

Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 119

HOUSE BILL 2344

AN ACT

AMENDING SECTIONS 12-562, 13-1802, 14-5506, 46-451, 46-452, 46-453, 46-454, 46-455, 46-456 AND 46-457, ARIZONA REVISED STATUTES; RELATING TO INCAPACITATED AND VULNERABLE ADULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-562, Arizona Revised Statutes, is amended to
3 read:

4 12-562. Medical malpractice actions; grounds

5 A. A medical malpractice action shall not be brought against a
6 licensed health care provider except upon the grounds set forth in section
7 12-561.

8 B. A medical malpractice action brought against a licensed health care
9 provider shall not be based upon assault and battery.

10 C. A medical malpractice action based upon breach of contract for
11 professional services shall not be brought unless such contract is in
12 writing.

13 D. A medical malpractice action brought against a physician licensed
14 pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to
15 title 32, chapter 7, a registered nurse practitioner licensed pursuant to
16 title 32, chapter 15 or a physician assistant licensed pursuant to title 32,
17 chapter 25 regarding services provided within that person's scope of practice
18 shall not be based on the neglect, abuse or exploitation of an ~~incapacitated~~
19 ~~or~~ A vulnerable adult, except as provided in section 46-455.

20 Sec. 2. Section 13-1802, Arizona Revised Statutes, is amended to read:

21 13-1802. Theft; classification; definitions

22 A. A person commits theft if, without lawful authority, the person
23 knowingly:

24 1. Controls property of another with the intent to deprive the other
25 person of such property; or

26 2. Converts for an unauthorized term or use services or property of
27 another entrusted to the defendant or placed in the defendant's possession
28 for a limited, authorized term or use; or

29 3. Obtains services or property of another by means of any material
30 misrepresentation with intent to deprive the other person of such property or
31 services; or

32 4. Comes into control of lost, mislaid or misdelivered property of
33 another under circumstances providing means of inquiry as to the true owner
34 and appropriates such property to the person's own or another's use without
35 reasonable efforts to notify the true owner; or

36 5. Controls property of another knowing or having reason to know that
37 the property was stolen; or

38 6. Obtains services known to the defendant to be available only for
39 compensation without paying or an agreement to pay the compensation or
40 diverts another's services to the person's own or another's benefit without
41 authority to do so.

42 B. A person commits theft if, WITHOUT LAWFUL AUTHORITY, the person
43 knowingly takes control, title, use or management of an ~~incapacitated~~ ~~or~~
44 ~~a~~ vulnerable adult's ~~assets or property through intimidation or deception, as~~
45 ~~defined in section 46-456,~~ while acting in a position of trust and confidence

1 and with the intent to deprive the ~~incapacitated or~~ vulnerable adult of the
2 ~~asset or~~ property. PROOF THAT A PERSON TOOK CONTROL, TITLE, USE OR
3 MANAGEMENT OF A VULNERABLE ADULT'S PROPERTY WITHOUT ADEQUATE CONSIDERATION TO
4 THE VULNERABLE ADULT MAY GIVE RISE TO AN INFERENCE THAT THE PERSON INTENDED
5 TO DEPRIVE THE VULNERABLE ADULT OF THE PROPERTY.

6 C. IT IS AN AFFIRMATIVE DEFENSE TO ANY PROSECUTION UNDER SUBSECTION B
7 OF THIS SECTION THAT EITHER:

8 1. THE PROPERTY WAS GIVEN AS A GIFT CONSISTENT WITH A PATTERN OF GIFT
9 GIVING TO THE PERSON THAT EXISTED BEFORE THE ADULT BECAME VULNERABLE.

10 2. THE PROPERTY WAS GIVEN AS A GIFT CONSISTENT WITH A PATTERN OF GIFT
11 GIVING TO A CLASS OF INDIVIDUALS THAT EXISTED BEFORE THE ADULT BECAME
12 VULNERABLE.

13 3. THE SUPERIOR COURT APPROVED THE TRANSACTION BEFORE THE TRANSACTION
14 OCCURRED.

15 ~~E.~~ D. The inferences set forth in section 13-2305 apply to any
16 prosecution under subsection A, paragraph 5 of this section.

17 ~~D.~~ E. At the conclusion of any grand jury proceeding, hearing or
18 trial, the court shall preserve any trade secret that is admitted in evidence
19 or any portion of a transcript that contains information relating to the
20 trade secret pursuant to section 44-405.

21 F. SUBSECTION B OF THIS SECTION DOES NOT APPLY TO AN AGENT WHO IS
22 ACTING WITHIN THE SCOPE OF THE AGENT'S DUTIES AS OR ON BEHALF OF A HEALTH
23 CARE INSTITUTION THAT IS LICENSED PURSUANT TO TITLE 36, CHAPTER 4 AND THAT
24 PROVIDES SERVICES TO THE VULNERABLE ADULT.

25 ~~E.~~ G. Theft of property or services with a value of twenty-five
26 thousand dollars or more is a class 2 felony. Theft of property or services
27 with a value of four thousand dollars or more but less than twenty-five
28 thousand dollars is a class 3 felony. Theft of property or services with a
29 value of three thousand dollars or more but less than four thousand dollars
30 is a class 4 felony, except that theft of any vehicle engine or transmission
31 is a class 4 felony regardless of value. Theft of property or services with
32 a value of two thousand dollars or more but less than three thousand dollars
33 is a class 5 felony. Theft of property or services with a value of one
34 thousand dollars or more but less than two thousand dollars is a class 6
35 felony. Theft of any property or services valued at less than one thousand
36 dollars is a class 1 misdemeanor, unless the property is taken from the
37 person of another, is a firearm or is a dog taken for the purpose of dog
38 fighting in violation of section 13-2910.01, in which case the theft is a
39 class 6 felony.

