental occurrence.

17 (u) "Prevention services" means interventions designed to reduce the  
 18 risk of maltreatment, including but not limited to case management, the  
 19 provision of goods or services, or caregiver support.

20 (v) "Protective action plan" or "PAP" means a person-centered plan  
 21 addressing the remedial, social, legal, medical, educational, mental  
 22 health, or other services available to reduce or eliminate the risk of  
 23 harm to a vulnerable adult.

24 ~~(8)~~ (w) "Provider" means an area agency on aging or a person or an entity  
 25 capable of providing adult protective services, including duly autho-  
 26 rized agents and employees.

27 (x) "Psychological abuse" means the infliction of fear, anguish, agi-  
 28 tation, or other emotional distress through verbal or nonverbal acts or  
 29 through unjust confinement of a vulnerable adult.

30 (y) "Self-neglect" means failure of a vulnerable adult to provide for  
 31 himself or refusal to accept support needed to obtain food, clothing,  
 32 shelter, or medical care reasonably necessary to sustain the life and  
 33 health of the vulnerable adult.

34 (z) "Sexual abuse" means touching, fondling, intercourse, or any other  
 35 sexual activity with a vulnerable adult when the vulnerable adult is  
 36 unable to understand, unwilling to consent, threatened, or physically  
 37 forced.

38 (aa) "Skilled nursing facility" shall have the same meaning as "nursing  
 39 facility" provided in section 39-1301, Idaho Code.

40 ~~(9)~~ (bb) "Supportive services" means noninvestigatory remedial, so-  
 41 cial, legal, health, educational, mental health, and referral services  
 42 provided to a vulnerable adult.

43 (cc) "Undue influence" means influence exercised over a vulnerable  
 44 adult with the intent to:

45 (i) Inhibit the vulnerable adult's freedom of choice;

46 (ii) Deprive the vulnerable adult of freedom of choice; or

47 (iii) Substitute the influencer's choice or desire over that of  
 48 the vulnerable adult.

49 ~~(10)~~ (dd) "Vulnerable adult" means a person eighteen (18) years of age  
 50 or older an adult who is unable to protect himself from abuse, neglect or

1 exploitation due to physical or mental impairment that affects the per-  
 2 son's judgment or behavior to the extent that he lacks sufficient under-  
 3 standing or capacity to make or communicate or implement decisions re-  
 4 garding his person. maltreatment because of:

5 (i) A mental, physical, or developmental disability;

6 (ii) A degenerative brain disease;

7 (iii) An inability to communicate or implement decisions regard-  
 8 ing his person; or

9 (iv) Other infirmities of aging in an older adult.

10 (ee) "Vulnerable adult maltreatment" or "maltreatment" means the in-  
 11 intentional or negligent infliction of pain or injury on a vulnerable  
 12 adult, including financial exploitation, human trafficking, neglect,  
 13 physical abuse, psychological abuse, or sexual abuse.

14 (2) Nothing in this chapter shall be construed to mean a person is  
 15 abused, neglected, or exploited for the sole reason he is relying upon treat-  
 16 ment by spiritual means through prayer alone in accordance with the tenets  
 17 and practices of a recognized church or religious denomination; nor shall  
 18 the provisions of this chapter be construed to require any medical care or  
 19 treatment in contravention of the stated or implied objection of such a per-  
 20 son.

