



# State of Tennessee

## PUBLIC CHAPTER NO. 772

### SENATE BILL NO. 2147

By Johnson, Crowe, Massey, Yager

Substituted for: House Bill No. 2420

By Barrett, Vital

AN ACT to amend Tennessee Code Annotated, Title 30; Title 31; Title 32; Title 34; Title 35; Title 36; Title 39 and Title 71, relative to elderly and vulnerable adults.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 31, Chapter 4, is amended by adding the following as a new section:

#### **31-4-106.**

(a) As used in this section:

(1) "Abuse or neglect" means:

(A) The same as those terms are defined in § 39-15-501 or § 71-6-102; or

(B) The intentional provision of unnecessary or excessive medications to an elderly person or disabled adult as part of a scheme to commit or attempt to commit fraud, deceit, or coercion or otherwise financially exploit an elderly person or disabled adult;

(2) "Capacity" means the mental ability to make a rational decision, including the ability to perceive and appreciate all relevant facts, and reach a rational judgment upon such facts; to make and carry out reasonable decisions concerning the person or the person's resources; and to protect the person from neglect or hazardous or abusive situations without assistance. A person does not have capacity if the person has been rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without the person's consent, in excessive amounts, or due to any other act committed upon that person without the person's consent;

(3) "Disabled adult" means the same as defined in § 71-6-120;

(4) "Elderly person" or "elder" means the same as defined in § 71-6-120;

(5) "Financial exploitation" means:

(A) The same as defined in § 39-15-501;

(B) Any scheme to commit or attempt to commit fraud, deceit, or coercion, or to otherwise unduly influence an elderly person or disabled adult in order to obtain or exert unauthorized control over an elderly person or disabled adult's property with the intent to deprive the elderly person or disabled adult or such person's beneficiaries or heirs of property; or

(C) Financial abuse as defined in § 36-3-601; and

(6) "Sexual abuse":

(A) Means:

(i) The same as defined in § 71-6-102; or

(ii) When an elderly person or disabled adult is forced, tricked, threatened, or otherwise coerced into sexual activity while rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic, medication, or other substance administered to that person without the person's consent, in excess, or due to any other act committed upon that person without the person's consent; and

(B) Does not include any act intended for a valid medical purpose, or any act reasonably intended to be a normal caregiving act, such as bathing by appropriate persons at appropriate times.

(b) If a surviving spouse is found by a court of competent jurisdiction to have procured a marriage to an elderly person or disabled adult as part of a scheme to commit abuse or neglect, sexual abuse, financial exploitation, or theft of the elderly person's or disabled adult's real or personal property whether by fraud, deceit, coercion, or otherwise, or has otherwise procured marriage to the elderly person or disabled adult by fraud, duress, or undue influence, then the surviving spouse is not entitled to any of the following rights or benefits that inure solely by virtue of the marriage or the person's status as surviving spouse of the decedent unless the decedent and the surviving spouse voluntarily cohabited as husband and wife with full and complete disclosure and knowledge of and capacity to understand the facts constituting such actions and both spouses subsequently ratified the marriage, only to the extent that the elderly adult or disabled adult is capable of ratifying such a marriage:

(1) Any right or benefit under this title or title 30 or 32, including, but not limited to, entitlement to a surviving spouse's elective share or allowance, preference in appointment as personal representative, inheritance by intestacy, homestead or exempt property, or inheritance as a surviving spouse;

(2) Any right or benefit under a bond, life insurance policy, or other contractual arrangement if the decedent is the principal obligee or the person upon whose life the policy is issued, unless the surviving spouse is provided for by name, whether or not designated as the spouse, in the bond, life insurance policy, or other contractual arrangement;

(3) Any right or benefit under a will, trust, or power of appointment, unless the surviving spouse is provided for by name, whether or not designated as the spouse, in the will, trust, or power of appointment; and

(4) Any immunity from the presumption of undue influence that a surviving spouse may have under state law.

(c) Any of the rights or benefits listed in subdivisions (b)(1)–(4) must pass as if the surviving spouse had predeceased the decedent if a court of competent jurisdiction finds that the surviving spouse is not entitled to the rights or benefits pursuant to subsection (b).

(d) A challenge to a surviving spouse's rights or benefits under this title or title 30 or 32 may be maintained as a defense, objection, or cause of action by any interested person after the death of the decedent in any proceeding in which the fact of marriage may be directly or indirectly material. It is not necessary for a court, as part of any judgment, to declare a marriage void and unenforceable for a contestant to prevail in such a proceeding.