40 ~~F.~~ H. A person who is convicted of a violation of subsection A,
41 paragraph 1 or 3 of this section that involved property with a value of one
42 hundred thousand dollars or more is not eligible for suspension of sentence,
43 probation, pardon or release from confinement on any basis except pursuant to
44 section 31-233, subsection A or B until the sentence imposed by the court has

1 been served, the person is eligible for release pursuant to section
2 41-1604.07 or the sentence is commuted.

3 I. FOR THE PURPOSES OF THIS SECTION:

4 1. "ADEQUATE CONSIDERATION" MEANS THE PROPERTY WAS GIVEN TO THE PERSON
5 AS PAYMENT FOR BONA FIDE GOODS OR SERVICES PROVIDED BY THE PERSON AND THE
6 PAYMENT WAS AT A RATE THAT WAS CUSTOMARY FOR SIMILAR GOODS OR SERVICES IN THE
7 COMMUNITY THAT THE VULNERABLE ADULT RESIDED IN AT THE TIME OF THE
8 TRANSACTION.

9 2. "PATTERN OF GIFT GIVING" MEANS TWO OR MORE GIFTS THAT ARE THE SAME
10 OR SIMILAR IN TYPE AND MONETARY VALUE.

11 3. "POSITION OF TRUST AND CONFIDENCE" HAS THE SAME MEANING PRESCRIBED
12 IN SECTION 46-456.

13 4. "PROPERTY" INCLUDES ALL FORMS OF REAL PROPERTY AND PERSONAL
14 PROPERTY.

15 5. "VULNERABLE ADULT" HAS THE SAME MEANING AS PRESCRIBED IN SECTION
16 46-451.

17 Sec. 3. Section 14-5506, Arizona Revised Statutes, is amended to read:
18 14-5506. Powers of attorney; intimidation; deception;
19 definitions

20 ~~A. Except as provided in subsection B of this section, an agent shall~~
21 ~~use the principal's money, property or other assets only in the principal's~~
22 ~~best interest and the agent shall not use the principal's money, property or~~
23 ~~other assets for the agent's benefit. An agent who violates this subsection~~
24 ~~is subject to prosecution under title 13 and civil penalties pursuant to~~
25 ~~section 46-456.~~

26 ~~B. Any authority, the use of which is not in the principal's best~~
27 ~~interest or is for the agent's benefit including contracted for commissions,~~
28 ~~fees or other compensation shall be specifically identified in detail within~~
29 ~~the instrument or a written contract signed by the principal that is~~
30 ~~specifically identified by the instrument and be separately initialed by the~~
31 ~~principal and the witness at the time of execution.~~

32 ~~C. A. If the agent acted with intimidation or deception as defined in~~
33 ~~section 46-456 in procuring the power of attorney or any authority provided~~
34 ~~in the power of attorney, the agent is subject to prosecution under title 13~~
35 ~~and civil penalties pursuant to section 46-456.~~

36 ~~D. B. A power of attorney executed by an adult who does not have~~
37 ~~capacity is invalid. In a criminal proceeding, the agent has the burden of~~
38 ~~proving by clear and convincing evidence that the principal had capacity. In~~
39 ~~a civil proceeding, if the party challenging the validity of a power of~~
40 ~~attorney on the grounds of lack of capacity proves by a preponderance of the~~
41 ~~evidence that, at the time the power of attorney was executed, the principal~~
42 ~~was a vulnerable adult, the agent has the burden of proving by clear and~~
43 ~~convincing evidence that the principal had capacity. In a civil proceeding,~~
44 ~~if the party challenging the validity of a power of attorney on the basis of~~
45 ~~lack of capacity does not prove by a preponderance of the evidence that, at~~

1 the time the power of attorney was executed, the principal was a vulnerable
2 adult, the agent has the burden of proving by a preponderance of the evidence
3 that the principal had capacity.

4 E. C. A person who in good faith either assists or deals with an
5 agent is protected as if the agent properly exercised the agent's power
6 regardless of whether the authority of that person as the agent has been
7 terminated.

8 F. D. For THE purposes of this section:

9 ~~1. "Best interest" means the agent acts solely for the principal's~~
10 ~~benefit.~~

11 ~~2.~~ 1. "Capacity" means that at the time the power of attorney was
12 executed the principal was capable of understanding in a reasonable manner
13 the nature and effect of the act of executing and granting the power of
14 attorney.

15 2. "INTIMIDATION" INCLUDES THREATENING TO DEPRIVE A VULNERABLE ADULT
16 OF FOOD, NUTRITION, SHELTER OR NECESSARY MEDICATION OR MEDICAL TREATMENT.

17 3. "Vulnerable adult" has the same meaning prescribed in section
18 46-451.

19 Sec. 4. Section 46-451, Arizona Revised Statutes, is amended to read:
20 46-451. Definitions; program goals

21 A. In this chapter, unless the context otherwise requires:

22 1. "Abuse" means:

23 (a) Intentional infliction of physical harm.

24 (b) Injury caused by negligent acts or omissions.

25 (c) Unreasonable confinement.

26 (d) Sexual abuse or sexual assault.

27 2. "De facto conservator" means any person who takes possession of the
28 estate of ~~an incapacitated or~~ A vulnerable adult, without right or lawful
29 authority. A de facto conservator is subject to all of the responsibilities
30 that attach to a legally appointed conservator or trustee.

31 3. "De facto guardian" means any person who takes possession of the
32 person of ~~an incapacitated or~~ A vulnerable adult, without right or lawful
33 authority. A de facto guardian is subject to all of the responsibilities
34 that attach to a legally appointed guardian.

35 4. "Exploitation" means the illegal or improper use of ~~an~~
36 ~~incapacitated or~~ A vulnerable adult or his resources for another's profit or
37 advantage.