21 SECTION 3. That Section 39-5303, Idaho Code, be, and the same is hereby  
 22 amended to read as follows:

23 39-5303. DUTY TO REPORT CASES OF ABUSE, ~~NEGLECT OR EXPLOITATION OF~~  
 24 ~~VULNERABLE ADULTS~~ VULNERABLE ADULT MALTREATMENT. (1) ~~Any physician, nurse,~~  
 25 ~~employee of a public or private health facility, or a state-licensed or cer-~~  
 26 ~~tified residential facility serving vulnerable adults, medical examiner,~~  
 27 ~~dentist, osteopath, optometrist, chiropractor, podiatrist, social worker,~~  
 28 ~~police officer, pharmacist, physical therapist, or home care worker who has~~  
 29 Licensed medical professionals, emergency services personnel, facility em-  
 30 ployees, skilled nursing facility employees, employees of an entity respon-  
 31 sible for providing care to a vulnerable adult, medical examiners, social  
 32 workers, or law enforcement personnel who have reasonable cause to believe  
 33 that a vulnerable adult is being or has been abused, neglected or exploited  
 34 maltreated shall immediately report such information to the commission.  
 35 Provided however, that nursing facilities defined in section 39-1301(b),  
 36 Idaho Code, and employees of such facilities shall make reports required  
 37 under this chapter to the department. commission's designated APS provider  
 38 as expeditiously as possible but within twenty-four (24) hours of acquiring  
 39 the information that forms the basis of such reasonable cause. When there  
 40 is reasonable cause to believe that abuse or sexual assault maltreatment has  
 41 resulted in death or serious physical injury jeopardizing the life, health,  
 42 or safety of a vulnerable adult, any person required to report under this  
 43 section shall also report such information within four (4) hours as expe-  
 44 ditiously as possible to the appropriate law enforcement agency but within  
 45 four (4) hours of acquiring the information that forms the basis of such  
 46 reasonable cause. Ombudsmen recognized by the commission are exempt from  
 47 reporting maltreatment that is discovered in the course of their duties.

48 (2) Failure to report as provided under this section is a misdemeanor  
 49 subject to punishment as provided in section 18-113, Idaho Code. ~~If an em-~~

1 ployee at a state licensed or certified residential facility fails to report  
 2 abuse or sexual assault that has resulted in death or serious physical injury  
 3 jeopardizing the life, health or safety of a vulnerable adult as provided un-  
 4 der this section, the department shall also have the authority to:

- 5 ~~(a) Revoke the facility's license and/or contract with the state to~~  
 6 ~~provide services;~~
- 7 ~~(b) Deny payment;~~
- 8 ~~(c) Assess and collect a civil monetary penalty with interest from the~~  
 9 ~~facility owner and/or facility administrator;~~
- 10 ~~(d) Appoint temporary management;~~
- 11 ~~(e) Close the facility and/or transfer residents to another certified~~  
 12 ~~facility;~~
- 13 ~~(f) Direct a plan of correction;~~
- 14 ~~(g) Ban admission of persons with certain diagnoses or requiring spe-~~  
 15 ~~cialized care;~~
- 16 ~~(h) Ban all admissions to the facility;~~
- 17 ~~(i) Assign monitors to the facility; or~~
- 18 ~~(j) Reduce the licensed bed capacity.~~

19 Any action taken by the department pursuant to this subsection shall be ap-  
 20 pealable as provided in chapter 52, title 67, Idaho Code.

21 (3) Any person, including any officer or employee of a financial insti-  
 22 tution, who has reasonable cause to believe that a vulnerable adult is being  
 23 abused, neglected, or exploited may report such information to the commis-  
 24 sion or its providers.

25 ~~(4) The commission and its providers shall make training available to~~  
 26 ~~officers and employees of financial institutions in identifying and re-~~  
 27 ~~porting instances of abuse, neglect or exploitation involving vulnerable~~  
 28 ~~adults.~~

29 ~~(5) Any person who makes any report pursuant to this chapter, or who~~  
 30 ~~testifies in any administrative or judicial proceeding arising from such re-~~  
 31 ~~port, or who is authorized to provide supportive or emergency services pur-~~  
 32 ~~suant to the provisions of this chapter, shall be immune from any civil or~~  
 33 ~~criminal liability on account of such report, testimony or services provided~~  
 34 ~~in good faith, except that such immunity shall not extend to perjury, reports~~  
 35 ~~made in bad faith or with malicious purpose nor, in the case of provision~~  
 36 ~~of services, in the presence of gross negligence under the existing circum-~~  
 37 ~~stances.~~

38 ~~(6) Any person who makes a report or allegation in bad faith, with mal-~~  
 39 ~~ice or knowing it to be false, shall be liable to the party against whom the~~  
 40 ~~report was made for the amount of actual damages sustained or statutory dam-~~  
 41 ~~ages in the amount of five hundred dollars (\$500), whichever is greater, plus~~  
 42 ~~attorney's fees and costs of suit. If the court finds that the defendant~~  
 43 ~~acted with malice or oppression, the court may award treble actual damages or~~  
 44 ~~treble statutory damages, whichever is greater.~~

