



Fact Sheet

STATES THAT PROVIDE A CIVIL CAUSE OF ACTION FOR ABUSE OF A VULNERABLE ADULT

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This fact sheet was prepared at the request of the Mental Health and Vulnerable Adults Task Force.

The Legislative Service Office (LSO) identified 13 states whose statutes provide a civil cause of action for abuse, neglect, or exploitation of a vulnerable adult. States vary in the types of harm that may prompt a civil action. Four states (Illinois, North Dakota, South Dakota, and Vermont) provide a civil cause of action for financial exploitation or theft only. A fifth state (Maine) allows an elderly dependent person or their legal or personal representative to bring a civil action to provide relief from the transfer of property or execution of a guaranty that was the result of undue influence. In addition to financial exploitation, Arizona and Oregon allow a civil cause of action to be brought for physical abuse or life/health endangerment. Utah provides a vulnerable adult who has been the victim of financial, personal dignity, or sexual exploitation with a private right of action against the perpetrator. The remaining five states (California, Connecticut, Florida, Tennessee, and Washington) provide a civil cause of action as a remedy for a broad range of harmful acts, to include abandonment, abuse, financial or other exploitation, or neglect.

See **Appendix A** for relevant statutes in each of the 13 identified states.

If you need further information, please contact the LSO Research/Evaluation Division at 307-777-7881.

APPENDIX A.
STATE STATUTES THAT PROVIDE
A CIVIL CAUSE OF ACTION FOR ELDER ABUSE

ARIZONA

CHAPTER 4 ADULT PROTECTIVE SERVICES (ARTS. 1 — 2)

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

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

B. A vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such vulnerable adult for having caused or allowed such conduct. A physician licensed pursuant to title 32, chapter 13, 14 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25, while providing services within the scope of that person's licensure, is not subject to civil liability for damages under this section unless either:

1. At the time of the events giving rise to a cause of action under this section, the person was employed or retained by the facility or designated by the facility, with the consent of the person, to serve the function of medical director as that term is defined or used by federal or state law governing a nursing care institution, an assisted living center, an assisted living facility, an assisted living home, an adult day health care facility, a residential care institution, an adult care home, a skilled nursing facility or a nursing facility.
2. At the time of the events giving rise to a cause of action under this section, all of the following applied:
 - (a) The person was a physician licensed pursuant to title 32, chapter 13, 14 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25.
 - (b) The person was the primary provider responsible for the medical services to the patient while the patient was at one of the facilities listed in paragraph 1 of this subsection.

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

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

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

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

G. Before a determination of liability, the orders may include entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the court deems proper.

H. After a determination of liability, such orders may include:

1. Ordering any person to divest himself of any direct or indirect interest in any enterprise.
2. Imposing reasonable restrictions, including permanent injunctions, on the future activities or investments of any person including prohibiting any person from engaging in the same type of endeavor or conduct to the extent allowed by the constitutions of the United States and this state.
3. Ordering dissolution or reorganization of any enterprise.
4. Ordering the payment of actual and consequential damages, as well as costs of suit, to those persons injured by the conduct described in this section. The court or jury may order the payment of punitive damages under common law principles that are generally applicable to the award of punitive damages in other civil actions.
5. Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the state or county as appropriate to be paid to the state general fund or the general fund of the county that incurred such costs and expenses.

I. A defendant who is convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in

any civil proceeding. For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.

J. A person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person and the person's attorney. Service of the notice does not limit or otherwise affect the right of this state to maintain an action under this section or intervene in a pending action and does not authorize the person to name this state or the attorney general as a party to the action. On receipt of a complaint, the attorney general shall notify the appropriate licensing agency.

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

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

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

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

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

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

Q. For the purposes of this section, "enterprise" means any corporation, partnership, association, labor union or other legal entity, or any group of persons associated in fact although not a legal entity, that is involved with providing care to a vulnerable adult.

46-456. Duty to a vulnerable adult; financial exploitation; civil penalties; exceptions; definitions

A. A person who is in a position of trust and confidence to a vulnerable adult shall use the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult or the person's relatives unless any of the following applies:

1. The superior court gives prior approval of the transaction on a finding that the transaction is for the benefit of the vulnerable adult.
2. The transaction is specifically authorized in a valid durable power of attorney that is executed by the vulnerable adult as the principal or in a valid trust instrument that is executed by the vulnerable adult as a settlor.
3. The transaction is required in order to obtain or maintain eligibility for services under title 36, chapter 29.
4. The person in the position of trust and confidence to the vulnerable adult is the vulnerable adult's spouse and the transaction furthers the interest of the marital community, including applying for benefits pursuant to title 36, chapter 29 or benefits for supplemental security income, medicare or veterans' administration programs.

B. A person who violates subsection A of this section or section 13-1802, subsection B shall be subject to actual damages and reasonable costs and attorney fees in a civil action brought by or on behalf of a vulnerable adult and the court may award additional damages in an amount up to two times the amount of the actual damages.