38 ~~5. "Incapacity" means an impairment by reason of mental illness,~~
39 ~~mental deficiency, mental disorder, physical illness or disability, advanced~~
40 ~~age, chronic use of drugs, chronic intoxication or other cause to the extent~~
41 ~~that the person lacks sufficient understanding or capacity to make or~~
42 ~~communicate informed decisions concerning his person.~~

43 ~~6.~~ 5. "Informed consent" means any of the following:

44 (a) A written expression by the person that the person fully
45 understands the potential risks and benefits of the withdrawal of food,

1 water, medication, medical services, shelter, cooling, heating or other
2 services necessary to maintain minimum physical or mental health and that the
3 person desires that the services be withdrawn.

4 (b) Consent to withdraw food, water, medication, medical services,
5 shelter, cooling, heating or other services necessary to maintain minimum
6 physical or mental health as permitted by an order of a court of competent
7 jurisdiction.

8 (c) A declaration made pursuant to title 36, chapter 32.

9 (d) Consent by another person under a durable power of attorney
10 relating to health care services to withdraw food, water, medication, medical
11 services, shelter, cooling, heating or other services necessary to maintain
12 minimum physical or mental health.

13 ~~7.~~ 6. "Neglect" means a pattern of conduct without the person's
14 informed consent resulting in deprivation of food, water, medication, medical
15 services, shelter, cooling, heating or other services necessary to maintain
16 minimum physical or mental health.

17 ~~8.~~ 7. "Protective services" means a program of identifiable and
18 specialized social services that may offer social services appropriate to
19 resolve problems of abuse, exploitation or neglect of an ~~incapacitated or~~ A
20 vulnerable adult.

21 ~~9.~~ 8. "Protective services worker" means a person who has been
22 selected by and trained under the requirements prescribed by the department
23 to provide protective services.

24 ~~10.~~ 9. "Vulnerable adult" means an individual who is eighteen years of
25 age or older AND who is unable to protect himself from abuse, neglect or
26 exploitation by others because of a physical or mental impairment.
27 VULNERABLE ADULT INCLUDES AN INCAPACITATED PERSON AS DEFINED IN SECTION
28 14-5101.

29 B. Protective services programs shall seek to maintain the adult in
30 his familiar environment by strengthening his capacity for self-maintenance
31 or by providing supportive services.

32 C. Nothing in this section shall be construed to mean that an adult is
33 abused, neglected or in need of protective services for the sole reason that
34 he relies on treatment from a recognized religious method of healing in lieu
35 of medical treatment.

36 D. A written expression pursuant to subsection A, paragraph ~~6-~~ 5,
37 subdivision (a) of this section is valid only if the person is of sound mind
38 when the consent is made and if the consent is witnessed by at least two
39 individuals who do not benefit by the withdrawal of services.

40 Sec. 5. Section 46-452, Arizona Revised Statutes, is amended to read:

41 46-452. Protective services worker; powers and duties

42 A. A protective services worker shall:

43 1. Receive reports of abused, exploited or neglected ~~incapacitated or~~
44 vulnerable adults.

1 2. Receive from any source oral or written information regarding an
2 adult who may be in need of protective services.

3 3. Upon receipt of such information make an evaluation to determine if
4 the adult is in need of protective services and what services, if any, are
5 needed.

6 4. Offer an adult in need of protective services or his guardian
7 whatever services appear appropriate in view of the evaluation.

8 5. File petitions as necessary for the appointment of a guardian or
9 conservator or the appointment of a temporary guardian or temporary
10 conservator or make application for a special visitation warrant as provided
11 for in title 14, chapter 5.

12 B. The department or a protective services worker employed by the
13 department may not be appointed as guardian, conservator or temporary
14 guardian.

15 C. An adult protective services worker is immune from civil liability
16 for applying for a special visitation warrant or for filing a petition for
17 guardianship or conservatorship unless the application or filing is done in
18 bad faith.

19 Sec. 6. Section 46-453, Arizona Revised Statutes, is amended to read:
20 46-453. Immunity of participants; nonprivileged communication

21 A. Any person making a complaint, furnishing a report, information or
22 records required or authorized by this chapter or otherwise participating in
23 the program authorized by this chapter or in a judicial or administrative
24 proceeding or investigation resulting from reports, information or records
25 submitted or obtained pursuant to this chapter is immune from any civil or
26 criminal liability by reason of such action, unless the person acted with
27 malice or unless such person has been charged with or is suspected of
28 abusing, exploiting or neglecting the ~~incapacitated~~ or vulnerable adult in
29 question. Except as provided in subsection B of this section the
30 physician-patient privilege, husband-wife privilege or any privilege except
31 the attorney-client privilege, provided for by professions such as the
32 practice of social work or nursing covered by law or a code of ethics
33 regarding practitioner-client confidences, both as they relate to the
34 competency of the witness and to the exclusion of confidential
35 communications, shall not pertain in any civil or criminal litigation in
36 which ~~an incapacitated~~ or A vulnerable adult's exploitation, abuse or neglect
37 is an issue nor in any judicial or administrative proceeding resulting from a
38 report, information or records submitted or obtained pursuant to section
39 46-454 nor in any investigation of ~~an incapacitated~~ or A vulnerable adult's
40 exploitation, abuse or neglect conducted by a peace officer or a protective
41 services worker.

42 B. In any civil or criminal litigation in which incapacitation, abuse,
43 exploitation or neglect of ~~an incapacitated~~ or A vulnerable adult is an
44 issue, a clergyman or priest shall not, without his consent, be examined as a
45 witness concerning any confession made to him in his role as a clergyman or a

1 priest in the course of the discipline enjoined by the church to which he
2 belongs.

