

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 67
SENATE BILL 1175

AN ACT

AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO ADULT
PROTECTIVE SERVICES.

(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 **ON A**
12 **FINDING THAT THE TRANSACTION IS FOR THE BENEFIT OF THE VULNERABLE ADULT.**

13 2. The transaction is specifically authorized in a valid durable power
14 of attorney that is executed by the vulnerable adult as the principal or in a
15 valid trust instrument that is executed by the vulnerable adult as a 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 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:

25 (a) **INTEREST IN ANY GOVERNING INSTRUMENT.**

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

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

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

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

43 (c) Nomination or appointment by the vulnerable adult that is
44 contained in a governing instrument that nominates or appoints the person who
45 violates subsection A of this section or section 13-1802, subsection B to

1 serve in any fiduciary or representative capacity, including serving as a
2 personal representative, executor, guardian, conservator, trustee or agent.

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

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

22 E. If the court imposes a revocation under subsection C, paragraph 2
23 of this section, provisions of the governing instrument shall be given effect
24 as if the person who violated subsection A of this section or section
25 13-1802, subsection B disclaimed all provisions revoked by the court or, in
26 the case of a revocation of a nomination in a fiduciary or representative
27 capacity, the person who violated subsection A of this section or section
28 13-1802, subsection B predeceased the decedent.

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

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

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

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

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

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

5 4. A health care institution licensed pursuant to title 36, chapter 4
6 that provides services to the vulnerable adult.

7 I. A CIVIL ACTION BROUGHT BY A PERSON IN A POSITION OF TRUST AND
8 CONFIDENCE AGAINST A VULNERABLE ADULT REGARDING A GOVERNING INSTRUMENT
9 ESTABLISHED BY THE VULNERABLE ADULT IS PRESUMED NOT TO BE FOR THE BENEFIT OF
10 THE VULNERABLE ADULT UNLESS IT IS SHOWN OTHERWISE BY CLEAR AND CONVINCING
11 EVIDENCE.

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

13 1. "Asset" includes all forms of personal and real property.

14 2. "Disposition or appointment of property" includes a transfer of an
15 item of property or any other benefit of a beneficiary designated in a
16 governing instrument.

17 3. "FOR THE BENEFIT OF THE VULNERABLE ADULT" INCLUDES ANY ACT THAT IS
18 CONSISTENT WITH THE CLEARLY STATED WISHES OF THE VULNERABLE ADULT FOUND BY
19 THE COURT TO BE MADE WITHOUT COERCION AND WHILE THE VULNERABLE ADULT WAS OF
20 SOUND MIND.

21 ~~3.~~ 4. "Governing instrument" means a deed, a will, a trust, a
22 custodianship, an insurance or annuity policy, an account with pay on death
23 designation, a security registered in beneficiary form, a pension, a profit
24 sharing, retirement or similar benefit plan, A FAMILY LIMITED PARTNERSHIP, an
25 instrument creating or exercising a power of appointment, a power of
26 attorney, AN ESTATE PLANNING DOCUMENT or a dispositive, appointive or
27 nominative instrument of any similar type.

28 ~~4.~~ 5. "Position of trust and confidence" means that a person is any
29 of the following:

30 (a) A person who has assumed a duty to provide care to the vulnerable
31 adult.

32 (b) A joint tenant or a tenant in common with a vulnerable adult.

33 (c) A person who is in a fiduciary relationship with a vulnerable
34 adult including a de facto guardian or de facto conservator.

35 (d) A person who is in a confidential relationship with the vulnerable
36 adult. The issue of whether a confidential relationship exists shall be an
37 issue of fact to be decided by the court based on the totality of the
38 circumstances.

39 (e) A BENEFICIARY OF THE VULNERABLE ADULT IN A GOVERNING INSTRUMENT.

40 ~~5.~~ 6. "Revocable" means a disposition, appointment, provision or
41 nomination under which the vulnerable adult, at the time of or immediately
42 before death, was alone empowered, by law or under the governing instrument,
43 to cancel the designation in favor of the person who violated subsection A of
44 this section or section 13-1802, subsection B, whether or not the vulnerable
45 adult was then empowered to designate the vulnerable adult in place of the

1 person who violated subsection A of this section or section 13-1802,
2 subsection B or the vulnerable adult then had capacity to exercise the power.

3 Sec. 2. Applicability

4 Section 46-546, Arizona Revised Statutes, as amended by this act,
5 applies to any governing instrument of a vulnerable adult regardless of
6 whether it was executed before the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 5, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2013.