C. In addition to the damages prescribed in subsection B of this section, the court may:

1. Order a person who violates subsection A of this section or section 13-1802, subsection B to forfeit all or a portion of the person's:
 - (a) Interest in any governing instrument.
 - (b) Benefits under title 14, chapter 2 with respect to the estate of the vulnerable adult, including an intestate share, an elective share, an omitted spouse's share, an omitted child's share, a homestead allowance, any exempt property and a family allowance. If the vulnerable adult died intestate, the vulnerable adult's intestate estate passes as if the person who violated subsection A of this section or section 13-1802, subsection B disclaimed that person's intestate share to the extent the court orders that person to forfeit all or a portion of the person's benefits under title 14, chapter 2.
2. Revoke, in whole or in part, any revocable:
 - (a) Disposition or appointment of property that is made in a governing instrument by the vulnerable adult to the person who violates subsection A of this section or section 13-1802, subsection B.
 - (b) Provision by the vulnerable adult that is contained in a governing instrument that confers a general or nongeneral power of appointment on the person who violates subsection A of this section or section 13-1802, subsection B.

(c) Nomination or appointment by the vulnerable adult that is contained in a governing instrument that nominates or appoints the person who violates subsection A of this section or section 13-1802, subsection B to serve in any fiduciary or representative capacity, including serving as a personal representative, executor, guardian, conservator, trustee or agent.

3. Sever the interests of the vulnerable adult and the person who violates subsection A of this section or section 13-1802, subsection B in any property that is held by them at the time of the violation as joint tenants with the right of survivorship or as community property with the right of survivorship, and transform the interests of the vulnerable adult and the person who violated subsection A of this section or section 13-1802, subsection B into tenancies in common. To the extent that the person who violated subsection A of this section or section 13-1802, subsection B did not provide adequate consideration for the jointly held interest, the court may cause the person's interest in the subject property to be forfeited in whole or in part.

D. A revocation or a severance under subsection C, paragraph 2 or 3 of this section does not affect any third party interest in property that was acquired for value and in good faith reliance on apparent title by survivorship in the person who violated subsection A of this section or section 13-1802, subsection B unless a writing declaring the severance has been noted, registered, filed or recorded in records that are appropriate to the kind and location of the property and that are relied on as evidence of ownership in the ordinary course of transactions involving that property.

E. If the court imposes a revocation under subsection C, paragraph 2 of this section, provisions of the governing instrument shall be given effect as if the person who violated subsection A of this section or section 13-1802, subsection B disclaimed all provisions revoked by the court or, in the case of a revocation of a nomination in a fiduciary or representative capacity, the person who violated subsection A of this section or section 13-1802, subsection B predeceased the decedent.

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

G. The vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult's estate has priority to, and may file, a civil action under this section. If an action is not filed by the vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult's estate, any other interested person, as defined in section 14-1201, may petition the court for leave to file an action on behalf of the vulnerable adult or the vulnerable adult's estate. Notice of the hearing on the petition shall comply with section 14-1401.

H. Subsections A, B, C, D, E and F of this section do not apply to an agent who is acting within the scope of the person's duties as, or on behalf of, any of the following:

1. A bank, financial institution or escrow agent licensed or certified pursuant to title 6.
2. A securities dealer or salesman registered pursuant to title 44, chapter 12, article 9.
3. An insurer, including a title insurer, authorized and regulated pursuant to title 20.
4. A health care institution licensed pursuant to title 36, chapter 4 that provides services to the vulnerable adult.

I. A civil action brought by a person in a position of trust and confidence against a vulnerable adult regarding a governing instrument established by the vulnerable adult is presumed not to be for the benefit of the vulnerable adult unless it is shown otherwise by clear and convincing evidence.

J. For the purposes of this section:

1. “Asset” includes all forms of personal and real property.
2. “Disposition or appointment of property” includes a transfer of an item of property or any other benefit of a beneficiary designated in a governing instrument.
3. “For the benefit of the vulnerable adult” includes any act that is consistent with the clearly stated wishes of the vulnerable adult found by the court to be made without coercion and while the vulnerable adult was of sound mind.
4. “Governing instrument” means a deed, a will, a trust, a custodianship, an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form, a pension, a profit sharing, retirement or similar benefit plan, a family limited partnership, an instrument creating or exercising a power of appointment, a power of attorney, an estate planning document or a dispositive, appointive or nominative instrument of any similar type.
5. “Position of trust and confidence” means that a person is any of the following:
 - (a) A person who has assumed a duty to provide care to the vulnerable adult.
 - (b) A joint tenant or a tenant in common with a vulnerable adult.
 - (c) A person who is in a fiduciary relationship with a vulnerable adult including a de facto guardian or de facto conservator.
 - (d) A person who is in a confidential relationship with the vulnerable adult. The issue of whether a confidential relationship exists shall be an issue of fact to be decided by the court based on the totality of the circumstances.
 - (e) A beneficiary of the vulnerable adult in a governing instrument.

6. “Revocable” means a disposition, appointment, provision or nomination under which the vulnerable adult, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the person who violated subsection A of this section or section 13-1802, subsection B, whether or not the vulnerable adult was then empowered to designate the vulnerable adult in place of the person who violated subsection A of this section or section 13-1802, subsection B or the vulnerable adult then had capacity to exercise the power.

CALIFORNIA

Welfare and Institutions Code, Article 8.5 Civil Actions for Abuse of Elderly or Dependent Adults (15657-15617.7)

§ 15657. Remedies

Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or abandonment as defined in Section 15610.05, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall apply, in addition to all other remedies otherwise provided by law:

- (a) The court shall award to the plaintiff reasonable attorney’s fees and costs. The term “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.
- (b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.
- (c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney’s fees permitted under this section may be imposed against an employer.