3 Sec. 7. Section 46-454, Arizona Revised Statutes, is amended to read:
4 46-454. Duty to report abuse, neglect and exploitation of
5 vulnerable adults; duty to make medical records
6 available; violation; classification

7 A. A physician, registered nurse practitioner, hospital intern or
8 resident, surgeon, dentist, psychologist, social worker, peace officer or
9 other person who has responsibility for the care of an ~~incapacitated~~ or A
10 vulnerable adult and who has a reasonable basis to believe that abuse or
11 neglect of the adult has occurred or that exploitation of the adult's
12 property has occurred shall immediately report or cause reports to be made of
13 such reasonable basis to a peace officer or to a protective services worker.
14 The guardian or conservator of an ~~incapacitated~~ or A vulnerable adult shall
15 immediately report or cause reports to be made of such reasonable basis to
16 the superior court. All of the above reports shall be made immediately in
17 person or by telephone and shall be followed by a written report mailed or
18 delivered within forty-eight hours or on the next working day if the
19 forty-eight hours expire on a weekend or holiday.

20 B. An attorney, accountant, trustee, guardian, conservator or other
21 person who has responsibility for preparing the tax records of an
22 ~~incapacitated~~ or A vulnerable adult or a person who has responsibility for
23 any other action concerning the use or preservation of the ~~incapacitated~~ or
24 vulnerable adult's property and who, in the course of fulfilling that
25 responsibility, discovers a reasonable basis to believe that exploitation of
26 the adult's property has occurred or that abuse or neglect of the adult has
27 occurred shall immediately report or cause reports to be made of such
28 reasonable basis to a peace officer, to a protective services worker or to
29 the public fiduciary of the county in which the ~~incapacitated~~ or vulnerable
30 adult resides. If the public fiduciary is unable to investigate the contents
31 of a report, the public fiduciary shall immediately forward the report to a
32 protective services worker. If a public fiduciary investigates a report and
33 determines that the matter is outside the scope of action of a public
34 fiduciary, then the report shall be immediately forwarded to a protective
35 services worker. All of the above reports shall be made immediately in
36 person or by telephone and shall be followed by a written report mailed or
37 delivered within forty-eight hours or on the next working day if the
38 forty-eight hours expire on a weekend or holiday.

39 C. Reports pursuant to subsections A and B shall contain:

40 1. The names and addresses of the adult and any persons having control
41 or custody of the adult, if known.

42 2. The adult's age and the nature and extent of ~~incapacity~~ or THE
43 ADULT'S vulnerability.

44 3. The nature and extent of the adult's injuries or physical neglect
45 or of the exploitation of the adult's property.

1 4. Any other information that the person reporting believes might be
2 helpful in establishing the cause of the adult's injuries or physical neglect
3 or of the exploitation of the adult's property.

4 D. Any person other than one required to report or cause reports to be
5 made in subsection A who has a reasonable basis to believe that abuse or
6 neglect of ~~an incapacitated or~~ A vulnerable adult has occurred may report the
7 information to a peace officer or to a protective services worker.

8 E. A person having custody or control of medical or financial records
9 of ~~an incapacitated or~~ A vulnerable adult for whom a report is required or
10 authorized under this section shall make such records, or a copy of such
11 records, available to a peace officer or adult protective services worker
12 investigating the ~~incapacitated or~~ vulnerable adult's neglect, exploitation
13 or abuse on written request for the records signed by the peace officer or
14 adult protective services worker. Records disclosed pursuant to this
15 subsection are confidential and may be used only in a judicial or
16 administrative proceeding or investigation resulting from a report required
17 or authorized under this section.

18 F. If reports pursuant to this section are received by a peace
19 officer, the peace officer shall notify the adult protective services of the
20 department of economic security as soon as possible and make such information
21 available to them.

22 G. A person required to receive reports pursuant to subsection A, B or
23 D may take or cause to be taken photographs of the abused adult and the
24 vicinity involved. Medical examinations including radiological examinations
25 of the involved adult may be performed. Accounts, inventories or audits of
26 the exploited adult's property may be performed. The person, department,
27 agency, or court that initiates such photographs, examinations, accounts,
28 inventories or audits shall pay the associated costs in accordance with
29 existing statutes and rules. If any person is found to be responsible for
30 the abuse, neglect or exploitation of ~~an incapacitated or~~ A vulnerable adult
31 in a criminal or civil action, the court may order the person to make
32 restitution as the court deems appropriate.

33 H. If psychiatric records are requested pursuant to subsection E, the
34 custodian of the records shall notify the attending psychiatrist, who may
35 excise from the records, before they are made available:

36 1. Personal information about individuals other than the patient.

37 2. Information regarding specific diagnosis or treatment of a
38 psychiatric condition, if the attending psychiatrist certifies in writing
39 that release of the information would be detrimental to the patient's health
40 or treatment.

41 I. If any portion of a psychiatric record is excised pursuant to
42 subsection H, a court, upon application of a peace officer or adult
43 protective services worker, may order that the entire record or any portion
44 of such record containing information relevant to the reported abuse or

1 neglect be made available to the peace officer or adult protective services
2 worker investigating the abuse or neglect.

3 J. A licensing agency shall not find that a reported incidence of
4 abuse at a care facility by itself is sufficient grounds to permit the agency
5 to close the facility or to find that all residents are in imminent danger.

6 K. A person who violates any provision of this section is guilty of a
7 class 1 misdemeanor.

8 Sec. 8. Section 46-455, Arizona Revised Statutes, is amended to read:

9 46-455. Permitting life or health of a vulnerable adult to be
10 endangered by neglect; violation; classification;
11 civil remedy; definition

12 A. A person who has been employed to provide care, who is a de facto
13 guardian or de facto conservator or who has been appointed by a court to
14 provide care to an ~~incapacitated~~ or A vulnerable adult and who causes or
15 permits the life of the adult to be endangered or that person's health to be
16 injured or endangered by neglect is guilty of a class 5 felony.