45 SECTION 4. That Section 39-5303A, Idaho Code, be, and the same is hereby  
 46 amended to read as follows:

47 39-5303A. LIMITED EXEMPTION FROM DUTY TO REPORT -- LIMITED APPLICA-  
 48 TION OF EXEMPTION FOR FACILITIES AND SKILLED NURSING FACILITIES. (1) The  
 49 requirements set forth in section 39-5303, Idaho Code, pertaining to the

1 reporting of ~~instances of abuse, neglect or exploitation of a~~ vulnerable  
 2 adult maltreatment to the commission or the department shall not apply to  
 3 situations involving resident-to-resident contact within ~~public or private~~  
 4 ~~health~~ facilities or ~~state licensed or certified~~ skilled nursing facilities  
 5 ~~which that~~ serve vulnerable adults, except in those cases involving ~~sex~~  
 6 sexual abuse, death, or serious physical injury that jeopardizes the life,  
 7 health, or safety of a vulnerable adult or repeated resident-to-resident  
 8 physical or verbal altercations, not resulting in observable physical or  
 9 mental injury, but constituting an ongoing pattern of resident behavior that  
 10 a facility's staff are unable to remedy through reasonable efforts.

11 (2) This exemption applies only to reports involving resident-to-resi-  
 12 dent abuse that are to be directed to the commission or the department pur-  
 13 suant to section 39-5303, Idaho Code. This exemption shall not limit any  
 14 other reporting obligation or requirement whether statutory or otherwise.

15 SECTION 5. That Section 39-5304, Idaho Code, be, and the same is hereby  
 16 amended to read as follows:

17 39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY AC-  
 18 CESS. (1) When a report is made by an individual or required pursuant to  
 19 this chapter, such report shall be made ~~immediately~~ to the commission or  
 20 appropriate provider. ~~Provided however, that nursing facilities defined in~~  
 21 ~~section 39-1301(b), Idaho Code, and employees of such facilities shall make~~  
 22 ~~reports required under this chapter to the department.~~ If known, the report  
 23 shall contain:

24 (a) ~~The the~~ name and address of the vulnerable adult; ~~the caretaker;~~  
 25 the caregiver, and the alleged perpetrator;

26 (b) ~~The the~~ nature and extent of ~~suspected abuse, neglect or exploita-~~  
 27 ~~tion~~ the suspected maltreatment; and

28 (c) ~~Any any~~ other information that will be of assistance in the investi-  
 29 gation.

30 (2) ~~If the allegations in the report indicate that an emergency exists,~~  
 31 ~~the commission or provider must initiate an investigation immediately and~~  
 32 ~~initiate contact with the alleged vulnerable adult within twenty-four (24)~~  
 33 ~~hours from the time the report is received. All other investigations must~~  
 34 ~~be initiated within seventy-two (72) hours from the time the report is re-~~  
 35 ~~ceived.~~

36 (2) The timing of the initiation of APS investigations shall be deter-  
 37 mined based on factors provided in the APS report. Such factors may include  
 38 but are not limited to the potential for immediate danger or harm to an indi-  
 39 vidual, the current location of the alleged vulnerable adult, and the nature  
 40 of the allegations.

41 (3) The APS investigation shall include a determination of the nature,  
 42 extent, and cause of the ~~abuse, neglect, or exploitation~~ maltreatment, exam-  
 43 ination of evidence and consultation with persons thought to have knowledge  
 44 of the circumstances, and identification, if possible, of the person alleged  
 45 to be responsible for the ~~abuse, neglect or exploitation~~ maltreatment of the  
 46 vulnerable adult.

47 (4) ~~Where no emergency exists, the~~ The commission or APS provider may  
 48 determine, ~~based on the review of the report and any initial inquiries,~~ that  
 49 an interview with the vulnerable adult is not necessary to the investigation

1 or not possible. If the commission or APS provider determines that an in-  
2 terview is necessary, the preferred method of interviewing is ~~by means of~~  
3 a personal visit with the vulnerable adult in the adult's dwelling. Alter-  
4 natively, the interview may occur in the local office of the commission or  
5 APS provider, or by telephone conversation, or by any other means available  
6 to the commission or APS provider. Decisions regarding the method of con-  
7 ducting any interview will be within the discretion of the commission or APS  
8 provider.