§ 15657.01. Issuance of attachment

Notwithstanding Section 483.010 of the Code of Civil Procedure, an attachment may be issued in any action for damages pursuant to Section 15657.5 for financial abuse of an elder or dependent adult, as defined in Section 15610.30. The other provisions of the Code of Civil Procedure not inconsistent with this article shall govern the issuance of an attachment pursuant to this section. In an application for a writ of attachment, the claimant shall refer to this section. An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

§ 15657.03. Protective orders

(a)

(1) An elder or dependent adult who has suffered abuse, as defined in Section 15610.07, may seek protective orders as provided in this section.

(2)

(A) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or dependent adult who acts within the authority of a power of attorney, a

person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek the relief.

(B)

(i) Subject to clause (ii), if the petition alleges abuse of an elder or dependent adult in the form of isolation, the term “other person legally authorized to seek the relief” as used in subparagraph (A) includes an interested party as defined in paragraph (3) of subdivision (b).

(ii) Clause (i) shall apply only for the purpose of seeking an order enjoining isolation under subparagraph (E) of paragraph (5) of subdivision (b).

(3)

(A) A petition under this section may be brought on behalf of an elder or dependent adult by a county adult protective services agency in either of the following circumstances:

(i) If the elder or dependent adult has suffered abuse as defined in subdivision (b) and has an impaired ability to appreciate and understand the circumstances that place the elder or dependent at risk of harm.

(ii) If the elder or dependent adult has provided written authorization to a county adult protective services agency to act on that person’s behalf.

(B) In the case of a petition filed pursuant to clause (i) of subparagraph (A) by a county adult protective services agency, a referral shall be made to the public guardian consistent with Section 2920 of the Probate Code prior to or concurrent with the filing of the petition, unless a petition for appointment of a conservator has already been filed with the probate court by the public guardian or another party.

(C) A county adult protective services agency shall be subject to any confidentiality restrictions that otherwise apply to its activities under law and shall disclose only those facts as necessary to establish reasonable cause for the filing of the petition, including, in the case of a petition filed pursuant to clause (i) of subparagraph (A), to establish the agency’s belief that the elder or dependent adult has suffered abuse and has an impaired ability to appreciate and understand the circumstances that place the elder or dependent adult at risk, and as may be requested by the court in determining whether to issue an order under this section.

(b) For purposes of this section:

(1) “Abuse” has the meaning set forth in Section 15610.07.

(2) “Conservator” means the legally appointed conservator of the person or estate of the petitioner, or both.

(3) “Interested party” means an individual with a personal, preexisting relationship with the elder or dependent adult. A preexisting relationship may be shown by a description of past involvement with the elder or dependent adult, time spent together, and any other proof that the individual spent time with the elder or dependent adult.

(4) “Petitioner” means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.

(5) “Protective order” means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner. On a showing of good cause, in an order issued pursuant to this subparagraph in connection with an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner, the court may do either or both of the following:

(i) Grant the petitioner exclusive care, possession, or control of the animal.

(ii) Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(B) An order excluding a party from the petitioner’s residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(C) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A) or (B).

(D)

(i) After notice and a hearing only, a finding that specific debts were incurred as the result of financial abuse of the elder or dependent adult by the respondent. For purposes of this subparagraph, the acts that may

support this order include, but are not limited to, the crimes proscribed by Section 530.5 of the Penal Code.

(ii) The finding pursuant to clause (i) shall not entitle the petitioner to any remedies other than those actually set forth in this section. The finding pursuant to clause (i) shall not affect the priority of any lien or other security interest.

(E)

(i) After notice and a hearing only, an order enjoining a party from abusing an elder or dependent adult by isolating them. An order may be issued under this subparagraph to restrain the respondent for the purpose of preventing a recurrence of isolation if the court finds by a preponderance of the evidence, to the satisfaction of the court, that the following requirements are met:

(I) The respondent's past act or acts of isolation of the elder or dependent adult repeatedly prevented contact with the interested party.

(II) The elder or dependent adult expressly desires contact with the interested party. A court shall use all means at its disposal to determine whether the elder or dependent adult desires contact with the person and has the capacity to consent to that contact.

(III) The respondent's isolation of the elder or dependent adult from the interested party was not in response to an actual or threatened abuse of the elder or dependent adult by the interested party or the elder or dependent adult's desire not to have contact with the interested party.

(ii) The order may specify the actions to be enjoined, including enjoining the respondent from preventing the interested party from in-person or remote online visits with the elder or dependent adult, including telephone and online contact.

(iii) An order enjoining isolation under this section is not required for an elder or dependent adult to visit with anyone with whom the elder or dependent adult desires visitation.

(iv) An order enjoining isolation shall not be issued under this section if the elder or dependent adult resides in a long-term care facility, as defined in Section 9701, or a residential facility, as defined in Section 1502 of the Health and Safety Code. In those cases, action may be taken under appropriate federal law.

(v) An order enjoining isolation shall not be issued under this section if the elder or dependent adult is a patient of a health facility as defined in subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code. In those cases, action may be taken under other appropriate state or federal law.

(6) “Respondent” means the person against whom the protective orders are sought and, if the petition is granted, the restrained or enjoined person.

