

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

CHAPTER 185
SENATE BILL 1341

AN ACT

AMENDING SECTIONS 46-451 AND 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 46-451, Arizona Revised Statutes, is amended to
3 read:
4 46-451. Definitions; program goals
5 A. In this chapter, unless the context otherwise requires:
6 1. "Abuse" means:
7 (a) Intentional infliction of physical harm.
8 (b) Injury caused by negligent acts or omissions.
9 (c) Unreasonable confinement.
10 (d) Sexual abuse or sexual assault.
11 2. "De facto conservator" means any person who takes possession of the
12 estate of a vulnerable adult, without right or lawful authority. A de facto
13 conservator is subject to all of the responsibilities that attach to a
14 legally appointed conservator or trustee.
15 3. "De facto guardian" means any person who takes possession of the
16 person of a vulnerable adult, without right or lawful authority. A de facto
17 guardian is subject to all of the responsibilities that attach to a legally
18 appointed guardian.
19 4. "Exploitation" means the illegal or improper use of a vulnerable
20 adult or his resources for another's profit or advantage.
21 5. "Informed consent" means any of the following:
22 (a) A written expression by the person that the person fully
23 understands the potential risks and benefits of the withdrawal of food,
24 water, medication, medical services, shelter, cooling, heating or other
25 services necessary to maintain minimum physical or mental health and that the
26 person desires that the services be withdrawn. A WRITTEN EXPRESSION IS VALID
27 ONLY IF THE PERSON IS OF SOUND MIND AND IF THE CONSENT IS WITNESSED BY AT
28 LEAST TWO INDIVIDUALS WHO DO NOT BENEFIT BY THE WITHDRAWAL OF SERVICES.
29 (b) Consent to withdraw food, water, medication, medical services,
30 shelter, cooling, heating or other services necessary to maintain minimum
31 physical or mental health as permitted by an order of a court of competent
32 jurisdiction.
33 (c) A declaration made pursuant to title 36, chapter 32.
34 (d) Consent by another person under a durable power of attorney
35 relating to health care services to withdraw food, water, medication, medical
36 services, shelter, cooling, heating or other services necessary to maintain
37 minimum physical or mental health.
38 6. "Neglect" means a pattern of conduct without the person's informed
39 consent resulting in deprivation of food, water, medication, medical
40 services, shelter, cooling, heating or other services necessary to maintain
41 minimum physical or mental health.
42 7. "Protective services" means a program of identifiable and
43 specialized social services that may offer social services appropriate to
44 resolve problems of abuse, exploitation or neglect of a vulnerable adult.

1 8. "Protective services worker" means a person who has been selected
2 by and trained under the requirements prescribed by the department to provide
3 protective services.

4 9. "Vulnerable adult" means an individual who is eighteen years of age
5 or older and who is unable to protect himself from abuse, neglect or
6 exploitation by others because of a physical or mental impairment.
7 Vulnerable adult includes an incapacitated person as defined in section
8 14-5101.

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

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

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

20 D. FOR THE PURPOSES OF THIS SECTION, A PERSON IS NOT EXPLOITED BY A
21 TRANSFER OF ASSETS IF THE TRANSFER IS TO OBTAIN OR MAINTAIN ELIGIBILITY FOR
22 BENEFITS UNDER TITLE 36, CHAPTER 29 OR BENEFITS FOR SUPPLEMENTAL SECURITY
23 INCOME, MEDICARE OR VETERANS' ADMINISTRATION PROGRAMS AND THE TRANSFER OF
24 ASSETS IS BETWEEN THE PERSON AND ANY OF THE FOLLOWING:

- 25 1. THE PERSON'S SPOUSE.
- 26 2. THE PERSON'S DISABLED CHILD.
- 27 3. A TRUST FOR THE BENEFIT OF THE PERSON'S SPOUSE OR DISABLED CHILD.

28 E. A TRANSFER OF ASSETS FOR THE PURPOSE OF OBTAINING OR MAINTAINING
29 ELIGIBILITY FOR BENEFITS UNDER TITLE 36, CHAPTER 29 SHALL COMPLY WITH 42
30 UNITED STATES CODE SECTION 1396p AND SECTIONS 36-2934 AND 36-2934.01.