9 (5) Upon completion of an APS investigation, the commission or APS  
10 provider shall prepare a written final report of the investigation. ~~The~~  
11 ~~name of the person making the original report or any person mentioned in the~~  
12 ~~report shall not be disclosed unless those persons specifically request such~~  
13 ~~disclosure or unless the disclosure is made pursuant to the commission's~~  
14 ~~duty to notify law enforcement as required in section 39-5310, Idaho Code, to~~  
15 ~~a request to law enforcement for emergency access, a court order or hearing.~~  
16 If the vulnerable adult maltreatment is substantiated, the final report will  
17 be made to law enforcement pursuant to section 39-5310, Idaho Code. If the  
18 ~~abuse, neglect, or exploitation~~ vulnerable adult maltreatment is substan-  
19 tiated to have occurred in a state-certified or state-licensed facility, a  
20 copy of the findings shall be sent to the licensing and certification office  
21 of the department. All records pertaining to APS investigations are held  
22 confidential in accordance with section 39-5307, Idaho Code, and federal  
23 law.

24 ~~If the commission or provider determines that a report is unsubstanti-~~  
25 ~~ated and that no other law has been violated, all records related to the re-~~  
26 ~~port shall be expunged no later than three (3) years following the completion~~  
27 ~~of the investigation.~~

28 SECTION 6. That Section 39-5305, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30 39-5305. INSPECTIONS -- RIGHT OF ENTRY. (1) Upon receiving informa-  
31 tion that a vulnerable adult is alleged to be ~~abused, neglected, or exploited~~  
32 ~~maltreated~~, the commission or provider shall cause such investigation to be  
33 made in accordance with the provisions of this chapter as is appropriate.  
34 In making the investigation, the commission or provider shall use its own  
35 resources and may enlist the cooperation of peace officers. In an emergency,  
36 any authorized commission employee or provider shall enlist the cooper-  
37 ation of a peace officer to ensure the safety of the vulnerable adult and  
38 shall receive the peace officer's assistance. Assistance in an emergency  
39 may include entry on private or public property where a vulnerable adult is  
40 allegedly subject to abuse, neglect or exploitation, and the removal and  
41 transportation of the vulnerable adult to a medical facility, care-provid-  
42 ing facility, or other appropriate and safe environment.

43 (2) In a nonemergency, any peace officer may cooperate with an autho-  
44 rized commission employee or provider in ensuring the safety of a vulnerable  
45 adult who has been abused, neglected or exploited, including a vulnerable  
46 adult living in a condition of self-neglect. Assistance shall be provided  
47 only with the consent of the vulnerable adult or his legal representative.

48 (3) For the purposes of implementing or enforcing any provision of this  
49 chapter or any rule authorized under the provisions of this chapter, any duly



1 authorized commission employee or provider may, upon presentation of appro-  
 2 priate credentials at any reasonable time, with consent or in an emergency,  
 3 enter upon any private or public property where a vulnerable adult allegedly  
 4 is subject to ~~abuse, neglect, or exploitation~~ maltreatment.

5 (4) All inspections and searches conducted under the provisions of  
 6 this chapter shall be performed in conformity with the prohibitions against  
 7 unreasonable searches and seizures contained in the fourth amendment to the  
 8 constitution of the United States and article I, section 17, of the constitu-  
 9 tion of the state of Idaho. The state shall not, under the authority granted  
 10 in this chapter, conduct warrantless administrative searches of private  
 11 property except with consent, or in an emergency.

12 (5) If consent to entry is not given, a commission employee or provider  
 13 with the assistance of the county prosecutor may obtain, and any magistrate  
 14 or district judge is authorized to issue, a search warrant upon showing that  
 15 probable cause exists to believe a vulnerable adult is subject to ~~abuse, ne-  
 16 glect or exploitation~~ maltreatment. Upon request of a commission employee  
 17 or provider, a peace officer shall serve the search warrant.

18 SECTION 7. That Section 39-5306, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20 39-5306. ~~SUPPORTIVE SERVICES AND DISCLOSURE~~. (1) If there is substan-  
 21 tiated ~~abuse, neglect, or exploitation~~ maltreatment of a vulnerable adult,  
 22 the commission or provider has the responsibility to assist the adult in ob-  
 23 taining available services.