17 B. ~~An incapacitated~~ or A vulnerable adult whose life or health is
18 being or has been endangered or injured by neglect, abuse or exploitation may
19 file an action in superior court against any person or enterprise that has
20 been employed to provide care, that has assumed a legal duty to provide care
21 or that has been appointed by a court to provide care to such ~~incapacitated~~
22 ~~or~~ vulnerable adult for having caused or permitted such conduct. A physician
23 licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed
24 pursuant to title 32, chapter 7, a registered nurse practitioner licensed
25 pursuant to title 32, chapter 15 or a physician assistant licensed pursuant
26 to title 32, chapter 25, while providing services within the scope of that
27 person's licensure, is not subject to civil liability for damages under this
28 section unless either:

29 1. At the time of the events giving rise to a cause of action under
30 this section, the person was employed or retained by the facility or
31 designated by the facility, with the consent of the person, to serve the
32 function of medical director as that term is defined or used by federal or
33 state law governing a nursing care institution, an assisted living center, an
34 assisted living facility, an assisted living home, an adult day health care
35 facility, a residential care institution, an adult care home, a skilled
36 nursing facility or a nursing facility.

37 2. At the time of the events giving rise to a cause of action under
38 this section, all of the following applied:

39 (a) The person was a physician licensed pursuant to title 32, chapter
40 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered
41 nurse practitioner licensed pursuant to title 32, chapter 15 or a physician
42 assistant licensed pursuant to title 32, chapter 25.

43 (b) The person was the primary provider responsible for the medical
44 services to the patient while the patient was at one of the facilities listed
45 in paragraph 1 of this subsection.

1 C. Any person who was the primary provider of medical services to the
2 patient in the last two years before it was recommended that the patient be
3 admitted to one of the facilities listed in subsection B, paragraph 1 of this
4 section is exempt from civil liability for damages under this section.

5 D. For the purposes of this section, primary provider does not include
6 a consultant or specialist as listed in subsection B, paragraph 2,
7 subdivision (a) of this section who is requested by the primary provider to
8 provide care to the patient for whom the primary provider is responsible,
9 unless that consultant or specialist assumes the primary care of the patient.

10 E. The state may file an action pursuant to this section on behalf of
11 those persons endangered or injured to prevent, restrain or remedy the
12 conduct described in this section.

13 F. The superior court has jurisdiction to prevent, restrain and remedy
14 the conduct described in this section, after making provision for the rights
15 of all innocent persons affected by such conduct and after a hearing or
16 trial, as appropriate, by issuing appropriate orders.

17 G. Before a determination of liability, the orders may include, but
18 are not limited to, entering restraining orders or temporary injunctions or
19 taking such other actions, including the acceptance of satisfactory
20 performance bonds, the creation of receiverships and the appointment of
21 qualified receivers and the enforcement of constructive trusts, as the court
22 deems proper.

23 H. After a determination of liability such orders may include, but are
24 not limited to:

25 1. Ordering any person to divest himself of any direct or indirect
26 interest in any enterprise.

27 2. Imposing reasonable restrictions, including permanent injunctions,
28 on the future activities or investments of any person including prohibiting
29 any person from engaging in the same type of endeavor or conduct to the
30 extent permitted by the constitutions of the United States and this state.

31 3. Ordering dissolution or reorganization of any enterprise.

32 4. Ordering the payment of actual and consequential damages, as well
33 as costs of suit and reasonable attorney fees, to those persons injured by
34 the conduct described in this section. The court or jury may order the
35 payment of punitive damages under common law principles that are generally
36 applicable to the award of punitive damages in other civil actions. The
37 court may order the payment of reasonable attorney fees that do not exceed
38 two times the total amount of compensatory damages that are awarded in the
39 action, except that the court may award additional attorney fees in
40 connection with the action after the court has reviewed and approved a
41 request for additional attorney fees to the plaintiff.

42 5. Ordering the payment of all costs and expenses of the prosecution
43 and investigation of the conduct described in this section, civil and
44 criminal, incurred by the state or county as appropriate to be paid to the

1 general fund of this state or the county that incurred such costs and
2 expenses.

3 I. A defendant convicted in any criminal proceeding is precluded from
4 subsequently denying the essential allegations of the criminal offense of
5 which he was convicted in any civil proceeding. For the purposes of this
6 subsection, a conviction may result from a verdict or plea, including a plea
7 of no contest.

8 J. A person who files an action under this section shall serve notice
9 and one copy of the pleading on the attorney general within thirty days after
10 the action is filed with the superior court. The notice shall identify the
11 action, the person and the person's attorney. Service of the notice does not
12 limit or otherwise affect the right of this state to maintain an action under
13 this section or intervene in a pending action nor does it authorize the
14 person to name this state or the attorney general as a party to the action.
15 Upon receipt of a complaint the attorney general shall notify the appropriate
16 licensing agency.

17 K. The initiation of civil proceedings pursuant to this section shall
18 be commenced within two years after actual discovery of the cause of action.

19 L. Except for the standard of proof provided in subsection H,
20 paragraph 4 of this section, the standard of proof in civil actions brought
21 pursuant to this section is the preponderance of the evidence.

22 M. Except in cases filed by a county attorney, the attorney general,
23 upon timely application, may intervene in any civil action or proceeding
24 brought under this section if the attorney general certifies that in his
25 opinion the action is of special public importance. Upon intervention, the
26 attorney general may assert any available claim and is entitled to the same
27 relief as if the attorney general had instituted a separate action.

28 N. In addition to the state's right to intervene as a party in any
29 action under this section, the attorney general may appear as a friend of the
30 court in any proceeding in which a claim under this section has been asserted
31 or in which a court is interpreting section 46-453 or this section.

32 O. A civil action authorized by this section is remedial and not
33 punitive and does not limit and is not limited by any other civil remedy or
34 criminal action or any other provision of law. Civil remedies provided under
35 this title are supplemental and not mutually exclusive.

36 P. The cause of action or the right to bring a cause of action
37 pursuant to subsection B or E of this section shall not be limited or
38 affected by the death of the ~~incapacitated~~ or vulnerable adult.

