

2015 DRAFTING REQUEST

Bill

Received: 11/5/2015 Received By: tdodge
 For: John Macco (608) 266-0485 Same as LRB:
 May Contact: By/Representing: Ben
 Subject: Health - social services Drafter: swalkenh
 Addl. Drafters: tdodge

Extra Copies:

Submit via email: YES
 Requester's email: Rep.Macco@legis.wisconsin.gov
 Carbon copy (CC) to: tamara.dodge@legis.wisconsin.gov
 sarah.walkenhorstbarber@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Preventing financial exploitation of elders

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 12/26/2015	eweiss 12/29/2015	_____	sbasford 12/29/2015		
/P1	tdodge 1/5/2016	eweiss 1/6/2016	_____			State S&L
/P2	swalkenh		_____	mbarman		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	1/19/2016	kmochal 1/19/2016	_____	lparisi 1/19/2016	lparisi 1/19/2016	State

FE Sent For:

→ A+
Intro.

<END>

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/P2	swalkenh		_____	mbarman		State

Pls Jacket

Vers. Drafted

Reviewed

Proofed

Submitted
1/6/2016

Jacketed

Required

FE Sent For:

<END>

Walkenhorst Barber, Sarah

From: LRB.Legal
Sent: Tuesday, January 19, 2016 12:16 PM
To: Dodge, Tamara; Walkenhorst Barber, Sarah
Subject: FW: Draft review: LRB -3800/P2
Attachments: 15-3800/P2.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

From: Joniaux, Benjamin
Sent: Tuesday, January 19, 2016 12:15 PM
To: LRB.Legal <lrblegal@legis.wisconsin.gov>
Subject: FW: Draft review: LRB -3800/P2

Please send the bill jacket for this bill.

Ben Joniaux
Legislative Aide
Office of Representative John Macco
22 West, State Capitol
Phone: 608-266-0485

From: LRB.Legal
Sent: Wednesday, January 06, 2016 7:47 AM
To: Rep.Macco <Rep.Macco@legis.wisconsin.gov>
Subject: Draft review: LRB -3800/P2

Following is the PDF version of draft LRB -3800/P2.

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/P2			_____	mbarman		State

Vers. Drafted

Reviewed

Proofed

Submitted
1/6/2016

Jacketed

Required

FE Sent For:

<END>

****DRAFT****

Doris' Law Proposal

Rep John Macco
November 4, 2015

A bill to impose fiduciary standards, require continuing education and adopt qualification standards to the elder care servicing sectors of the legal, social services and Wisconsin judiciary.

The purpose of the bill is to equip those advocating for and servicing our burgeoning elderly population to the unique challenges within this population segment, to establish actionable documentation as to the process of servicing this population, to prevent fraud and abuse and to increase the level of competency required to service these citizens.

There are 3 components of the bill. They are loosely modeled after FINRA rule 2090 Know Your Customer, FINRA Elder Care CE requirements and the Activities of Daily Living (ADL) standards.

1.) "Know your Customer Provision"

- a. *"Every member shall use reasonable diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer."* – FINRA Rulebook
- b. This provision would require attorneys, advocates and judges to provide a methodology and demonstrate that they know an elderly individual in question and that they can demonstrate they have the best interests of the individual in mind.

2.) Continuing Education Requirement

- a. This provision requires attorneys, advocates and judges to integrate elder care training as part of their annual continuing education requirements. (much like the new money laundering requirements now in place) Each industry's SRO, licensing body or practice must be able to document and demonstrate a minimum level of competence in recognizing suspicious activities and crimes that occur against elderly

3.) Activities of Daily Living Requirements

- a. Require that attorneys, advocates and judges practicing in the elder care industry adopt the Activities of Daily Living Metric along with the standardized level of qualifications in determining an elderly person's level of competency particularly to execute legal documents.
 - b. The standards are such that if an elderly individual is incapable of completing two of the five Activities of Daily Living unaided they are deemed to qualify. Since it is inconsistent on one hand to have an individual qualify as incapable to handle their own activities of daily living yet somehow still be competent to execute legal documents this same standard will be applied to the capacity of executing legal documents.
-



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3800(?)
TJD/SWB: ... P/
 & ... emw

In: 12/26

Due Tues
12/29

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
Xref ✓

Gen.