24 (2) If the commission or provider develops a protective action plan of  
 25 supportive services for the vulnerable adult, the plan shall provide for  
 26 appropriate supportive services available to the vulnerable adult that are  
 27 least restrictive to personal freedom and shall provide encouragement for  
 28 client self-determination and continuity of care.

29 (3) If the vulnerable adult does not consent to the receipt of reason-  
 30 able and necessary supportive services, or if the vulnerable adult withdraws  
 31 consent, services shall not be provided or continued.

32 ~~(4) If the commission or provider determines that a vulnerable adult is  
 33 an incapacitated person as defined in section 15-5-101(a), Idaho Code, men-  
 34 tally ill as defined in section 66-317, Idaho Code, or developmentally dis-  
 35 abled as defined in section 66-402, Idaho Code, the commission or provider  
 36 may petition the court for protective proceedings, appointment of a guardian  
 37 or conservator and such other relief as may be provided by chapter 5, title  
 38 15, Idaho Code, and chapters 3 and 4, title 66, Idaho Code.~~

39 ~~(5) An employee or provider of the commission shall not be appointed  
 40 the guardian or conservator of a vulnerable adult unless the commission em-  
 41 ployee or provider has a spousal or familial relationship with the vulnera-  
 42 ble adult.~~

43 (4) If a report is unsubstantiated, the commission or provider may as-  
 44 sist the vulnerable adult or the vulnerable adult's caregiver with preven-  
 45 tion services.

46 SECTION 8. That Section 39-5307, Idaho Code, be, and the same is hereby  
 47 amended to read as follows:

1           39-5307. ACCESS TO RECORDS. Any person, department, agency, or com-  
2 mission authorized to carry out the duties enumerated in this chapter shall  
3 have access to all relevant records, which shall be subject to disclosure ac-  
4 cording to chapter 1, title 74, Idaho Code, and section 39-5310, Idaho Code.  
5 Other persons and entities shall only be divulged be granted such access only  
6 with the written consent of the vulnerable adult or his legal representa-  
7 tive. No medical records of any vulnerable adult may be divulged for any pur-  
8 pose without the express written consent of such person or his legal repre-  
9 sentative, or pursuant to other proper judicial process or federal law.

10           SECTION 9. That Section 39-5308, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12           39-5308. INTERAGENCY COOPERATION. (1) In performing the duties set  
13 forth in this chapter, the commission or provider may request the assistance  
14 of the staffs and resources of all appropriate state departments, agencies  
15 and commissions, and local health directors, and may utilize any other pub-  
16 lic or private agencies, groups, or individuals who are appropriate and who  
17 may be available. Interagency cooperation shall include the involvement,  
18 when appropriate, of law enforcement personnel, department personnel, med-  
19 ical personnel, and any other person or entity deemed necessary due to ~~their~~  
20 specialized training in providing services to vulnerable adults. Intera-  
21 gency cooperation may also include access to client information necessary  
22 for the provision of services to vulnerable adults.

23           (2) The commission shall provide to the department on at least a quar-  
24 terly basis a listing of all alleged perpetrators ~~against whom an allega-~~  
25 ~~tion of adult abuse, neglect or exploitation has been substantiated.~~ Upon  
26 request, ~~all available supportive information shall be provided to enable~~  
27 ~~the department to conduct criminal background checks and other required in-~~  
28 ~~vestigations associated with substantiated allegations of vulnerable adult~~  
29 maltreatment.

30           (3) The department shall provide to the commission or provider any  
31 report of vulnerable adult maltreatment received under this chapter from a  
32 skilled nursing facility defined in section 39-1301(b), Idaho Code, or an  
33 employee of such facility.

34           (4) The commission or provider shall provide the department with any  
35 report received under this chapter involving allegations of ~~abuse, neglect~~  
36 ~~or exploitation maltreatment~~ occurring in a skilled nursing facility as de-  
37 defined in section 39-1301(b), Idaho Code.

38           (5) The commission, providers, and the department shall ~~use intera-~~  
39 ~~gency staffing when necessary~~ conduct a joint investigation and share client  
40 and facility information when necessary to provide services to vulnerable  
41 adults.