39 Q. For the purposes of this section, "enterprise" means any
40 corporation, partnership, association, labor union, or other legal entity,
41 or any group of persons associated in fact although not a legal entity, which
42 THAT is involved with providing care to an ~~incapacitated~~ or A vulnerable
43 adult.

1 Sec. 9. Section 46-456, Arizona Revised Statutes, is amended to read:
2 46-456. Duty to a vulnerable adult; financial exploitation;
3 civil penalties; exceptions; definitions

4 A. A person who is in a position of trust and confidence to ~~an~~
5 ~~incapacitated or~~ A vulnerable adult shall ~~act for the benefit of that person~~
6 ~~to the same extent as a trustee pursuant to title 14, chapter 7. USE THE~~
7 VULNERABLE ADULT'S ASSETS SOLELY FOR THE BENEFIT OF THE VULNERABLE ADULT AND
8 NOT FOR THE BENEFIT OF THE PERSON WHO IS IN THE POSITION OF TRUST AND
9 CONFIDENCE TO THE VULNERABLE ADULT OR THE PERSON'S RELATIVES UNLESS EITHER OF
10 THE FOLLOWING APPLIES:

11 1. THE SUPERIOR COURT GIVES PRIOR APPROVAL OF THE TRANSACTION.

12 2. THE TRANSACTION IS SPECIFICALLY AUTHORIZED IN A VALID DURABLE POWER
13 OF ATTORNEY THAT IS EXECUTED BY THE VULNERABLE ADULT AS THE PRINCIPAL OR IN A
14 VALID TRUST INSTRUMENT THAT IS EXECUTED BY THE VULNERABLE ADULT AS A
15 SETTLOR.

16 ~~B. A person who is in a position of trust and confidence and who by~~
17 ~~intimidation or deception knowingly takes control, title, use or management~~
18 ~~of an incapacitated or vulnerable adult's asset or property with the intent~~
19 ~~to permanently deprive that person of the asset or property is guilty of~~
20 ~~theft as provided in section 13-1802.~~

21 ~~C. B.~~ B. A person who violates subsection A ~~or B~~ of this section is OR
22 SECTION 13-1802, SUBSECTION B SHALL BE subject to ACTUAL damages in a civil
23 action brought by or on behalf of ~~an incapacitated or~~ A vulnerable adult ~~that~~
24 ~~equal up to three times the amount of the monetary damages~~ AND THE COURT MAY
25 AWARD ADDITIONAL DAMAGES FOR AN AMOUNT UP TO TWO TIMES THE AMOUNT OF THE
26 ACTUAL DAMAGES.

27 ~~D. C.~~ C. IN ADDITION TO THE DAMAGES PRESCRIBED IN SUBSECTION B OF THIS
28 SECTION, THE COURT MAY:

29 1. ORDER A person who violates subsection A ~~or B~~ of this section
30 ~~forfeits~~ OR SECTION 13-1802, SUBSECTION B TO FORFEIT all OR A PORTION OF THE
31 PERSON'S benefits UNDER TITLE 14, CHAPTER 2 with respect to the estate of the
32 ~~deceased, incapacitated or~~ vulnerable adult, including an intestate share, an
33 elective share, an omitted spouse's share, an omitted child's share, a
34 homestead allowance, ~~an~~ ANY exempt property allowance and a family allowance.
35 If the ~~incapacitated or~~ vulnerable adult died intestate, the ~~decedent's~~
36 VULNERABLE ADULT'S intestate estate passes as if the person who ~~committed the~~
37 ~~violation~~ VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802,
38 SUBSECTION B disclaimed that person's intestate share TO THE EXTENT THE COURT
39 ORDERS THAT PERSON TO FORFEIT ALL OR A PORTION OF THE PERSON'S BENEFITS UNDER
40 TITLE 14, CHAPTER 2.

41 2. REVOKE, IN WHOLE OR IN PART, ANY REVOCABLE:

42 (a) DISPOSITION OR APPOINTMENT OF PROPERTY THAT IS MADE IN A GOVERNING
43 INSTRUMENT BY THE VULNERABLE ADULT TO THE PERSON WHO VIOLATES SUBSECTION A OF
44 THIS SECTION OR SECTION 13-1802, SUBSECTION B.

1 (b) PROVISION BY THE VULNERABLE ADULT THAT IS CONTAINED IN A GOVERNING
2 INSTRUMENT THAT CONFERS A GENERAL OR NONGENERAL POWER OF APPOINTMENT ON THE
3 PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION OR SECTION 13-1802,
4 SUBSECTION B.

5 (c) NOMINATION OR APPOINTMENT BY THE VULNERABLE ADULT THAT IS
6 CONTAINED IN A GOVERNING INSTRUMENT THAT NOMINATES OR APPOINTS THE PERSON WHO
7 VIOLATES SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B TO
8 SERVE IN ANY FIDUCIARY OR REPRESENTATIVE CAPACITY, INCLUDING SERVING AS A
9 PERSONAL REPRESENTATIVE, EXECUTOR, GUARDIAN, CONSERVATOR, TRUSTEE OR AGENT.

10 3. SEVER THE INTERESTS OF THE VULNERABLE ADULT AND THE PERSON WHO
11 VIOLATES SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B IN ANY
12 PROPERTY THAT IS HELD BY THEM AT THE TIME OF THE VIOLATION AS JOINT TENANTS
13 WITH THE RIGHT OF SURVIVORSHIP OR AS COMMUNITY PROPERTY WITH THE RIGHT OF
14 SURVIVORSHIP, AND TRANSFORM THE INTERESTS OF THE VULNERABLE ADULT AND THE
15 PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802,
16 SUBSECTION B INTO TENANCIES IN COMMON. TO THE EXTENT THAT THE PERSON WHO
17 VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B DID
18 NOT PROVIDE ADEQUATE CONSIDERATION FOR THE JOINTLY HELD INTEREST, THE COURT
19 MAY CAUSE THE PERSON'S INTEREST IN THE SUBJECT PROPERTY TO BE FORFEITED IN
20 WHOLE OR IN PART.