(e)(1) The contestant has the burden of establishing, by a preponderance of the evidence, that the marriage was procured as part of a scheme to commit abuse or neglect, sexual abuse, financial exploitation, or theft of the elderly person's or disabled adult's real or personal property whether by fraud, deceit, coercion, or otherwise, or to otherwise procure marriage to the elderly person or disabled adult by fraud, duress, or undue influence.

(2) If ratification of the marriage is raised as a defense, then the surviving spouse has the burden of establishing, by clear and convincing evidence, the subsequent ratification by both spouses; provided, however, such defense is not available if:

(A) The elderly person or disabled adult would otherwise lack the capacity to ratify; or

(B) Abuse or neglect, sexual abuse, financial exploitation, or theft resulted from intentional, fraudulent, or malicious conduct by the surviving spouse.

(f) In all actions brought under this section, the court shall award costs, including attorney's fees, to a contestant that prevails. When awarding costs and attorney's fees, the court may direct payment from a party's interest, if any, in the estate, or enter a judgment that may be satisfied from other property of the party, or both.

(g)(1) An insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless, before payment, the insurance company, financial institution, or other obligor received written notice of a claim pursuant to this section.

(2) The notice required by this subsection (g) must be in writing and must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice. Permissible methods of notice include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message.

(3) To be effective, notice to a financial institution or insurance company must contain the name, address, and the taxpayer identification number, or the account or policy number, of the principal obligee or person whose life is insured and shall be directed to an officer or a manager of the financial institution or insurance company in this state. If the financial institution or insurance company has no offices in this state, then the notice must be directed to the principal office of the financial institution or insurance company.

(4) Notice is effective when given, except that notice to a financial institution or insurance company is not effective until five (5) business days after being given.

(h) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law or equity.

(i) Unless sooner barred by adjudication or estoppel, an interested person is barred from bringing an action under this section unless the action is commenced within four (4) years after the decedent's date of death. A cause of action under this section accrues on the decedent's date of death.

SECTION 2. Tennessee Code Annotated, Section 71-6-102(5), is amended by adding the following new subdivision:

(D) Includes a person who resides in an elderly person's or disabled adult's personal residence and has assumed the duty to provide care for the elderly person or disabled adult or another person, including a spouse, child, or relative of the elderly person or disabled adult, who also resides in the elderly person's or disabled adult's personal residence and who knows or reasonably should know of the elderly person's or disabled adult's mental or physical dysfunction or advanced age;

SECTION 3. Tennessee Code Annotated, Section 71-6-120(b), is amended by deleting the subsection and substituting:

(b) In addition to other remedies provided by law, an elderly person or disabled adult in that person's own right, or by conservator or next friend, has a right of recovery in a civil action for compensatory damages for abuse or neglect; sexual abuse or exploitation, as defined in this part; theft of such person's or adult's money or property whether by fraud, deceit, coercion, or otherwise; or abuse or neglect, sexual abuse, or financial exploitation, as those terms are defined in § 31-4-106, by a caretaker. Such right of action against a wrongdoer must not abate or be extinguished by the death of the elderly person or disabled adult, but must pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action must pass to the victim's personal representative; provided, that, if the personal representative is the alleged wrongdoer, then it must pass to any interested party that is not the alleged wrongdoer.

SECTION 4. Tennessee Code Annotated, Section 71-6-120(d), is amended by deleting the subsection and substituting:

(d) Damages include compensatory damages and costs where it is proven that a defendant is liable for abuse or neglect; sexual abuse or exploitation, as defined in this part; for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise; or for abuse or neglect, sexual abuse, or financial exploitation, as those terms are defined in § 31-4-106, by a caretaker. Costs include reasonable expenses and reasonable attorney's fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part, or theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion, or otherwise.

SECTION 5. Tennessee Code Annotated, Section 71-6-120, is amended by adding the following new subsection:

(i) In any will or estate contest provided under title 30, 31, or 32 or in any proceeding contesting the validity of any gifts, bequests, or other transactions, a caretaker found liable under subsection (b) is in a per se confidential relationship with the elderly person or disabled adult so as to raise the presumption of undue influence requiring the caretaker to prove by clear and convincing evidence that the challenged bequest was fair.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it.


SENATE BILL NO. 2147

PASSED: April 10, 2024

  
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RANDY McNALLY  
SPEAKER OF THE SENATE

  
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CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 23<sup>rd</sup> day of April 2024

  
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BILL LEE, GOVERNOR