

REFERENCE TITLE: vulnerable adults; financial abuse

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2331

Introduced by
Representative Mason

AN ACT

AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO INCAPACITATED AND VULNERABLE ADULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 46-456, Arizona Revised Statutes, is amended to
3 read:

4 46-456. Duty to an incapacitated or vulnerable adult; financial
5 exploitation; civil and criminal penalties;
6 exceptions; definitions

7 A. A person who is in a position of trust and confidence to an
8 incapacitated or vulnerable adult shall act for the benefit of that person to
9 the same extent as a trustee pursuant to title 14, chapter 7, article 3.

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

15 C. A person who violates subsection A or B of this section is subject
16 to damages in a civil action brought by or on behalf of an incapacitated or
17 vulnerable adult that equal up to three times the amount of the monetary
18 damages.

19 D. A person who violates subsection A or B of this section forfeits
20 all benefits with respect to the estate of the deceased, incapacitated or
21 vulnerable adult, including an intestate share, an elective share, an omitted
22 spouse's share, an omitted child's share, a homestead allowance, an exempt
23 property allowance and a family allowance. If the incapacitated or
24 vulnerable adult died intestate, the decedent's intestate estate passes as if
25 the person who committed the violation disclaimed that person's intestate
26 share.

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

29 F. Subsections A, C, D and E of this section do not apply to an agent
30 that is any of the following:

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

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

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

37 G. PROOF THAT A PERSON TOOK CONTROL, TITLE, USE OR MANAGEMENT OF AN
38 INCAPACITATED OR VULNERABLE ADULT'S ASSET OR PROPERTY WITHOUT ANY BENEFIT TO
39 THE INCAPACITATED OR VULNERABLE ADULT MAY GIVE RISE TO AN INFERENCE THAT THE
40 PERSON USED INTIMIDATION OR DECEPTION TO TAKE CONTROL, TITLE, USE OR
41 MANAGEMENT OF THE ASSET OR PROPERTY WITH THE INTENT TO PERMANENTLY DEPRIVE
42 THE INCAPACITATED OR VULNERABLE ADULT OF THE ASSET OR PROPERTY.

43 ~~G.~~ H. For the purposes of this section:

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

- 1 (a) Creating or confirming a false impression in an incapacitated or
2 vulnerable adult's mind.
- 3 (b) Failing to correct a false impression that the person is
4 responsible for creating or confirming in an incapacitated or vulnerable
5 adult's mind.
- 6 (c) Making a promise to an incapacitated or vulnerable adult that the
7 person does not intend to perform or that the person knows will not or cannot
8 be performed. A person's failure to perform a promise is not by itself
9 sufficient proof that the person did not intend to perform the promise.
- 10 (d) Misrepresenting or concealing a material fact that relates to the
11 terms of a contract or an agreement that the person enters into with the
12 incapacitated or vulnerable adult or that relates to the existing or
13 preexisting condition of any of the property involved in a contract or an
14 agreement.
- 15 (e) Using any material misrepresentation, false pretense or false
16 promise to induce, encourage or solicit an incapacitated or vulnerable adult
17 to enter into a contract or an agreement.
- 18 2. "Intimidation" includes threatening to deprive an incapacitated or
19 vulnerable adult of food, nutrition, shelter or necessary medication or
20 medical treatment.
- 21 3. "Position of trust and confidence" means that a person is any of
22 the following:
- 23 (a) ~~One~~ A PERSON who has assumed a duty to provide care to the
24 incapacitated or vulnerable adult.
- 25 (b) A joint tenant or a tenant in common with an incapacitated or
26 vulnerable adult.
- 27 (c) ~~One~~ A PERSON who is in a fiduciary relationship with an
28 incapacitated or vulnerable adult including a de facto guardian or de facto
29 conservator.