

B-Engrossed
House Bill 3323

Ordered by the Senate June 8
Including House Amendments dated April 24 and Senate Amendments
dated June 8

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes type B area agency **or other person designated by Department of Human Services in county** that serves population of 650,000 or more persons to investigate suspected abuse and to bring civil action against person who engages in abuse of vulnerable person.

Sunsets July 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to type B area agencies; creating new provisions; amending ORS 124.100 and 124.125; and declaring an emergency.

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

SECTION 1. ORS 124.125 is amended to read:

124.125. (1) The Attorney General, the Department of Human Services, **a type B area agency**, **a designee** or [any] **a** district attorney may bring an action against [any] **a** 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, **type B area agency**, **designee** 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] **a** 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*] **is** 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] **a** district attorney, **an attorney representing a type B area agency or a designee** may execute in writing and cause to be served an investigative demand upon [any] **a** 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,

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 may be filed in the appropriate court.

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

5 (a) Personal service outside of this state;

6 (b) Mailing the investigative demand by registered or certified mail to the last-known place of
7 business, residence or abode within or outside of this state of the person for whom service is in-
8 tended;

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

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

12 (6) If [any] a person, after being served with an investigative demand under subsection (3) of this
13 section, fails or refuses to obey an investigative demand issued by the Attorney General, [or] a
14 district attorney, **an attorney representing a type B area agency or a designee**, the Attorney
15 General, [or] district attorney, **attorney representing a type B area agency or designee** may,
16 after notice to an appropriate court and after a hearing, request an order:

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

19 (b) Granting other relief as may be required, until the person obeys the investigative demand.

20 (7) [Any] Disobedience of [any] a final order of a court under subsection (6) of this section shall
21 be punished as a contempt of court.

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

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

25 124.100. (1) As used in ORS 124.100 to 124.140:

26 **(a) “Designee” means a person designated by the Department of Human Services to
27 conduct investigations under ORS 430.731 in a county with a population of 650,000 or more
28 persons.**

29 [(a)] **(b)** “Elderly person” means a person 65 years of age or older.

30 [(b)] **(c)** “Financially incapable” has the meaning given that term in ORS 125.005.

31 [(c)] **(d)** “Incapacitated” has the meaning given that term in ORS 125.005.

32 [(d)] **(e)** “Person with a disability” means a person with a physical or mental impairment that:

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

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

38 **(f) “Type B area agency” means a type B area agency, as defined in ORS 410.040, that is
39 designated to operate in a geographic area with a population of 650,000 or more persons.**

40 [(e)] **(g)** “Vulnerable person” means:

41 (A) An elderly person;

42 (B) A financially incapable person;

43 (C) An incapacitated person; or

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

1 (2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or fi-
2 nancial abuse may bring an action against any person who has caused the physical or financial
3 abuse or who has permitted another person to engage in physical or financial abuse. The court shall
4 award the 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 ORS 31.710, resulting
6 from the physical or financial abuse, or \$500, whichever amount is greater.

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

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

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

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

13 (a) A vulnerable person;

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

15 (c) A personal representative for the estate of a decedent who was a vulnerable person at the
16 time the cause of action arose; or

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

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

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

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

26 **SECTION 3.** No later than December 31, 2017, type B area agencies and designees, as
27 defined in ORS 124.100, shall report to the Legislative Assembly, in the manner provided in
28 ORS 192.245, on the actions brought under the authority granted to type B area agencies and
29 designees by the amendments to ORS 124.125 by section 1 of this 2015 Act. The report must
30 include the number of actions filed, including the number of actions filed on behalf of elderly
31 individuals and the number of actions filed on behalf of individuals with intellectual or de-
32 velopmental disabilities, and the outcomes of the actions.

33 **SECTION 4.** ORS 124.125, as amended by section 1 of this 2015 Act, is amended to read:

34 124.125. (1) The Attorney General, the Department of Human Services[, *a type B area agency, a*
35 *designee*] or a district attorney may bring an action against a person who engages in conduct de-
36 scribed in ORS 124.105 and 124.110. In addition to remedies otherwise provided in ORS 124.100 to
37 124.140, upon prevailing in the action, the court shall award to the Attorney General, Department
38 of Human Services[, *type B area agency, designee*] or district attorney costs of investigation and
39 penalties. Penalties awarded under this section may not exceed \$25,000 per occurrence.

40 (2) The Attorney General may intervene in a civil action brought under ORS 124.100 if the At-
41 torney General certifies that, in the opinion of the Attorney General, the action is of general public
42 importance. In the action, the state is entitled to the same relief as if the Attorney General insti-
43 tuted the action under the provisions of this section.

44 (3) When it appears that a person is engaging in conduct described in ORS 124.105 or 124.110,
45 the Attorney General[,] or a district attorney[, *an attorney representing a type B area agency or a*

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

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

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

- 14 (a) Personal service outside of this state;
- 15 (b) Mailing the investigative demand by registered or certified mail to the last-known place of
16 business, residence or abode within or outside of this state of the person for whom service is in-
17 tended;
- 18 (c) As to any person other than a natural person, in the manner provided for service of summons
19 in an action or suit; or
- 20 (d) Such service as the court may direct.

21 (6) If a person, after being served with an investigative demand under subsection (3) of this
22 section, fails or refuses to obey an investigative demand issued by the Attorney General[,] **or** a
23 district attorney, [*an attorney representing a type B area agency or a designee,*] the Attorney
24 General[,] **or** district attorney[, *attorney representing a type B area agency or designee*] may, after
25 notice to an appropriate court and after a hearing, request an order:

- 26 (a) Granting injunctive relief to restrain the person from engaging in conduct that is involved
27 in the alleged or suspected violation; or
 - 28 (b) Granting other relief as may be required, until the person obeys the investigative demand.
- 29 (7) Disobedience of a final order of a court under subsection (6) of this section shall be punished
30 as a contempt of court.

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

33 **SECTION 5.** ORS 124.100, as amended by section 2 of this 2015 Act, is amended to read:

34 124.100. (1) As used in ORS 124.100 to 124.140:

35 [(a) “*Designee*” means a person designated by the Department of Human Services to conduct in-
36 vestigations under ORS 430.731 in a county with a population of 650,000 or more persons.]

37 [(b)] (a) “Elderly person” means a person 65 years of age or older.

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

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

40 [(e)] (d) “Person with a disability” means a person with a physical or mental impairment that:

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

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

1 [(f) "Type B area agency" means a type B area agency, as defined in ORS 410.040, that is design-
2 nated to operate in a geographic area with a population of 650,000 or more persons.]

3 [(g)] (e) "Vulnerable person" means:

- 4 (A) An elderly person;
- 5 (B) A financially incapable person;
- 6 (C) An incapacitated person; or

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

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

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

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

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

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

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

21 (a) A vulnerable person;

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

23 (c) A personal representative for the estate of a decedent who was a vulnerable person at the
24 time the cause of action arose; or

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

27 (4) An action may be brought under this section only for physical abuse described in ORS
28 124.105 or for financial abuse described in ORS 124.110.

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

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

34 **SECTION 6. The amendments to ORS 124.100 and 124.125 by sections 4 and 5 of this 2015
35 Act become operative July 1, 2018.**

36 **SECTION 7. This 2015 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
38 on its passage.**