

CIVIL ACTION FOR ABUSE OF VULNERABLE PERSON

124.100 Definitions for ORS 124.100 to 124.140; action authorized; relief; qualifications for bringing action; service on Attorney General.

(1) As used in ORS 124.100 to 124.140:

(a) “Elderly person” means a person 65 years of age or older.

(b) “Financially incapable” has the meaning given that term in ORS 125.005.

(c) “Incapacitated” has the meaning given that term in ORS 125.005.

(d) “Person with disabilities” means a person with a physical or mental impairment that:

(A) Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; and

(B) Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the person with the physical or mental impairment.

(e) “Vulnerable person” means:

(A) An elderly person;

(B) A financially incapable person;

(C) An incapacitated person; or

(D) A person with disabilities who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person’s physical or mental impairment.

(2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

(a) An amount equal to three times all economic damages, as defined in ORS 31.710, resulting from the physical or financial abuse, or \$500, whichever amount is greater.

(b) An amount equal to three times all noneconomic damages, as defined by ORS 31.710, resulting from the physical or financial abuse.

(c) Reasonable attorney fees incurred by the plaintiff.

(d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

(3) An action may be brought under this section only by:

(a) A vulnerable person;

- (b) A guardian, conservator or attorney-in-fact for a vulnerable person;
- (c) A personal representative for the estate of a decedent who was a vulnerable person at the time the cause of action arose; or
- (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable person.

(4) An action may be brought under this section only for physical abuse described in ORS 124.105 or for financial abuse described in ORS 124.110.

(5) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.

(6) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced. [1995 c.671 §1; 1997 c.249 §41; 1999 c.305 §1; 2001 c.843 §3; 2003 c.211 §1; 2005 c.87 §1; 2005 c.386 §1a]

Note: Section 2, chapter 87, Oregon Laws 2005, provides:

Sec. 2. The amendments to ORS 124.100 by section 1 of this 2005 Act apply to actions for injury, damage or death occurring before, on or after the effective date of this 2005 Act [January 1, 2006]. [2005 c.87 §2]

Note: Section 4, chapter 386, Oregon Laws 2005, provides:

Sec. 4. The amendments to ORS 124.100, 124.105 and 124.110 by sections 1 to 3 of this 2005 Act apply to conduct described in ORS 124.105 and 124.110 that gives rise to a cause of action under ORS 124.100 to 124.140 that occurs on or after the effective date of this 2005 Act [January 1, 2006]. [2005 c.386 §4]

124.105 Physical abuse subject to action. (1) An action may be brought under ORS 124.100 for physical abuse if the defendant engaged in conduct against a vulnerable person that would constitute any of the following:

(a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.

(b) Menacing, under the provisions of ORS 163.190.

(c) Recklessly endangering another person, under the provisions of ORS 163.195.

(d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.

(e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.

(f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.

(g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.

(h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.

(i) Strangulation, under ORS 163.187.

(2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any unreasonable physical constraint on the vulnerable person or subjected the vulnerable person to prolonged or continued deprivation of food or water.

(3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a physical or chemical restraint, or psychotropic medication on the vulnerable person without an order from a physician licensed in the State of Oregon or under any of the following conditions:

(a) For the purpose of punishing the vulnerable person.

(b) For any purpose not consistent with the purposes authorized by a physician.

(c) For a period significantly beyond that for which the restraint or medication was authorized by a physician. [1995 c.671 §2; 2003 c.577 §4; 2005 c.386 §2]

Note: See second note under 124.100.

124.110 Financial abuse subject to action. (1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:

(a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.

(b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; and

(B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person.

(c) When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020.

(2) A transfer of money or property that is made for the purpose of qualifying a vulnerable person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful taking or appropriation under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section. [1995 c.671 §3; 1999 c.305 §2; 1999 c.875 §8; 2005 c.386 §3]

Note: See second note under 124.100.

124.115 Persons not subject to action. (1) Except as provided by subsection (2) of this section, an action under ORS 124.100 may not be brought against:

- (a) Financial institutions, as defined by ORS 706.008;
- (b) A health care facility, as defined in ORS 442.015;
- (c) Any facility licensed or registered under ORS chapter 443; or
- (d) Broker-dealers licensed under ORS 59.005 to 59.541.