(c) Except as provided in subdivision (b), an order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in paragraph (5) of subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner’s residence or dwelling only on a showing of all of the following:

(1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(2) That the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(3) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) Within 21 days, or, if good cause appears to the court, 25 days, from the date that a request for a temporary restraining order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(g) The respondent may file a response that explains or denies the alleged abuse.

(h) The court may issue, upon notice and a hearing, any of the orders set forth in paragraph (5) of subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result

to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(i)

(1) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive the right to notice if that party is physically present in court and does not challenge the sufficiency of the notice.

(j) In a proceeding under this section, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges to be a victim of abuse. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges to be a victim of abuse in feeling more confident that the alleged abuse victim will not be injured or threatened by the other party during the proceedings if the person who alleges to be a victim of abuse and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(k) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any declarations in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(l) A notice of hearing under this section shall notify the respondent that if the respondent does not attend the hearing, the court may make orders against the respondent that could last up to five years.

(m) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(n)

(1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(o)

(1) If a respondent, named in an order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent that is available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with a temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except

for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address:

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

(p)

(1) Information on a protective order relating to elder or dependent adult abuse issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court’s discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service, which the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's oral notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(8) This subdivision does not apply, and the protective order shall not be subject to the requirements of Section 6380 of the Family Code, if the protective order issued pursuant to this section was made solely on the basis of isolation unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(q) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(r) There shall not be a filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(s) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this section.

(t) The prevailing party in an action brought under this section may be awarded court costs and attorney's fees, if any.

(u)

(1) A person subject to a protective order under this section shall not own, possess, purchase, receive, or attempt to receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms that the person owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm or ammunition while subject to a protective order issued under this section is punishable pursuant to Section 29825 of the Penal Code.

(4) This subdivision does not apply in a case in which a protective order issued under this section was made solely on the basis of financial abuse or isolation unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(v) In a proceeding brought under paragraph (3) of subdivision (a), all of the following apply:

(1) Upon the filing of a petition for a protective order, the elder or dependent adult on whose behalf the petition has been filed shall receive a copy of the petition, a notice of the hearing, and any declarations submitted in support of the petition. The elder or dependent adult shall receive this information at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for provision of this information to the elder or dependent adult.

(2) The adult protective services agency shall make reasonable efforts to assist the elder or dependent adult to attend the hearing and provide testimony to the court, if that person wishes to do so. If the elder or dependent adult does not attend the hearing, the agency shall provide information to the court at the hearing regarding the reasons why the elder or dependent adult is not in attendance.

(3) Upon the filing of a petition for a protective order and upon issuance of an order granting the petition, the county adult protective services agency shall take all reasonable steps to provide for the safety of the elder or dependent adult, pursuant to Chapter 13 (commencing with Section 15750), which may include, but are not limited to, facilitating the location of alternative accommodations for the elder or dependent adult, if needed.

(w) Willful disobedience of a temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(x) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a petitioner's right to use other existing civil remedies.

(y)

(1) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and shall be used by parties in actions brought pursuant to this section.

(2) On or before February 1, 2023, the Judicial Council shall revise or promulgate forms as necessary to implement the changes made by the act that added this paragraph.

(z) When issuing a protective order pursuant to this section for abuse involving acts described in paragraph (1) or (2) of subdivision (a) of Section 15610.07, after notice and a hearing, the court may, if appropriate, also issue an order requiring the restrained party to participate in mandatory

clinical counseling or anger management courses provided by a counselor, psychologist, psychiatrist, therapist, clinical social worker, or other mental or behavioral health professional licensed in the state to provide those services.

(aa) This section shall become operative on January 1, 2023.

§ 15657.04. Court order prohibiting obtaining address or location of protected person

(a) The court shall order that any party enjoined pursuant to Section 15657.03 be prohibited from taking any action to obtain the address or location of any protected person, unless there is good cause not to make that order.

(b) The Judicial Council shall develop forms necessary to effectuate this section.

§ 15657.05. Remedies for abduction

Where it is proven by clear and convincing evidence that an individual is liable for abduction, as defined in Section 15610.06, in addition to all other remedies otherwise provided by law:

(a)

(1) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" shall include, but is not limited to, costs of representing the abductee and his or her family in this state and any other state in any action related to the abduction and returning of the abductee to this state, as well as travel expenses for returning the abductee to this state and reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(2) The award of attorney's fees shall be governed by the principles set forth in Section 15657.1.

(b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

§ 15657.1. Attorney's fees

The award of attorney's fees pursuant to subdivision (a) of Section 15657 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:

(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.

(b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.

(c) The reasonableness and timeliness of any written offer in compromise made by a party to the action

§ 15657.2. Laws governing professional negligence causes of action

Notwithstanding this article, any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action.

§ 15657.3. Concurrent jurisdiction of superior court; Right to commence action

(a) The department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abduction, as defined in Section 15610.06, or the abuse of an elderly or dependent adult, if a conservator has been appointed for the plaintiff prior to the initiation of the action for abuse.

(b) The department of the superior court having jurisdiction over probate conservatorships shall not grant relief under this article if the court determines that the matter should be determined in a civil action, but shall instead transfer the matter to the general civil calendar of the superior court. The court need not abate a proceeding for relief pursuant to this article if the court determines that the civil action was filed for the purpose of delay.

