

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 converting money, assets or property of the older person under certain circumstances; revising the definition of “exploitation” for the purposes of certain provisions concerning civil liability of a person for exploiting an older person or vulnerable person to include converting money, assets or property of the older or vulnerable person under certain circumstances; 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:



* A B 1 2 6 R 1 *

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 act taken by a person who has the
7 trust and confidence of an older person or any use of the power of
8 attorney or guardianship of an older person to ~~obtain~~ :

9 (a) *Obtain* control, through deception, intimidation or undue
10 influence, over the older person's money, assets or property with the
11 intention of permanently depriving the older person of the
12 ownership, use, benefit or possession of his money, assets or
13 property ~~to~~ ; or

14 (b) *Convert money, assets or property of the older person with*
15 *the intention of permanently depriving the older person of the*
16 *ownership, use, benefit or possession of his money, assets or*
17 *property.*

18 As used in this subsection, "undue influence" does not include the
19 normal influence that one member of a family has over another.

20 3. "Isolation" means willfully, maliciously and intentionally
21 preventing an older person from having contact with another person
22 by:

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

31 (b) Physically restraining the older person to prevent the older
32 person from meeting with a person who comes to visit the older
33 person.

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

37 4. "Neglect" means the failure of:

38 (a) A person who has assumed legal responsibility or a
39 contractual obligation for caring for an older person or who has
40 voluntarily assumed responsibility for his care to provide food,
41 shelter, clothing or services which are necessary to maintain the
42 physical or mental health of the older person; or

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



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

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

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

9 41.1395 1. Except as otherwise provided in subsection 3, if
10 an older person or a vulnerable person suffers a personal injury or
11 death that is caused by abuse or neglect or suffers a loss of money or
12 property caused by exploitation, the person who caused the injury,
13 death or loss is liable to the older person or vulnerable person for
14 two times the actual damages incurred by the older person or
15 vulnerable person.

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

21 3. The provisions of this section do not apply to a person who
22 caused injury, death or loss to a vulnerable person if he did not
23 know or have reason to know that the harmed person was a
24 vulnerable person.

25 4. For the purposes of this section:

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

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

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

31 (b) "Exploitation" means any act taken by a person who has the
32 trust and confidence of an older person or a vulnerable person or
33 any use of the power of attorney or guardianship of an older person
34 or a vulnerable person to ~~obtain~~:

35 (1) *Obtain* control, through deception, intimidation or undue
36 influence, over the money, assets or property of the older person or
37 vulnerable person with the intention of permanently depriving the
38 older person or vulnerable person of the ownership, use, benefit or
39 possession of his money, assets or property ~~to~~; or

40 (2) *Convert money, assets or property of the older person*
41 *with the intention of permanently depriving the older person or*
42 *vulnerable person of the ownership, use, benefit or possession of*
43 *his money, assets or property.*

44 As used in this paragraph, "undue influence" does not include the
45 normal influence that one member of a family has over another.



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1 (c) “Neglect” means the failure of a person who has assumed
2 legal responsibility or a contractual obligation for caring for an older
3 person or a vulnerable person, or who has voluntarily assumed
4 responsibility for his care, to provide food, shelter, clothing or
5 services within the scope of his responsibility or obligation, which
6 are necessary to maintain the physical or mental health of the older
7 person or vulnerable person. For the purposes of this paragraph, a
8 person voluntarily assumes responsibility to provide care for an
9 older or vulnerable person only to the extent that he has expressly
10 acknowledged his responsibility to provide such care.

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

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

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

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

18 The term includes, without limitation, a person who is mentally
19 retarded, a person who has a severe learning disability, a person who
20 suffers from a severe mental or emotional illness or a person who
21 suffers from a terminal or catastrophic illness or injury.