1 AN ACT ...; relating to: changes to elder abuse reporting system regarding
2 financial exploitation. ^{and continuing legal and judicial education}
_{on elder law related issues} ✓

Analysis by the Legislative Reference Bureau

★
Wisconsin

This bill makes changes to the elder abuse reporting system including changes to mandatory reporting and reporting of financial exploitation ^{and requests}
Elder abuse reporting ^{the supreme court to make rules on legal and judicial education}
_{regarding elder law issues}

Under current law, an employee of any entity that has credentials from the Department of Health Services, a health care provider, a social worker, a professional counselor, or a marriage and family therapist who has seen an elder adult at risk in his or her professional duties is required to report to a specified entity if he or she has reasonable cause to believe either 1) that the elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk or 2) that an elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss. Any person, including an attorney, is allowed to report that he or she believes that abuse, financial exploitation, neglect, or self-neglect has occurred under certain circumstances. The bill adds attorneys and persons working under the supervision of attorneys to those who are required to report. The bill also adds circumstances in which the elder adult at risk is experiencing financial exploitation to the situations that a mandatory reporter must report.

After responding to a report, the county elder-adult-at-risk agency may take certain specified actions if it has reason to believe that the elder adult at risk has been

the subject of abuse, financial exploitation, neglect, or self-neglect including referring the case to law enforcement officials if there is reason to believe a crime has been committed and bringing a petition for guardianship and protective services or protective placement if necessary to prevent financial exploitation, neglect, self-neglect, or abuse and if the elder adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services. The bill adds bringing a petition for guardianship of the estate of the elder adult at risk to prevent financial exploitation to the list of actions the elder-adult-at-risk agency may take following a report.

Generally, departmental report forms and records of elder abuse reports are confidential except as specified by law. Departmental report forms include documentation of an elder-adult-at-risk agency's response to or investigation of a report. Currently, the departmental report form may be released upon request to the reporter who made a report in his or her professional capacity regarding action to be taken to protect or provide services to the alleged victim of abuse, financial exploitation, neglect, or self-neglect. The bill removes that requirement that the reporter requesting the departmental report made the report in a professional capacity and adds that the reporter may receive the report if the report was made in good faith.

Currently, a person who is not specified by law may request a departmental report form and receive information on whether an elder abuse report was received and whether statutory responsibility was fulfilled. The bill specifies that the statutory responsibility means the reporting, response, investigation, and determination of whether the elder adult at risk is in need of service requirements.

Requested continuing legal and judicial education requirements

The bill requests the Wisconsin Supreme Court to promulgate rules requiring an attorney whose practice involves elder law or trusts and estates law to complete certain continuing legal education requirements each reporting period.

The bill also requests the Court to promulgate rules requiring justices and judges to complete, during each reporting period, certain judicial education requirements relating to elder law and trusts and estates law.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 46.90 (4) (ab) 5. of the statutes is created to read:
2 46.90 (4) (ab) 5. An attorney or a person working under the supervision of an
3 attorney.

4 SECTION 2. 46.90 (4) (ad) 3. of the statutes is created to read:

nal :
space →

X

X

1 46.90 (4) (ad) 3. The elder adult at risk is experiencing financial exploitation.

2 **SECTION 3.** 46.90 (5m) (br) 7. of the statutes is created to read:

3 46.90 (5m) (br) 7. Bring a petition for guardianship of the estate of the elder
4 adult at risk to prevent financial exploitation.

5 **SECTION 4.** 46.90 (6) (b) 10. of the statutes is amended to read:

6 46.90 (6) (b) 10. To the reporter who made a report in his or her professional
7 capacity good faith, regarding action to be taken to protect or provide services to the
8 alleged victim of abuse, financial exploitation, neglect, or self-neglect.

History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82; 2003 a. 33; 2005 a. 264, 388; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45; 2009 a. 319; 2011 a. 32; 2013 a. 20.

9 **SECTION 5.** 46.90 (6) (bd) of the statutes is amended to read:

10 46.90 (6) (bd) If a person requesting a departmental report form is not one of
11 the persons or entities specified in par. (b), the elder-adult-at-risk agency may
12 release information indicating only whether or not a report was received and
13 whether or not statutory responsibility under subs. (4), (5), and (5m) (a) was fulfilled.

History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82; 2003 a. 33; 2005 a. 264, 388; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45; 2009 a. 319; 2011 a. 32; 2013 a. 20.

14 **SECTION 6.** 751.158 of the statutes is created to read:

15 **751.158 Rules regarding the practice of law; special requirements for**
16 **elder law and trusts and estates practice.** (1) The supreme court is requested
17 to promulgate rules that require each attorney whose practice involves elder law or
18 trusts or estates law, to complete, each reporting period, continuing legal education
19 relating to elder law and trusts and estates practice, including, as determined by the
20 board of bar examiners, identification of financial exploitation, ^{and} isolation of
21 vulnerable adults, and ethical representation of older adults, including methodology
22 and standards for reasonable diligence in pursuing a client's best interest.

1 (2) The supreme court is requested to promulgate rules that require each
2 justice and judges to complete, each reporting period, judicial education relating to
3 elder law and trusts and estates law, including, as determined by the office of judicial
4 education, identification of financial exploitation, isolation of vulnerable adults, and
5 ethical issues in cases involving representation of older adults, including
6 methodology and standards for reasonable diligence in pursuing a client's best
7 interest.