21 D. A REVOCATION OR A SEVERANCE UNDER SUBSECTION C, PARAGRAPH 2 OR 3 OF
22 THIS SECTION DOES NOT AFFECT ANY THIRD PARTY INTEREST IN PROPERTY THAT WAS
23 ACQUIRED FOR VALUE AND IN GOOD FAITH RELIANCE ON APPARENT TITLE BY
24 SURVIVORSHIP IN THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR
25 SECTION 13-1802, SUBSECTION B UNLESS A WRITING DECLARING THE SEVERANCE HAS
26 BEEN NOTED, REGISTERED, FILED OR RECORDED IN RECORDS THAT ARE APPROPRIATE TO
27 THE KIND AND LOCATION OF THE PROPERTY AND THAT ARE RELIED ON AS EVIDENCE OF
28 OWNERSHIP IN THE ORDINARY COURSE OF TRANSITIONS INVOLVING THAT PROPERTY.

29 E. IF THE COURT IMPOSES A REVOCATION UNDER SUBSECTION C, PARAGRAPH 2
30 OF THIS SECTION, PROVISIONS OF THE GOVERNING INSTRUMENT SHALL BE GIVEN EFFECT
31 AS IF THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION
32 13-1802, SUBSECTION B DISCLAIMED ALL PROVISIONS REVOKED BY THE COURT OR, IN
33 THE CASE OF A REVOCATION OF A NOMINATION IN A FIDUCIARY OR REPRESENTATIVE
34 CAPACITY, THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION
35 13-1802, SUBSECTION B PREDECEASED THE DECEDENT.

36 ~~E~~ F. Section 46-455, subsections F, G, H, I, K, L, M and P also
37 apply to civil violations of this section.

38 G. THE VULNERABLE ADULT OR THE DULY APPOINTED CONSERVATOR OR PERSONAL
39 REPRESENTATIVE OF THE VULNERABLE ADULT'S ESTATE HAS PRIORITY TO, AND MAY
40 FILE, A CIVIL ACTION UNDER THIS SECTION. IF AN ACTION IS NOT FILED BY THE
41 VULNERABLE ADULT OR THE DULY APPOINTED CONSERVATOR OR PERSONAL REPRESENTATIVE
42 OF THE VULNERABLE ADULT'S ESTATE, ANY OTHER INTERESTED PERSON, AS DEFINED IN
43 SECTION 14-1201, MAY PETITION THE COURT FOR LEAVE TO FILE AN ACTION ON BEHALF
44 OF THE VULNERABLE ADULT OR THE VULNERABLE ADULT'S ESTATE. NOTICE OF THE
45 HEARING ON THE PETITION SHALL COMPLY WITH SECTION 14-1401.

1 F. H. Subsections A, B, C, D, and E AND F of this section do not
2 apply to an agent ~~that is~~ WHO IS ACTING WITHIN THE SCOPE OF THE PERSON'S
3 DUTIES AS, OR ON BEHALF OF, any of the following:

4 1. A bank, financial institution or escrow agent licensed or certified
5 pursuant to title 6.

6 2. A securities dealer or salesman registered pursuant to title 44,
7 chapter 12, article 9.

8 3. An insurer, including a title insurer, authorized and regulated
9 pursuant to title 20.

10 4. A HEALTH CARE INSTITUTION LICENSED PURSUANT TO TITLE 36, CHAPTER 4
11 THAT PROVIDES SERVICES TO THE VULNERABLE ADULT.

12 ~~G.~~ I. For the purposes of this section:

13 1. ~~"Deception" means that a person deceives an incapacitated or~~
14 ~~vulnerable adult by knowingly doing any of the following:~~

15 (a) ~~Creating or confirming a false impression in an incapacitated or~~
16 ~~vulnerable adult's mind.~~

17 (b) ~~Failing to correct a false impression that the person is~~
18 ~~responsible for creating or confirming in an incapacitated or vulnerable~~
19 ~~adult's mind.~~

20 (c) ~~Making a promise to an incapacitated or vulnerable adult that the~~
21 ~~person does not intend to perform or that the person knows will not or cannot~~
22 ~~be performed. A person's failure to perform a promise is not by itself~~
23 ~~sufficient proof that the person did not intend to perform the promise.~~

24 (d) ~~Misrepresenting or concealing a material fact that relates to the~~
25 ~~terms of a contract or an agreement that the person enters into with the~~
26 ~~incapacitated or vulnerable adult or that relates to the existing or~~
27 ~~preexisting condition of any of the property involved in a contract or an~~
28 ~~agreement.~~

29 (e) ~~Using any material misrepresentation, false pretense or false~~
30 ~~promise to induce, encourage or solicit an incapacitated or vulnerable adult~~
31 ~~to enter into a contract or an agreement.~~

32 2. ~~"Intimidation" includes threatening to deprive an incapacitated or~~
33 ~~vulnerable adult of food, nutrition, shelter or necessary medication or~~
34 ~~medical treatment.~~

35 1. "ASSET" INCLUDES ALL FORMS OF PERSONAL AND REAL PROPERTY.

36 2. "DISPOSITION OR APPOINTMENT OF PROPERTY" INCLUDES A TRANSFER OF AN
37 ITEM OF PROPERTY OR ANY OTHER BENEFIT OF A BENEFICIARY DESIGNATED IN A
38 GOVERNING INSTRUMENT.

39 3. "GOVERNING INSTRUMENT" MEANS A DEED, A WILL, A TRUST, A
40 CUSTODIANSHIP, AN INSURANCE OR ANNUITY POLICY, AN ACCOUNT WITH PAY ON DEATH
41 DESIGNATION, A SECURITY REGISTERED IN BENEFICIARY FORM, A PENSION, A PROFIT
42 SHARING, RETIREMENT OR SIMILAR BENEFIT PLAN, AN INSTRUMENT CREATING OR
43 EXERCISING A POWER OF APPOINTMENT, A POWER OF ATTORNEY OR A DISPOSITIVE,
44 APPOINTIVE OR NOMINATIVE INSTRUMENT OF ANY SIMILAR TYPE.