(c) The death of the elder or dependent adult does not cause the court to lose jurisdiction of a claim for relief for abuse of that elder or dependent adult.

(d)

(1) Subject to paragraph (2) and subdivision (e), after the death of the elder or dependent adult, the right to commence or maintain an action shall pass to the personal representative of the decedent. If there is no personal representative, the right to commence or maintain an action shall pass to any of the following, if the requirements of Section 377.32 of the Code of Civil Procedure are met:

(A) An intestate heir whose interest is affected by the action.

(B) The decedent's successor in interest, as defined in Section 377.11 of the Code of Civil Procedure.

(C) An interested person, as defined in Section 48 of the Probate Code, as limited in this subparagraph. As used in this subparagraph, "an interested person" does

not include a creditor or a person who has a claim against the estate and who is not an heir or beneficiary of the decedent's estate.

(2) If the personal representative refuses to commence or maintain an action or if the personal representative's family or an affiliate, as those terms are defined in subdivision (c) of Section 1064 of the Probate Code, is alleged to have committed abuse of the elder or dependent adult, the persons described in subparagraphs (A), (B), and (C) of paragraph (1) shall have standing to commence or maintain an action for elder abuse. This paragraph does not require the court to resolve the merits of an elder abuse action for purposes of finding that a plaintiff who meets the qualifications of subparagraphs (A), (B), and (C) of paragraph (1) has standing to commence or maintain such an action.

(e) If two or more persons who are either described in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (d) or a personal representative claim to have standing to commence or maintain an action for elder abuse, upon petition or motion, the court in which the action or proceeding is pending, may make any order concerning the parties that is appropriate to ensure the proper administration of justice in the case pursuant to Section 377.33 of the Code of Civil Procedure.

(f) This section does not affect the applicable statute of limitations for commencing an action for relief for abuse of an elderly or dependent adult.

§ 15657.5. Recovery of attorney fees and costs; Recoverable damages; Statement where damages are awarded based on claim for financial abuse of elder or dependent adult

(a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney's fees and costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs.

(d) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

(e) Any money judgment in an action under this section shall include a statement that the damages are awarded based on a claim for financial abuse of an elder or dependent adult, as defined in Section 15610.30. If only part of the judgment is based on that claim, the judgment shall specify what amount was awarded on that basis.

§ 15657.6. Return of property; Remedies for failure to return

A person or entity that takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder or dependent adult when the elder or dependent adult lacks capacity pursuant to Section 812 of the Probate Code, or is of unsound mind, but not entirely without understanding, pursuant to Section 39 of the Civil Code, shall, upon demand by the elder or dependent adult or a representative of the elder or dependent adult, as defined in subdivision (d) of Section 15610.30, return the property and if that person or entity fails to return the property, the elder or dependent adult shall be entitled to the remedies provided by Section 15657.5, including attorney's fees and costs. This section shall not apply to any agreement entered into by an elder or dependent adult when the elder or dependent adult had capacity.

§ 15657.7. Statute of limitations

An action for damages pursuant to Sections 15657.5 and 15657.6 for financial abuse of an elder or dependent adult, as defined in Section 15610.30, shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.

§ 15657.8. Agreement to settle a civil action for physical abuse, neglect, or financial abuse; Applicability

(a) An agreement to settle a civil action for physical abuse, as defined in Section 15610.63, neglect, as defined in Section 15610.57, or financial abuse, as defined in Section 15610.30, of an elder or dependent adult shall not include any of the following provisions, whether the agreement is made before or after filing the action:

(1) A provision that prohibits any party to the dispute from contacting or cooperating with the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of State Hospitals, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined in Section 4900, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children, provided that the party contacting or cooperating with one of these entities had a good faith belief that the information he or she provided is relevant to the concerns, duties, or obligations of that entity.

(2) A provision that prohibits any party to the dispute from filing a complaint with, or reporting any violation of law to, the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of State Hospitals, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined in Section 4900, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children.

(3) A provision that requires any party to the dispute to withdraw a complaint he or she has filed with, or a violation he or she has reported to, the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of State Hospitals, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined in Section 4900, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children.

(b) A provision described in subdivision (a) is void as against public policy.

(c) This section shall apply only to an agreement entered on or after January 1, 2013.

CONNECTICUT

Chapter 319dd Protective Services for the Elderly (§§ 17b-450 — 17b-489)

Sec. 17b-462. Cause of action by elderly victim. Civil attachment jurisdiction.

(a) An elderly person who has been the victim of abuse, neglect, exploitation or abandonment, as such terms are defined in section 17b-450, may have a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, exploitation or abandonment together with costs and a reasonable attorney's fee. The action may be brought by the elderly person, or the elderly person's guardian or conservator, by a person or organization acting on behalf of the elderly person with the consent of such elderly person or the elderly person's guardian or conservator, or by the personal representative of the estate of a deceased elderly victim.

(b) In any action to recover damages based upon a claim of exploitation, as defined in section 17b-450, the Superior Court shall have jurisdiction to render an order pursuant to chapter 904 prohibiting the defendant from transferring, depleting or otherwise alienating or diminishing any funds, assets or property.