8

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

& TJD
LRB-3800/P1
TJD&SWB:emw
P2

In: 115
Due 1/6
Wed

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

S.A. ✓
Zweck ✓

Regen
cat

1 AN ACT *to amend* 46.90 (6) (b) 10. and 46.90 (6) (bd); and *to create* 46.90 (4) (ab)
2 5., 46.90 (4) (ad) 3., 46.90 (5m) (br) 7. and 751.158 of the statutes; **relating to:**
3 changes to elder abuse reporting system regarding financial exploitation and
4 continuing legal and judicial education on elder law-related issues.

Analysis by the Legislative Reference Bureau

This bill makes changes to the elder abuse reporting system, including changes to mandatory reporting and reporting of financial exploitation, and requests the Wisconsin Supreme Court to make rules on legal and judicial education regarding elder law issues.

Elder abuse reporting

Under current law, an employee of any entity that has credentials from the Department of Health Services, a health care provider, a social worker, a professional counselor, or a marriage and family therapist who has seen an elder adult at risk in his or her professional duties is required to report to a specified entity if he or she has reasonable cause to believe either 1) that the elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk or 2) that an elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss. Any person, including an attorney, is allowed to report that he or she believes that abuse, financial exploitation, neglect, or self-neglect has occurred under certain circumstances. The

bill adds attorneys and persons working under the supervision of attorneys to those who are required to report. The bill also adds circumstances in which the elder adult at risk is experiencing financial exploitation to the situations that a mandatory reporter must report.

After responding to a report, the county elder-adult-at-risk agency may take certain specified actions if it has reason to believe that the elder adult at risk has been the subject of abuse, financial exploitation, neglect, or self-neglect including referring the case to law enforcement officials if there is reason to believe a crime has been committed and bringing a petition for guardianship and protective services or protective placement if necessary to prevent financial exploitation, neglect, self-neglect, or abuse and if the elder adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services. The bill adds bringing a petition for guardianship of the estate of the elder adult at risk to prevent financial exploitation to the list of actions the elder-adult-at-risk agency may take following a report.

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Currently, a person who is not specified by law may request a departmental report form and receive information on whether an elder abuse report was received and whether statutory responsibility was fulfilled. The bill specifies that statutory responsibility means the reporting, response, investigation, and determination of whether the elder adult at risk is in need of service requirements.

Requested continuing legal and judicial education requirements

The bill requests the Wisconsin Supreme Court to promulgate rules requiring an attorney whose practice involves elder law or trusts and estates law to complete certain continuing legal education requirements each reporting period. *not*

The bill also requests the court to promulgate rules requiring justices and judges to complete, during each reporting period, certain judicial education requirements relating to elder law and trusts and estates law.

For further information see the *state (and local)* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Fix
Component

1 **SECTION 1.** 46.90 (4) (ab) 5. of the statutes is created to read:

2 46.90 (4) (ab) 5. An attorney or a person working under the supervision of an
3 attorney.

4 **SECTION 2.** 46.90 (4) (ad) 3. of the statutes is created to read:

5 46.90 (4) (ad) 3. The elder adult at risk is experiencing financial exploitation.

6 **SECTION 3.** 46.90 (5m) (br) 7. of the statutes is created to read:

7 46.90 (5m) (br) 7. Bring a petition for guardianship of the estate of the elder
8 adult at risk to prevent financial exploitation.

9 **SECTION 4.** 46.90 (6) (b) 10. of the statutes is amended to read:

10 46.90 (6) (b) 10. To the reporter who made a report in ~~his or her professional~~
11 ~~capacity~~ good faith, regarding action to be taken to protect or provide services to the
12 alleged victim of abuse, financial exploitation, neglect, or self-neglect.

13 **SECTION 5.** 46.90 (6) (bd) of the statutes is amended to read:

14 46.90 (6) (bd) If a person requesting a departmental report form is not one of
15 the persons or entities specified in par. (b), the elder-adult-at-risk agency may
16 release information indicating only whether or not a report was received and
17 whether or not statutory responsibility under subs. (4), (5), and (5m) (a) was fulfilled.

18 **SECTION 6.** 751.158 of the statutes is created to read:

19 **751.158 Rules regarding the practice of law; special requirements for**
20 **elder law and trusts and estates practice.** (1) The supreme court is requested
21 to promulgate rules that require each attorney whose practice involves elder law or
22 trusts or estates law to complete, each reporting period, continuing legal education
23 relating to elder law and trusts and estates practice, including, as determined by the
24 board of bar examiners, identification of financial exploitation and isolation of

1 vulnerable adults and ethical representation of older adults, including methodology
2 and standards for reasonable diligence in pursuing a client's best interest.