1 ~~3-~~ 4. "Position of trust and confidence" means that a person is any
2 of the following:

3 (a) ~~One~~ A PERSON who has assumed a duty to provide care to the
4 ~~incapacitated~~ or vulnerable adult.

5 (b) A joint tenant or a tenant in common with ~~an incapacitated~~ or A
6 vulnerable adult.

7 (c) ~~One~~ A PERSON who is in a fiduciary relationship with ~~an~~
8 ~~incapacitated~~ or A vulnerable adult including a de facto guardian or de facto
9 conservator.

10 (d) A PERSON WHO IS IN A CONFIDENTIAL RELATIONSHIP WITH THE VULNERABLE
11 ADULT. THE ISSUE OF WHETHER A CONFIDENTIAL RELATIONSHIP EXISTS SHALL BE AN
12 ISSUE OF FACT TO BE DECIDED BY THE COURT BASED ON THE TOTALITY OF THE
13 CIRCUMSTANCES.

14 5. "REVOCABLE" MEANS A DISPOSITION, APPOINTMENT, PROVISION OR
15 NOMINATION UNDER WHICH THE VULNERABLE ADULT, AT THE TIME OF OR IMMEDIATELY
16 BEFORE DEATH, WAS ALONE EMPOWERED, BY LAW OR UNDER THE GOVERNING INSTRUMENT,
17 TO CANCEL THE DESIGNATION IN FAVOR OF THE PERSON WHO VIOLATED SUBSECTION A OF
18 THIS SECTION OR SECTION 13-1802, SUBSECTION B, WHETHER OR NOT THE VULNERABLE
19 ADULT WAS THEN EMPOWERED TO DESIGNATE THE VULNERABLE ADULT IN PLACE OF THE
20 PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802,
21 SUBSECTION B OR THE VULNERABLE ADULT THEN HAD CAPACITY TO EXERCISE THE POWER.

22 Sec. 10. Section 46-457, Arizona Revised Statutes, is amended to read:
23 46-457. Elder abuse central registry; mandatory reporting;
24 release of information

25 A. A person who files an action under this article shall serve notice
26 and one copy of the pleading with the attorney general within thirty days
27 after the action is filed in the superior court. The notice shall identify
28 the action, the person against whom the civil complaint has been filed and
29 that person's attorney. The person who files an action is responsible for
30 submitting a report on the final disposition of the case within thirty days
31 after the final action is taken.

32 B. Except as otherwise provided in this subsection, a state agency
33 other than adult protective services that renders an administrative decision
34 that substantiates the allegation of abuse or that files a civil action that
35 alleges abuse, neglect or financial exploitation pursuant to this article or
36 title 36 shall serve notice and one copy of the administrative decision or
37 pleading with the attorney general within thirty days after the
38 administrative decision is rendered or within thirty days after the action is
39 filed in the superior court. The agency is responsible for submitting a
40 report on the final disposition of the case within thirty days after the
41 final action is taken. Adult protective services shall report its findings
42 to the registry established pursuant to section 46-459. The department of
43 economic security shall not provide the notice prescribed in this subsection
44 for information maintained in the adult protective services registry pursuant
45 to section 46-459.

1 C. If the victim of the offense is an ~~incapacitated~~ or A vulnerable
2 adult, a person who files a criminal complaint or indictment involving a
3 violation of this article or section 13-1102, 13-1103, 13-1104, 13-1105,
4 13-1201, 13-1203, 13-1204, 13-1303, 13-1304, 13-1403, 13-1404, 13-1406,
5 13-1802, 13-1807, 13-2002, 13-2310 or 13-3623 shall submit a copy of the
6 criminal complaint or indictment to the attorney general within thirty days
7 after arraignment. Within thirty days of the date of issuance of the minute
8 entry the court shall endorse to the attorney general a copy of the
9 sentencing minute entry or the minute entry reflecting the case has been
10 dismissed or a judgment of acquittal has been entered. The attorney general
11 shall develop guidelines to implement this subsection.

12 D. The attorney general shall maintain a registry containing the names
13 of persons pursuant to subsection A, B or C of this section with the date the
14 action was filed with the superior court or the date the administrative
15 decision was rendered, the dates of the conduct set forth in the complaint,
16 the indictment or decision, the general nature of the complaint, indictment
17 or decision and the disposition of the complaint, indictment or decision, if
18 known.

19 E. The information maintained pursuant to subsection D of this section
20 is available to the public on written request to the custodian of the
21 registry.

22 F. A person may submit a written statement on that person's own behalf
23 to the custodian of the registry. The statement is part of the records for
24 distribution in response to all inquiries concerning that person.

25 G. A person or agency that distributes information in the registry in
26 good faith is not subject to civil or criminal liability.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 17, 2009

by the following vote: 33 Ayes,
20 Nays, 7 Not Voting

[Signature]
Speaker of the House

[Signature]
Norman L. Moore
Chief Clerk of the House

Passed the Senate July 1, 2009

by the following vote: 22 Ayes,
4 Nays, 4 Not Voting

[Signature]
President of the Senate

[Signature]
Charmian Bellefleur
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

July 1, 2009,
by the following vote: 33 Ayes,

7 Nays, 20 Not Voting

Kip Allen
Speaker of the House
Norman L. Syoore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
1st day of July, 2009,

at 8:25 o'clock A. M.

Susan K. Myers
Secretary to the Governor

Approved this 13th day of

July, 2009,

at 8:40 o'clock A. M.

Janice K. Brewer
Governor of Arizona

H.B. 2344

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 13 day of July, 2009,

at 11:14 o'clock A. M.

Kellie Blumeth
Secretary of State