(c) Notwithstanding the preceding provisions of this section, no cause of action for neglect or abandonment may be brought against any person who has no contractual obligation to provide care to an elderly person unless such neglect was wilful or criminal.

FLORIDA

Chapter 415. Adult Protective Services. (§§ 415.101 — 415.113)

§ 415.1111. Civil actions.

A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult. A party who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult. Notwithstanding the foregoing, any civil action for damages against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part II of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.023, or against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part I of chapter 429 relating to its operation of the licensed facility shall be brought pursuant to s. 429.29. Such licensee or entity shall not be vicariously liable for the acts or omissions of its employees or agents or any other third party in an action brought under this section.

ILLINOIS

Criminal Elder Abuse

720 Ill. Comp. Stat. 5/17-56

(a) A person commits financial exploitation of an elderly person or a person with a disability when he or she stands in a position of trust or confidence with the elderly person or a person with a disability and he or she knowingly and by deception or intimidation obtains control over the property of an elderly person or a person with a disability or illegally uses the assets or resources of an elderly person or a person with a disability.

...

(g) **Civil Liability.** A civil cause of action exists for financial exploitation of an elderly person or a person with a disability as described in subsection (a) of this Section. A person against whom a civil judgment has been entered for financial exploitation of an elderly person or person with a disability shall be liable to the victim or to the estate of the victim in damages of treble the amount of the value of the property obtained, plus reasonable attorney fees and court costs. In a civil action under this subsection, the burden of proof that the defendant committed financial exploitation of an elderly person or a person with a disability as described in subsection (a) of this Section shall be by a preponderance of the evidence. This subsection shall be operative whether or not the defendant has been charged or convicted of the criminal offense as described in subsection (a) of this Section. This subsection (g) shall not limit or affect the right of any person to bring any cause of action or seek any remedy available under the common law, or other applicable law, arising out of the financial exploitation of an elderly person or a person with a disability.

(h) If a person is charged with financial exploitation of an elderly person or a person with a disability that involves the taking or loss of property valued at more than \$5,000, a prosecuting attorney may file a petition with the circuit court of the county in which the defendant has been charged to freeze the assets of the defendant in an amount equal to but not greater than the alleged value of lost or stolen property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The burden of proof required to freeze the defendant's assets shall be by a preponderance of the evidence.

(Source: P.A. 99-272, eff. 1-1-16.)

MAINE

CHAPTER 20. Improvident Transfers of Title (§§ 1021 — 1025)

§ 1022. Undue influence

1. Presumption. In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the elderly dependent person was represented in the transfer or execution by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the evidence and when the transferee or person who benefits from the execution of a guaranty fails to rebut the presumption, the elderly dependent person is entitled to avoid the transfer or execution and entitled to the relief set forth in section 1024.

2. Confidential or fiduciary relationship. For the purpose of this section, the transfer of property or execution of a guaranty is deemed to have been made in the context of a confidential or fiduciary relationship if the transferee or person who benefits from the execution of a guaranty had a close relationship with the elderly dependent person prior to the transfer or execution. Confidential or fiduciary relationships include the following:

- A. A family relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, including relationships by marriage and adoption;
- B. A fiduciary relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, such as with a guardian, conservator, trustee, accountant, broker or financial advisor;
- C. A relationship between an elderly dependent person and a physician, nurse or other medical or health care provider;
- D. A relationship between the elderly dependent person and a psychologist, social worker or counselor;
- E. A relationship between the elderly dependent person and an attorney;
- F. A relationship between the elderly dependent person and a priest, minister, rabbi or spiritual advisor;
- G. A relationship between the elderly dependent person and a person who provides care or services to that person whether or not care or services are paid for by the elderly person;
- H. A relationship between an elderly dependent person and a friend or neighbor; or

I. A relationship between an elderly dependent person and a person sharing the same living quarters.

When any of these relationships exist and when a transfer or execution is made to a corporation or organization primarily on account of the membership, ownership or employment interest or for the benefit of the fiduciary or confidante, a fiduciary or confidential relationship with the corporation or organization is deemed to exist.

§ 1023. Civil action; relief available

1. Civil action. A civil action may be brought to obtain relief under this chapter by an elderly dependent person, that person's legal representative or the personal representative of the estate of an elderly dependent person.

2. Relief available; protected transfers and executions. When a court finds that a transfer of property or execution of a guaranty was the result of undue influence, it shall grant appropriate relief enabling the elderly dependent person to avoid the transfer or execution, including the rescission or reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining use of or entry on property or commanding the return of property. When the court finds that undue influence is a good and valid defense to a transferee's suit on a contract to transfer the property or a suit of a person who benefits from the execution of a guaranty on that guaranty, the court shall refuse to enforce the transfer or guaranty. No relief obtained or granted under this section may in any way affect or limit the right, title and interest of good faith purchasers, mortgagees, holders of security interests or other 3rd parties who obtain an interest in the transferred property for value after its transfer from the elderly dependent person. No relief obtained or granted under this section may affect any mortgage deed to the extent of value given by the mortgagee.

3. Statute of limitations. The limitations imposed by Title 14, section 752, apply to all actions brought under this chapter.

NORTH DAKOTA

CHAPTER 50-25.2 VULNERABLE ADULT PROTECTION SERVICES (§§ 50-25.2-01 — 50-25.2-14)

50-25.2-11.1. Civil remedy for financial exploitation — Damages — Commencement of action.

