

State of Arizona
House of Representatives
Forty-second Legislature
Second Regular Session
1996

FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 274

HOUSE BILL 2457

AN ACT

AMENDING TITLE 46, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 46-456; RELATING TO ADULT PROTECTION SERVICES.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 46, chapter 4, article 1, Arizona Revised Statutes,
3 is amended by adding section 46-456, to read:

4 46-456. Duty to an incapacitated or vulnerable adult; financial
5 exploitation; civil and criminal penalties;
6 exceptions; definitions

7 A. A PERSON WHO IS IN A POSITION OF TRUST AND CONFIDENCE TO AN
8 INCAPACITATED OR VULNERABLE ADULT SHALL ACT FOR THE BENEFIT OF THAT PERSON
9 TO THE SAME EXTENT AS A TRUSTEE PURSUANT TO TITLE 14, CHAPTER 7.

10 B. A PERSON WHO IS IN A POSITION OF TRUST AND CONFIDENCE AND WHO BY
11 INTIMIDATION OR DECEPTION KNOWINGLY TAKES CONTROL, TITLE, USE OR MANAGEMENT
12 OF AN INCAPACITATED OR VULNERABLE ADULT'S ASSET OR PROPERTY WITH THE INTENT
13 TO PERMANENTLY DEPRIVE THAT PERSON OF THE ASSET OR PROPERTY IS GUILTY OF
14 THEFT AND IS PUNISHABLE AS PROVIDED IN SECTION 13-1802, SUBSECTIONS C AND D.

15 C. A PERSON WHO VIOLATES SUBSECTION A OR B OF THIS SECTION IS SUBJECT
16 TO DAMAGES IN A CIVIL ACTION BROUGHT BY OR ON BEHALF OF AN INCAPACITATED OR
17 VULNERABLE ADULT THAT EQUAL UP TO THREE TIMES THE AMOUNT OF THE MONETARY
18 DAMAGES.

19 D. A PERSON WHO VIOLATES SUBSECTION A OR B OF THIS SECTION FORFEITS
20 ALL BENEFITS WITH RESPECT TO THE ESTATE OF THE DECEASED, INCAPACITATED OR
21 VULNERABLE ADULT, INCLUDING AN INTESTATE SHARE, AN ELECTIVE SHARE, AN OMITTED
22 SPOUSE'S SHARE, AN OMITTED CHILD'S SHARE, A HOMESTEAD ALLOWANCE, AN EXEMPT
23 PROPERTY ALLOWANCE AND A FAMILY ALLOWANCE. IF THE INCAPACITATED OR
24 VULNERABLE ADULT DIED INTESTATE, THE DECEDENT'S INTESTATE ESTATE PASSES AS

1 IF THE PERSON WHO COMMITTED THE VIOLATION DISCLAIMED THAT PERSON'S INTESTATE
2 SHARE.

3 E. THE PROVISIONS OF SECTION 46-455, SUBSECTIONS D, E, F, G, I, J, M
4 AND O ALSO APPLY TO CIVIL VIOLATIONS OF THIS SECTION.

5 F. SUBSECTIONS A, C, D AND E OF THIS SECTION DO NOT APPLY TO AN AGENT
6 THAT IS ANY OF THE FOLLOWING:

7 1. A BANK, FINANCIAL INSTITUTION OR ESCROW AGENT LICENSED OR CERTIFIED
8 PURSUANT TO TITLE 6.

9 2. A SECURITIES DEALER OR SALESMAN REGISTERED PURSUANT TO TITLE 44,
10 CHAPTER 12, ARTICLE 9.

11 3. AN INSURER, INCLUDING A TITLE INSURER, AUTHORIZED AND REGULATED
12 PURSUANT TO TITLE 20.

13 G. FOR THE PURPOSES OF THIS SECTION:

14 1. "DECEPTION" MEANS THAT A PERSON DECEIVES AN INCAPACITATED OR
15 VULNERABLE ADULT BY KNOWINGLY DOING ANY OF THE FOLLOWING:

16 (a) CREATING OR CONFIRMING A FALSE IMPRESSION IN AN INCAPACITATED OR
17 VULNERABLE ADULT'S MIND.

18 (b) FAILING TO CORRECT A FALSE IMPRESSION THAT THE PERSON IS
19 RESPONSIBLE FOR CREATING OR CONFIRMING IN AN INCAPACITATED OR VULNERABLE
20 ADULT'S MIND.

21 (c) MAKING A PROMISE TO AN INCAPACITATED OR VULNERABLE ADULT THAT THE
22 PERSON DOES NOT INTEND TO PERFORM OR THAT THE PERSON KNOWS WILL NOT OR CANNOT
23 BE PERFORMED. A PERSON'S FAILURE TO PERFORM A PROMISE IS NOT BY ITSELF
24 SUFFICIENT PROOF THAT THE PERSON DID NOT INTEND TO PERFORM THE PROMISE.

25 (d) MISREPRESENTING OR CONCEALING A MATERIAL FACT THAT RELATES TO THE
26 TERMS OF A CONTRACT OR AN AGREEMENT THAT THE PERSON ENTERS INTO WITH THE
27 INCAPACITATED OR VULNERABLE ADULT OR THAT RELATES TO THE EXISTING OR
28 PREEXISTING CONDITION OF ANY OF THE PROPERTY INVOLVED IN A CONTRACT OR AN
29 AGREEMENT.

30 (e) USING ANY MATERIAL MISREPRESENTATION, FALSE PRETENSE OR FALSE
31 PROMISE TO INDUCE, ENCOURAGE OR SOLICIT AN INCAPACITATED OR VULNERABLE ADULT
32 TO ENTER INTO A CONTRACT OR AN AGREEMENT.

33 2. "INTIMIDATION" INCLUDES THREATENING TO DEPRIVE AN INCAPACITATED OR
34 VULNERABLE ADULT OF FOOD, NUTRITION, SHELTER OR NECESSARY MEDICATION OR
35 MEDICAL TREATMENT.

36 3. "POSITION OF TRUST AND CONFIDENCE" MEANS THAT A PERSON IS ANY OF
37 THE FOLLOWING:

38 (a) ONE WHO HAS ASSUMED A DUTY TO PROVIDE CARE TO THE INCAPACITATED
39 OR VULNERABLE ADULT.

40 (b) A JOINT TENANT OR A TENANT IN COMMON WITH AN INCAPACITATED OR
41 VULNERABLE ADULT.

42 (c) ONE WHO IS IN A FIDUCIARY RELATIONSHIP WITH AN INCAPACITATED OR
43 VULNERABLE ADULT INCLUDING A DEFACTO GUARDIAN OR DEFACTO CONSERVATOR.

~~APPROVED BY THE GOVERNOR APRIL 23, 1996~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 1996~~