

# House Bill 3323

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 **as introduced**.

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 declaring an emergency.

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

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

5 124.125. (1) The Attorney General, the Department of Human Services, **a type B area agency**  
6 or any district attorney may bring an action against any person who engages in conduct described  
7 in ORS 124.105 and 124.110. In addition to remedies otherwise provided in ORS 124.100 to 124.140,  
8 upon prevailing in the action, the court shall award to the Attorney General, Department of Human  
9 Services, **type B area agency** or district attorney costs of investigation and penalties. Penalties  
10 awarded under this section may not exceed \$25,000 per occurrence.

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

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

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

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

29 (a) Personal service outside of this state;

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

**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 tended;

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

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

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

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

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

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

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

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

17 124.100. (1) As used in ORS 124.100 to 124.140:

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

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

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

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

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

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

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

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

30 (A) An elderly person;

31 (B) A financially incapable person;

32 (C) An incapacitated person; or

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

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

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

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

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

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

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

2 (a) A vulnerable person;

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

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

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

8 (4) An action may be brought under this section only for physical abuse described in ORS  
9 124.105 or for financial abuse described in ORS 124.110.

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

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

15 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**  
16 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
17 **on its passage.**

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