(2) An action may be brought under ORS 124.100 against a person listed in subsection (1) of this section if:

- (a) The person is convicted of one of the crimes specified in ORS 124.105 (1); or
- (b) The person engages in conduct constituting financial abuse as described in ORS 124.110, and the person is convicted of a crime by reason of the conduct. [1995 c.671 §3a; 1997 c.631 §408; 1999 c.305 §3]

124.120 Relief available. The court may restrain and remedy the conduct described in ORS 124.105 and 124.110 by issuing appropriate orders including but not limited to:

- (1) A judgment for the remedies provided by ORS 124.100.
- (2) Restraining orders, temporary injunctions or other actions as the court deems proper, including the acceptance of satisfactory performance bonds, the creation of receiverships, the appointment of qualified receivers and the enforcement of constructive trusts.

(3) Ordering any person to divest direct or indirect interest or contact with any person or enterprise.

(4) Imposing reasonable restrictions, including permanent injunctions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor or conduct to the extent permitted by the Constitution of the United States and this state. [1995 c.671 §4]

124.125 Action by Attorney General, Department of Human Services or district attorney; investigative demands. (1) The Attorney General, the Department of Human Services or any district attorney may bring an action against any person who engages in conduct described in ORS 124.105 and 124.110. In addition to remedies otherwise provided in ORS 124.100 to 124.140, upon prevailing in the action, the court shall award to the Attorney General, Department of Human Services or district attorney costs of investigation and penalties. Penalties awarded under this section may not exceed \$25,000 per occurrence.

(2) The Attorney General may intervene in any civil action brought under ORS 124.100 if the Attorney General certifies that, in the opinion of the Attorney General, the action is of general public importance. In the action, the state shall be entitled to the same relief as if the Attorney General instituted the action under the provisions of this section.

(3) When it appears that a person is engaging in conduct described in ORS 124.105 or 124.110, the Attorney General or any district attorney may execute in writing and cause to be served an investigative demand upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation. The investigative demand shall require the person, under oath or otherwise, to appear and testify, to answer written interrogatories or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as stated in the investigative demand.

(4) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, including a request for privileged material, may be filed in the appropriate court.

(5) Service of an investigative demand under subsection (3) of this section shall be made personally within this state. If personal service within this state cannot be made, substituted service may be made by any of the following methods:

- (a) Personal service outside of this state;
 - (b) Mailing the investigative demand by registered or certified mail to the last-known place of business, residence or abode within or outside of this state of the person for whom service is intended;
 - (c) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or
 - (d) Such service as the court may direct.
- (6) If any person after being served with an investigative demand under subsection (3) of this section fails or refuses to obey an investigative demand issued by the Attorney General or a district attorney, the Attorney General or district attorney may, after notice to an appropriate court and after a hearing, request an order:
- (a) Granting injunctive relief to restrain the person from engaging in conduct that is involved in the alleged or suspected violation; or
 - (b) Granting other relief as may be required, until the person obeys the investigative demand.
- (7) Any disobedience of any final order of a court under subsection (6) of this section shall be punished as a contempt of court.
- (8) ORS 192.550 to 192.595 apply to the disclosure of financial records by a financial institution pursuant to the service of an investigative demand under subsection (3) of this section. [1995 c.671 §5; 2003 c.265 §1]

124.130 Statute of limitation. An action under ORS 124.100 to 124.140 must be commenced within seven years after discovery of the conduct described in ORS 124.105 and 124.110 that gives rise to a cause of action under ORS 124.100 to 124.140. [1995 c.671 §6]

124.135 Remedies not exclusive. The remedies provided by ORS 124.100 to 124.140 are in addition to any other remedy, civil or criminal, that may be available under any other provision of law. [1995 c.671 §7]

124.140 Estoppel based on criminal conviction. A defendant convicted in any criminal proceeding of conduct that gives rise to a cause of action under ORS 124.100, whether the conviction results from a plea or verdict, is estopped from denying the conduct for purposes of an action under ORS 124.100 to 124.140. [1995 c.671 §8]

PENALTIES

124.990 Criminal penalty. A person who violates ORS 124.060 commits a Class A violation. [Formerly 410.990]