1. A vulnerable adult who has been financially exploited has a cause of action against any perpetrator and may recover damages for that exploitation. The action may be brought in a court of competent jurisdiction by:

- a. The vulnerable adult;
- b. The vulnerable adult's guardian or conservator;
- c. Any person acting on behalf of the vulnerable adult with the consent of the vulnerable adult; or
- d. The personal representative of the estate of a deceased victim.

2. An action for financial exploitation of a vulnerable adult must be proven by clear and convincing evidence. If financial exploitation is proven, the court shall award to the plaintiff actual damages, reasonable attorney's fees and costs, and reasonable fees for the services of a guardian ad litem if appointed by the court.

3. If the financial exploitation of the vulnerable adult by the perpetrator involved oppression, fraud, deception, or actual malice, the court may award exemplary damages in accordance with section 32-03.2-11.

4. An action for damages for financial exploitation of a vulnerable adult must be commenced within six years after the plaintiff discovers or, through exercise of reasonable diligence, should have discovered the facts constituting the financial exploitation.

OREGON

Civil Action for Abuse of Vulnerable Person (124.100 – 124.140)

124.100 Definitions for ORS 124.100 to 124.140; action authorized; relief; qualifications for bringing action; notice to Attorney General.

(1) As used in ORS 124.100 to 124.140:

- (a)** “Elderly person” means a person 65 years of age or older.
- (b)** “Financially incapable” has the meaning given that term in ORS 125.005.
- (c)** “Incapacitated” has the meaning given that term in ORS 125.005.
- (d)** “Person with a disability” means a person with a physical or mental impairment that:
 - (A)** Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; and
 - (B)** Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the person with the physical or mental impairment.
- (e)** “Vulnerable person” means:
 - (A)** An elderly person;
 - (B)** A financially incapable person;
 - (C)** An incapacitated person; or
 - (D)** A person with a disability who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person’s physical or mental impairment.

(2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

- (a)** An amount equal to three times all economic damages, as defined in ORS 31.705, resulting from the physical or financial abuse, or \$500, whichever amount is greater.
- (b)** An amount equal to three times all noneconomic damages, as defined in ORS 31.705, resulting from the physical or financial abuse.

(c) Reasonable attorney fees incurred by the plaintiff.

(d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

(3) An action may be brought under this section only by:

(a) A vulnerable person;

(b) A guardian, conservator or attorney-in-fact for a vulnerable person;

(c) A personal representative for the estate of a decedent who was a vulnerable person at the time the cause of action arose; or

(d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable person.

(4) An action may be brought under this section only for physical abuse described in ORS 124.105 or for financial abuse described in ORS 124.110.

(5) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.

(6) A person commencing an action under this section shall mail a copy of the complaint or other initial pleading to the Attorney General at the time the action commences. Failure to mail a copy of the complaint or pleading is not a jurisdictional defect and may be cured at any time prior to entry of judgment. A court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by declaration or by return receipt of mailing.

124.105 Physical abuse subject to action.

(1) An action may be brought under ORS 124.100 for physical abuse if the defendant engaged in conduct against a vulnerable person that would constitute any of the following:

(a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.

(b) Menacing, under the provisions of ORS 163.190.

(c) Recklessly endangering another person, under the provisions of ORS 163.195.

(d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.

(e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.

(f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.

(g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.

(h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.

(i) Strangulation, under ORS 163.187.

(2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any unreasonable physical constraint on the vulnerable person or subjected the vulnerable person to prolonged or continued deprivation of food or water.

(3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a physical or chemical restraint, or psychotropic medication on the vulnerable person without an order from a physician or naturopathic physician licensed in the State of Oregon or under any of the following conditions:

(a) For the purpose of punishing the vulnerable person.

(b) For any purpose not consistent with the purposes authorized by a physician or naturopathic physician.

(c) For a period significantly beyond that for which the restraint or medication was authorized by a physician or naturopathic physician.

124.110 Financial abuse subject to action.

(1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:

(a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.

(b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; and

(B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person.

(c) When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020.

(2) A transfer of money or property that is made for the purpose of qualifying a vulnerable person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful taking or appropriation under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section.

124.115 Persons not subject to action.

(1) Except as provided by subsection (2) of this section, an action under ORS 124.100 may not be brought against:

- (a) Financial institutions, as defined by ORS 706.008;
- (b) A health care facility, as defined in ORS 442.015;
- (c) Any facility licensed or registered under ORS chapter 443; or
- (d) Broker-dealers licensed under ORS 59.005 to 59.505.

(2) An action may be brought under ORS 124.100 against a person listed in subsection (1) of this section if:

- (a) The person is convicted of one of the crimes specified in ORS 124.105 (1); or
- (b) The person engages in conduct constituting financial abuse as described in ORS 124.110, and the person is convicted of a crime by reason of the conduct.

SOUTH DAKOTA

CHAPTER 22-46 ABUSE, NEGLECT OR EXPLOITATION OF DISABLED ADULTS (§§ 22-46-1 — 22-46-18)

22-46-13. Cause of action of elder or adult upon finding that exploitation has occurred.