31 Sec. 2. Section 46-456, Arizona Revised Statutes, is amended to read:
32 46-456. Duty to a vulnerable adult; financial exploitation;
33 civil penalties; exceptions; definitions

34 A. A person who is in a position of trust and confidence to a
35 vulnerable adult shall use the vulnerable adult's assets solely for the
36 benefit of the vulnerable adult and not for the benefit of the person who is
37 in the position of trust and confidence to the vulnerable adult or the
38 person's relatives unless ~~either~~ ANY of the following applies:

- 39 1. The superior court gives prior approval of the transaction.
- 40 2. The transaction is specifically authorized in a valid durable power
41 of attorney that is executed by the vulnerable adult as the principal or in a
42 valid trust instrument that is executed by the vulnerable adult as a settlor.
- 43 3. THE TRANSACTION IS REQUIRED IN ORDER TO OBTAIN OR MAINTAIN
44 ELIGIBILITY FOR SERVICES UNDER TITLE 36, CHAPTER 29.

45 4. THE PERSON IN THE POSITION OF TRUST AND CONFIDENCE TO THE
46 VULNERABLE ADULT IS THE VULNERABLE ADULT'S SPOUSE AND THE TRANSACTION

1 FURTHERS THE INTEREST OF THE MARITAL COMMUNITY, INCLUDING APPLYING FOR
2 BENEFITS PURSUANT TO TITLE 36, CHAPTER 29 OR BENEFITS FOR SUPPLEMENTAL
3 SECURITY INCOME, MEDICARE OR VETERANS' ADMINISTRATION PROGRAMS.

4 B. A person who violates subsection A of this section or section
5 13-1802, subsection B shall be subject to actual damages and reasonable costs
6 and attorney fees in a civil action brought by or on behalf of a vulnerable
7 adult and the court may award additional damages ~~for~~ IN an amount up to two
8 times the amount of the actual damages.

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

11 1. Order a person who violates subsection A of this section or section
12 13-1802, subsection B to forfeit all or a portion of the person's benefits
13 under title 14, chapter 2 with respect to the estate of the vulnerable adult,
14 including an intestate share, an elective share, an omitted spouse's share,
15 an omitted child's share, a homestead allowance, any exempt property and a
16 family allowance. If the vulnerable adult died intestate, the vulnerable
17 adult's intestate estate passes as if the person who violated subsection A of
18 this section or section 13-1802, subsection B disclaimed that person's
19 intestate share to the extent the court orders that person to forfeit all or
20 a portion of the person's benefits under title 14, chapter 2.

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

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

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

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

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

45 D. A revocation or a severance under subsection C, paragraph 2 or 3 of
46 this section does not affect any third party interest in property that was

1 acquired for value and in good faith reliance on apparent title by
2 survivorship in the person who violated subsection A of this section or
3 section 13-1802, subsection B unless a writing declaring the severance has
4 been noted, registered, filed or recorded in records that are appropriate to
5 the kind and location of the property and that are relied on as evidence of
6 ownership in the ordinary course of transactions involving that property.

7 E. If the court imposes a revocation under subsection C, paragraph 2
8 of this section, provisions of the governing instrument shall be given effect
9 as if the person who violated subsection A of this section or section
10 13-1802, subsection B disclaimed all provisions revoked by the court or, in
11 the case of a revocation of a nomination in a fiduciary or representative
12 capacity, the person who violated subsection A of this section or section
13 13-1802, subsection B predeceased the decedent.

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

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

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

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

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

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

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

35 I. For the purposes of this section:

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

37 2. "Disposition or appointment of property" includes a transfer of an
38 item of property or any other benefit of a beneficiary designated in a
39 governing instrument.

40 3. "Governing instrument" means a deed, a will, a trust, a
41 custodianship, an insurance or annuity policy, an account with pay on death
42 designation, a security registered in beneficiary form, a pension, a profit
43 sharing, retirement or similar benefit plan, an instrument creating or
44 exercising a power of appointment, a power of attorney or a dispositive,
45 appointive or nominative instrument of any similar type.

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

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

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

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

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

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

20 Sec. 3. Legislative intent

21 The legislature intends by this act only to clarify existing law as
22 enacted by the legislature and interpreted by the courts.

APPROVED BY THE GOVERNOR MAY 2, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2013.