

REFERENCE TITLE: vulnerable adult; abuse; damages

State of Arizona
House of Representatives
Fifty-first Legislature
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2013

HB 2162

Introduced by
Representatives Campbell, Wheeler: Cardenas, McCune Davis

AN ACT

AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO 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 46-456, Arizona Revised Statutes, is amended to
3 read:

4 46-456. Duty to a vulnerable adult; financial exploitation;
5 civil penalties; exceptions; definitions

6 A. A person who is in a position of trust and confidence to a
7 vulnerable adult shall use the vulnerable adult's assets solely for the
8 benefit of the vulnerable adult and not for the benefit of the person who is
9 in the position of trust and confidence to the vulnerable adult or the
10 person's relatives unless either of 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 violates subsection A of this section or section
17 13-1802, subsection B shall be subject to actual damages and reasonable costs
18 and attorney fees in a civil action brought by or on behalf of a vulnerable
19 adult and the court may award additional damages ~~for~~ IN an amount up to ~~two~~
20 THREE times the amount of the actual damages.

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

23 1. Order a person who violates subsection A of this section or section
24 13-1802, subsection B to forfeit all or a portion of the person's benefits
25 under title 14, chapter 2 with respect to the estate of the vulnerable adult,
26 including an intestate share, an elective share, an omitted spouse's share,
27 an omitted child's share, a homestead allowance, any exempt property and a
28 family allowance. If the vulnerable adult died intestate, the vulnerable
29 adult's intestate estate passes as if the person who violated subsection A of
30 this section or section 13-1802, subsection B disclaimed that person's
31 intestate share to the extent the court orders that person to forfeit all or
32 a portion of the person's benefits under title 14, chapter 2.

33 2. Revoke, in whole or in part, any revocable:

34 (a) Disposition or appointment of property that is made in a governing
35 instrument by the vulnerable adult to the person who violates subsection A of
36 this section or section 13-1802, subsection B.

37 (b) Provision by the vulnerable adult that is contained in a governing
38 instrument that confers a general or nongeneral power of appointment on the
39 person who violates subsection A of this section or section 13-1802,
40 subsection B.

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

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

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

20 E. If the court imposes a revocation under subsection C, paragraph 2
21 of this section, provisions of the governing instrument shall be given effect
22 as if the person who violated subsection A of this section or section
23 13-1802, subsection B disclaimed all provisions revoked by the court or, in
24 the case of a revocation of a nomination in a fiduciary or representative
25 capacity, the person who violated subsection A of this section or section
26 13-1802, subsection B predeceased the decedent.

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

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

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

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

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

44 3. An insurer, including a title insurer, authorized and regulated
45 pursuant to title 20.

1 4. A health care institution licensed pursuant to title 36, chapter 4
2 that provides services to the vulnerable adult.
3 I. For the purposes of this section:
4 1. "Asset" includes all forms of personal and real property.
5 2. "Disposition or appointment of property" includes a transfer of an
6 item of property or any other benefit of a beneficiary designated in a
7 governing instrument.
8 3. "Governing instrument" means a deed, a will, a trust, a
9 custodianship, an insurance or annuity policy, an account with pay on death
10 designation, a security registered in beneficiary form, a pension, a profit
11 sharing, retirement or similar benefit plan, an instrument creating or
12 exercising a power of appointment, a power of attorney or a dispositive,
13 appointive or nominative instrument of any similar type.
14 4. "Position of trust and confidence" means that a person is any of
15 the following:
16 (a) A person who has assumed a duty to provide care to the vulnerable
17 adult.
18 (b) A joint tenant or a tenant in common with a vulnerable adult.
19 (c) A person who is in a fiduciary relationship with a vulnerable
20 adult including a de facto guardian or de facto conservator.
21 (d) A person who is in a confidential relationship with the vulnerable
22 adult. The issue of whether a confidential relationship exists shall be an
23 issue of fact to be decided by the court based on the totality of the
24 circumstances.
25 5. "Revocable" means a disposition, appointment, provision or
26 nomination under which the vulnerable adult, at the time of or immediately
27 before death, was alone empowered, by law or under the governing instrument,
28 to cancel the designation in favor of the person who violated subsection A of
29 this section or section 13-1802, subsection B, whether or not the vulnerable
30 adult was then empowered to designate the vulnerable adult in place of the
31 person who violated subsection A of this section or section 13-1802,
32 subsection B or the vulnerable adult then had capacity to exercise the power.