3 (2) The supreme court is requested to promulgate rules that require each
4 justice and judge to complete, each reporting period, judicial education relating to
5 elder law and trusts and estates law, including, as determined by the office of judicial
6 education, identification of financial exploitation, isolation of vulnerable adults, and
7 ethical issues in cases involving representation of older adults, including
8 methodology and standards for reasonable diligence in pursuing a client's best
9 interest.

10

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3800/P2 1
SWB&TJD:emw
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 1/19/16
Requested TODAY
ASAP
NO CHANGES
Please Jacket
for Assembly

1 **AN ACT to create** 751.158 of the statutes; **relating to:** continuing legal and
2 judicial education on elder law-related issues.

Analysis by the Legislative Reference Bureau

The bill requests the Wisconsin Supreme Court to promulgate rules requiring an attorney whose practice involves elder law or trusts and estates law to complete certain continuing legal education requirements each reporting period. The bill also requests the court to promulgate rules requiring justices and judges to complete, during each reporting period, certain judicial education requirements relating to elder law and trusts and estates law.

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Jacket

SECTION 1

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9 education, identification of financial exploitation, isolation of vulnerable adults, and
10 ethical issues in cases involving representation of older adults, including
11 methodology and standards for reasonable diligence in pursuing a client's best
12 interest.

13 (END)

back

Parisi, Lori

From: Joniaux, Benjamin
Sent: Tuesday, January 19, 2016 1:10 PM
To: LRB.Legal
Subject: Draft Review: LRB -3800/1

Please Jacket LRB -3800/1 for the ASSEMBLY.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3800/1
SWB&TJD:emw

2015 ASSEMBLY BILL 789

Before changes

January 22, 2016 – Introduced by Representatives MACCO, ROHRKASTE, HESSELBEIN, BERNIER, NOVAK, KATZMA, TITTL, CZAJA, SKOWRONSKI, BROSTOFF, MEYERS, KOLSTE, JAGLER, PETRYK, SWEARINGEN, KLEEFISCH, STEINEKE, QUINN, KITCHENS, KAHL, A. OTT, RIPP, ZEPNICK, SPIROS, SUBECK, E. BROOKS, MURPHY, SARGENT, KULP, BALLWEG, NYGREN, OHNSTAD, JOHNSON, JARCHOW, SINICKI and BORN, cosponsored by Senators COWLES, OLSEN, CARPENTER, HANSEN and C. LARSON. Referred to Committee on Mental Health Reform.

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ASSEMBLY BILL 789

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12 interest.

13

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

Corrected
Copy

LRB-3800/1
SWB&TJD:emw

2015 ASSEMBLY BILL 789

January 22, 2016 – Introduced by Representatives MACCO, ROHRKASTE, HESSELBEIN, BERNIER, NOVAK, KATSMA, TITTL, CZAJA, SKOWRONSKI, BROSTOFF, MEYERS, KOLSTE, JAGLER, PETRYK, SWEARINGEN, KLEEFISCH, STEINEKE, QUINN, KITCHENS, KAHL, A. OTT, RIPP, ZEPNICK, SPIROS, SUBECK, E. BROOKS, MURPHY, SARGENT, KULP, BALLWEG, NYGREN, OHNSTAD, JOHNSON, JARCHOW, SINICKI and BORN, cosponsored by Senators COWLES, OLSEN, CARPENTER, HANSEN and C. LARSON. Referred to Committee on Mental Health Reform.

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ASSEMBLY BILL 789**SECTION 1**

1 trusts or estates law to complete, each reporting period, continuing legal education
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10 ethical issues in cases involving representation of older adults, including
11 methodology and standards for reasonable diligence in pursuing a client's best
12 interest.

13 (END)



After Changes
02-16-2016

2015 ASSEMBLY BILL 789

changes made by KJF

January 22, 2016 – Introduced by Representatives MACCO, ROHRKASTE, HESSELBEIN, BERNIER, NOVAK, KATSMA, TITTL, CZAJA, SKOWRONSKI, BROSTOFF, MEYERS, KOLSTE, JAGLER, PETRYK, SWEARINGEN, KLEEFISCH, STEINEKE, QUINN, KITCHENS, KAHL, A. OTT, RIPP, ZEPNICK, SPIROS, SUBECK, E. BROOKS, MURPHY, SARGENT, KULP, BALLWEG, NYGREN, OHNSTAD, JOHNSON, JARCHOW, SINICKI and BORN, cosponsored by Senators COWLES, OLSEN, CARPENTER, HANSEN and C. LARSON. Referred to Committee on Mental Health Reform.

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ASSEMBLY BILL 789**SECTION 1**

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8 education, identification of financial exploitation, isolation of vulnerable adults, and
9 ethical issues in cases involving representation of older adults, including
10 methodology and standards for reasonable diligence in pursuing a client's best
11 interest.

12 (END)