42           SECTION 10. That Section 39-5309, Idaho Code, be, and the same is hereby  
43 repealed.

44           SECTION 11. That Chapter 53, Title 39, Idaho Code, be, and the same is  
45 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
46 igned as Section 39-5309, Idaho Code, and to read as follows:

1           39-5309. DEPARTMENT AUTHORITY OVER CERTAIN FACILITIES -- IMMUNITY --  
2 EXCEPTIONS -- REPORTS MADE IN BAD FAITH. (1) Skilled nursing facilities and  
3 employees of such facilities shall make reports required under this chap-  
4 ter to the department. If an employee at a state-licensed or state-certified  
5 residential facility fails to report maltreatment resulting in death or se-  
6 rious physical injury jeopardizing the life, health, or safety of a vulnera-  
7 ble adult as provided under this section, then the department shall have the  
8 authority over the facility to:

- 9           (a) Revoke its license or contract with the state to provide services;  
10           (b) Deny payment;  
11           (c) Assess and collect a civil monetary penalty with interest from the  
12 facility owner or facility administrator;  
13           (d) Appoint temporary management;  
14           (e) Close the facility or transfer residents to another certified fa-  
15 cility;  
16           (f) Direct a plan of correction;  
17           (g) Ban admission of persons with certain diagnoses or requiring spe-  
18 cialized care;  
19           (h) Ban all admissions;  
20           (i) Assign monitors; or  
21           (j) Reduce the licensed bed capacity.

22           (2) Any action taken by the department pursuant to subsection (1) of  
23 this section shall be appealable as provided in chapter 52, title 67, Idaho  
24 Code.

25           (3) Any person who makes a report pursuant to this chapter, testifies  
26 in an administrative or a judicial proceeding arising from such a report, or  
27 is authorized to provide supportive services pursuant to the provisions of  
28 this chapter shall be immune from any civil or criminal liability on account  
29 of such report, testimony, or services being provided in good faith, except  
30 that such immunity shall not extend to:

- 31           (a) Perjury;  
32           (b) Reports made in bad faith or with malicious purpose; or  
33           (c) In the provision of services, gross negligence under the existing  
34 circumstances.

35           (4) Any person who makes a report or allegation in bad faith, with mal-  
36 ice, or knowing it to be false shall be liable to the party against whom the  
37 report was made for the amount of actual damages sustained or statutory dam-  
38 ages in the amount of five hundred dollars (\$500), whichever is greater, as  
39 well as for attorney's fees and costs. If a court finds that a defendant  
40 acted with malice or oppression, then the court may award treble actual dam-  
41 ages or treble statutory damages, whichever is greater.

42           SECTION 12. That Section 39-5310, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44           39-5310. REPORT TO LAW ENFORCEMENT -- PROSECUTION. (1) If, as the re-  
45 sult of any investigation initiated under the provisions of this chapter,  
46 it appears that the ~~abuse, neglect, or exploitation~~ maltreatment has caused  
47 injury or a serious imposition on the rights of the vulnerable adult, the  
48 commission shall immediately notify the appropriate law enforcement agency,  
49 which shall initiate an investigation and shall determine whether criminal

1 proceedings should be initiated against the ~~caretaker~~ caregiver or other  
2 persons in accordance with applicable state law. Notwithstanding the pro-  
3 hibition against disclosure of names of persons associated with the written  
4 report of an investigation as provided in section 39-5304, Idaho Code, the  
5 commission shall disclose names associated with the written report when  
6 notification is made as required in this section.

7 (2) The abuse, neglect, or exploitation of a vulnerable adult is a crime  
8 under section 18-1505, Idaho Code, and is subject to punishments provided in  
9 that section and other applicable state law.

10 (3) If at any time an APS provider has reasonable belief that maltreat-  
11 ment has caused serious injury or imposition on the rights of a vulnerable  
12 adult, the provider shall notify law enforcement within twenty-four (24)  
13 hours of obtaining the information on which the reasonable belief is based.

14 SECTION 13. An emergency existing therefor, which emergency is hereby  
15 declared to exist, this act shall be in full force and effect on and after  
16 July 1, 2023.