A court may find that an elder or adult with a disability has been exploited as defined in § 22-46-1 or 22-46-3.¹ If a court finds exploitation occurred, the elder or adult with a disability has a cause of action against the perpetrator and may recover actual and punitive damages for the exploitation. The action may be brought by the elder or adult with a disability, or that person's guardian, conservator, by a person or organization acting on behalf of the elder or adult with a disability with the consent of that person or that person's guardian or conservator, or by the personal representative of the estate of a deceased elder or adult with a disability without regard to whether the cause of death resulted from the exploitation. The action may be brought in any court of competent jurisdiction to enforce the action. A party who prevails in the action may recover reasonable attorney's fees, costs of the action, compensatory damages, and punitive damages.

¹ S.D.C.L. 22-46-1 defines exploitation as the wrongful taking or exercising of control over property of an elder or adult with a disability with intent to defraud the elder or adult with a disability. S.D.C.L. 22-46-3 defines appropriation of an elderly person's property by a trustee as theft by exploitation.

TENNESSEE

CHAPTER 6 PROGRAMS AND SERVICES FOR ABUSED PERSONS

PART 1 ADULT PROTECTION

71-6-120. Right of elderly person or disabled adult to recover for abuse or neglect, sexual abuse, exploitation, or theft.

(a) As used in this section, unless the context otherwise requires:

(1) “Capacity to consent” means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts; or to make and carry out reasonable decisions concerning the person or the person's resources; or to protect the person from neglect, or hazardous or abusive situations without assistance;

(2) “Disabled adult” means a person who is eighteen (18) years of age or older and who meets one (1) of the following:

(A) Has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;

(B) Lacks the capacity to consent;

(C) Has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons; or

(D) Has been found to be incompetent by a court of proper jurisdiction; and

(3) “Elderly person” or “elder” means a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.

(b) In addition to other remedies provided by law, an elderly person or disabled adult in that person's own right, or by conservator or next friend, shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult, but shall pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.

(c) Jurisdiction for such action shall be in the circuit or chancery court where the elderly person or disabled adult may reside or where the actions occurred.

(d) Damages shall include compensatory damages and costs where it is proven that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or

otherwise. Costs shall include reasonable expenses. In addition, if it is proven upon clear and convincing evidence that abuse or neglect, sexual abuse or exploitation or theft resulted from intentional, fraudulent or malicious conduct by the defendant, a claimant shall be entitled to recover reasonable attorneys' fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part or theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise.

(e) In addition to the damages described in (d), a defendant may also be found liable for punitive damages in accordance with applicable common law standards.

(f) Nothing in this section shall be construed as requiring the department of human services to initiate any proceedings pursuant to this section or to act on behalf of any elderly person or disabled adult subject to this section.

(g) This section shall not apply to a cause of action within the scope of title 29, chapter 26; such cause of action shall be governed solely by title 29, chapter 26.

(h) A financial institution, officer, director, or employee of a financial institution, shall not be liable in any civil action brought by or on behalf of a disabled adult or elderly person for recovery of damages under this chapter, unless prior to such civil action, the financial institution, officer, director, or employee of a financial institution, shall have been convicted of a violation of § 39-15-502; provided, however, that this provision shall not apply to theft or conversion by an employee, officer or director of a financial institution or liability arising under other law.

UTAH

PART 2. ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT (§§ 26B-6-201 — 26B-6-219)

26B-6-213. Private right of action — Estate asset — Attorney fees.

- (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation² has a private right of action against the perpetrator.
- (2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.
- (3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.
- (4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

² Utah Code 26B-6-201(16) defines “exploitation” as an offense described in Section 76-5-111.3 [personal dignity exploitation], 76-5-111.4 [financial exploitation], or 76-5b-202 [sexual exploitation].

VERMONT

Subchapter 3. Protecting Against Financial Exploitation (§§ 6951 — 6953)

§ 6952. Civil action for relief from financial exploitation

(a) Right of action. A vulnerable adult or his or her agent or guardian may bring an action in the Civil Division of the Superior Court pursuant to this section for relief against a natural person who, with reckless disregard or with knowledge, has engaged in the financial exploitation of the vulnerable adult. An action under this section shall be dismissed if the court determines the vulnerable adult is capable of expressing his or her wishes and that he or she does not wish to pursue the action.

(b) Remedies.

(1) If the court finds that financial exploitation of a vulnerable adult has occurred, the court shall grant appropriate relief to the vulnerable adult, which may include money damages, injunctive relief, reasonable costs, attorney's fees, and equitable relief.

(2) If the financial exploitation was intentional, the court may grant exemplary damages not to exceed three times the value of economic damages.

(c) Effects on other parties. No relief granted or otherwise obtained pursuant to this section shall affect or limit in any way the right, title, or interest of a good faith purchaser, mortgagee, holder of a security interest, or other party who obtained an interest in property after its transfer from the vulnerable adult to the natural person who engaged in financial exploitation. No relief granted or otherwise obtained pursuant to this section shall affect any mortgage deed to the extent of the value provided by the mortgagee.

(d) Statute of limitations. The limitations period imposed by 12 V.S.A. § 511 shall apply to all actions brought pursuant to this subchapter.

WASHINGTON

CHAPTER 74.34 ABUSE OF VULNERABLE ADULTS (§§ 74.34.005 — 74.34.902)

74.34.200. Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult — Cause of action for damages — Legislative intent.

(1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombuds or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorneys' fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section.