

DRAFT

SUMMARY

Authorizes type B area agency that serves population of 650,000 or more persons to bring civil action against person who engages in abuse of vulnerable person.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to type B area agencies; amending ORS 124.100 and 124.125; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 124.125 is amended to read:

6 124.125. (1) The Attorney General, the Department of Human Services, a
7 **type B area agency** or any district attorney may bring an action against
8 any person who engages in conduct described in ORS 124.105 and 124.110. In
9 addition to remedies otherwise provided in ORS 124.100 to 124.140, upon
10 prevailing in the action, the court shall award to the Attorney General, De-
11 partment of Human Services, **type B area agency** or district attorney costs
12 of investigation and penalties. Penalties awarded under this section may not
13 exceed \$25,000 per occurrence.

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

19 (3) When it appears that a person is engaging in conduct described in
20 ORS 124.105 or 124.110, the Attorney General or any district attorney may

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 execute in writing and cause to be served an investigative demand upon any
2 person who is believed to have information, documentary material or phys-
3 ical evidence relevant to the alleged or suspected violation. The investigative
4 demand shall require the person, under oath or otherwise, to appear and
5 testify, to answer written interrogatories or to produce relevant documentary
6 material or physical evidence for examination, at a reasonable time and place
7 as stated in the investigative demand.

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

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

17 (a) Personal service outside of this state;

18 (b) Mailing the investigative demand by registered or certified mail to the
19 last-known place of business, residence or abode within or outside of this
20 state of the person for whom service is intended;

21 (c) As to any person other than a natural person, in the manner provided
22 for service of summons in an action or suit; or

23 (d) Such service as the court may direct.

24 (6) If any person after being served with an investigative demand under
25 subsection (3) of this section fails or refuses to obey an investigative demand
26 issued by the Attorney General or a district attorney, the Attorney General
27 or district attorney may, after notice to an appropriate court and after a
28 hearing, request an order:

29 (a) Granting injunctive relief to restrain the person from engaging in
30 conduct that is involved in the alleged or suspected violation; or

31 (b) Granting other relief as may be required, until the person obeys the

1 investigative demand.

2 (7) Any disobedience of any final order of a court under subsection (6)
3 of this section shall be punished as a contempt of court.

4 (8) ORS 192.583 to 192.607 apply to the disclosure of financial records by
5 a financial institution pursuant to the service of an investigative demand
6 under subsection (3) of this section.

7 **SECTION 2.** ORS 124.100 is amended to read:

8 124.100. (1) As used in ORS 124.100 to 124.140:

9 (a) "Elderly person" means a person 65 years of age or older.

10 (b) "Financially incapable" has the meaning given that term in ORS
11 125.005.

12 (c) "Incapacitated" has the meaning given that term in ORS 125.005.

13 (d) "Person with a disability" means a person with a physical or mental
14 impairment that:

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

17 (B) Prevents performance of substantially all the ordinary duties of oc-
18 cupations in which an individual not having the physical or mental impair-
19 ment is capable of engaging, having due regard to the training, experience
20 and circumstances of the person with the physical or mental impairment.

21 (e) **"Type B area agency" means a type B area agency, as defined**
22 **in ORS 410.040, that is designated to operate in a geographic area with**
23 **a population or 650,000 or more persons.**

24 [(e)] (f) "Vulnerable person" means:

25 (A) An elderly person;

26 (B) A financially incapable person;

27 (C) An incapacitated person; or

28 (D) A person with a disability who is susceptible to force, threat, duress,
29 coercion, persuasion or physical or emotional injury because of the person's
30 physical or mental impairment.

31 (2) A vulnerable person who suffers injury, damage or death by reason

1 of physical abuse or financial abuse may bring an action against any person
2 who has caused the physical or financial abuse or who has permitted another
3 person to engage in physical or financial abuse. The court shall award the
4 following to a plaintiff who prevails in an action under this section:

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

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

10 (c) Reasonable attorney fees incurred by the plaintiff.

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

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

14 (a) A vulnerable person;

15 (b) A guardian, conservator or attorney-in-fact for a vulnerable person;

16 (c) A personal representative for the estate of a decedent who was a vul-
17 nerable person at the time the cause of action arose; or

18 (d) A trustee for a trust on behalf of the trustor or the spouse of the
19 trustor who is a vulnerable person.

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

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

26 (6) A person commencing an action under this section must serve a copy
27 of the complaint on the Attorney General within 30 days after the action is
28 commenced.

29 **SECTION 3. This 2015 Act being necessary for the immediate pres-**
30 **ervation of the public peace, health and safety, an emergency is de-**
31 **clared to exist, and this 2015 Act takes effect on its passage.**

