
ASSEMBLY BILL NO. 126—ASSEMBLYMEN PIERCE, ANDERSON,
ATKINSON, BUCKLEY, CLABORN, COLLINS, HORNE,
KOIVISTO, MCCLEARY AND OCEGUERA (BY REQUEST)

FEBRUARY 13, 2003

Referred to Committee on Judiciary

SUMMARY—Revises definition of “exploitation” for purposes of provisions concerning abuse of older person and for purposes of provisions concerning civil liability for exploiting older person or vulnerable person. (BDR 15-879)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to exploitation; revising the definition of “exploitation” for the purposes of certain provisions concerning the abuse of an older person to include the actions of certain persons who serve in a fiduciary or other representative capacity to an older person; revising the definition of “exploitation” for the purposes of certain provisions concerning the civil liability of a person for exploiting an older person or vulnerable person to include the actions of certain persons who serve in a fiduciary or other representative capacity to the older person or vulnerable person; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 200.5092 is hereby amended to read as
2 follows:
3 200.5092 As used in NRS 200.5091 to 200.50995, inclusive,
4 unless the context otherwise requires:
5 1. “Abuse” means willful and unjustified:



1 (a) Infliction of pain, injury or mental anguish on an older
2 person; or

3 (b) Deprivation of food, shelter, clothing or services which are
4 necessary to maintain the physical or mental health of an older
5 person.

6 2. "Exploitation" means ~~any~~:

7 (a) *Any* act taken by a person who has the trust and confidence
8 of an older person ~~for any use of the power of attorney or~~
9 ~~guardianship of an older person~~ to obtain control, through
10 deception, intimidation or undue influence, over the older person's
11 money, assets or property with the intention of permanently
12 depriving the older person of the ownership, use, benefit or
13 possession of his money, assets or property. As used in this
14 ~~subsection,~~ *paragraph*, "undue influence" does not include the
15 normal influence that one member of a family has over another.

16 (b) *An intentional breach of duty owed to an older person by a*
17 *person who has been placed in a fiduciary or other representative*
18 *capacity with respect to the money, assets or property of the older*
19 *person that causes the older person to be permanently deprived of*
20 *the ownership, use, benefit or possession of his money, assets or*
21 *property. As used in this paragraph, "fiduciary or other*
22 *representative capacity" includes, without limitation, possessing*
23 *the authority to exercise a power of attorney and appointment as a*
24 *guardian.*

25 3. "Isolation" means willfully, maliciously and intentionally
26 preventing an older person from having contact with another person
27 by:

28 (a) Intentionally preventing the older person from receiving his
29 visitors, mail or telephone calls, including, without limitation,
30 communicating to a person who comes to visit the older person or a
31 person who telephones the older person that the older person is not
32 present or does not want to meet with or talk to the visitor or caller
33 knowing that the statement is false, contrary to the express wishes of
34 the older person and intended to prevent the older person from
35 having contact with the visitor; or

36 (b) Physically restraining the older person to prevent the older
37 person from meeting with a person who comes to visit the older
38 person.

39 The term does not include an act intended to protect the property or
40 physical or mental welfare of the older person or an act performed
41 pursuant to the instructions of a physician of the older person.

42 4. "Neglect" means the failure of:

43 (a) A person who has assumed legal responsibility or a
44 contractual obligation for caring for an older person or who has
45 voluntarily assumed responsibility for his care to provide food,



1 shelter, clothing or services which are necessary to maintain the
2 physical or mental health of the older person; or

3 (b) An older person to provide for his own needs because of
4 inability to do so.

5 5. "Older person" means a person who is 60 years of age or
6 older.

7 6. "Protective services" means services the purpose of which is
8 to prevent and remedy the abuse, neglect, exploitation and isolation
9 of older persons. The services may include investigation, evaluation,
10 counseling, arrangement and referral for other services and
11 assistance.

12 **Sec. 2.** NRS 41.1395 is hereby amended to read as follows:

13 41.1395 1. Except as otherwise provided in subsection 3, if
14 an older person or a vulnerable person suffers a personal injury or
15 death that is caused by abuse or neglect or suffers a loss of money or
16 property caused by exploitation, the person who caused the injury,
17 death or loss is liable to the older person or vulnerable person for
18 two times the actual damages incurred by the older person or
19 vulnerable person.

20 2. If it is established by a preponderance of the evidence that a
21 person who is liable for damages pursuant to this section acted with
22 recklessness, oppression, fraud or malice, the court shall order the
23 person to pay the attorney's fees and costs of the person who
24 initiated the lawsuit.

25 3. The provisions of this section do not apply to a person who
26 caused injury, death or loss to a vulnerable person if he did not
27 know or have reason to know that the harmed person was a
28 vulnerable person.

29 4. For the purposes of this section:

30 (a) "Abuse" means willful and unjustified:

31 (1) Infliction of pain, injury or mental anguish; or

32 (2) Deprivation of food, shelter, clothing or services which
33 are necessary to maintain the physical or mental health of an older
34 person or a vulnerable person.

35 (b) "Exploitation" means ~~any~~:

36 (1) *Any* act taken by a person who has the trust and
37 confidence of an older person or a vulnerable person ~~for any use of~~
38 ~~the power of attorney or guardianship of an older person or a~~
39 ~~vulnerable person~~ to obtain control, through deception, intimidation
40 or undue influence, over the money, assets or property of the older
41 person or vulnerable person with the intention of permanently
42 depriving the older person or vulnerable person of the ownership,
43 use, benefit or possession of his money, assets or property. As used
44 in this ~~paragraph,~~ *subparagraph*, "undue influence" does not



1 include the normal influence that one member of a family has over
2 another.

3 *(2) An intentional breach of duty owed to an older person*
4 *or a vulnerable person by a person who has been placed in a*
5 *fiduciary or other representative capacity with respect to the*
6 *money, assets or property of the older person or vulnerable person*
7 *that causes the older person or vulnerable person to be*
8 *permanently deprived of his ownership, use, benefit or possession*
9 *of his money, assets or property. As used in this subparagraph,*
10 *“fiduciary or other representative capacity” includes, without*
11 *limitation, possessing the authority to exercise a power of attorney*
12 *and appointment as a guardian.*

13 (c) “Neglect” means the failure of a person who has assumed
14 legal responsibility or a contractual obligation for caring for an older
15 person or a vulnerable person, or who has voluntarily assumed
16 responsibility for his care, to provide food, shelter, clothing or
17 services within the scope of his responsibility or obligation, which
18 are necessary to maintain the physical or mental health of the older
19 person or vulnerable person. For the purposes of this paragraph, a
20 person voluntarily assumes responsibility to provide care for an
21 older or vulnerable person only to the extent that he has expressly
22 acknowledged his responsibility to provide such care.

23 (d) “Older person” means a person who is 60 years of age or
24 older.

25 (e) “Vulnerable person” means a person who:

26 (1) Has a physical or mental impairment that substantially
27 limits one or more of the major life activities of the person; and

28 (2) Has a medical or psychological record of the impairment
29 or is otherwise regarded as having the impairment.

30 The term includes, without limitation, a person who is mentally
31 retarded, a person who has a severe learning disability, a person who
32 suffers from a severe mental or emotional illness or a person who
33 suffers from a terminal or catastrophic illness or injury.

