

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3323

By COMMITTEE ON HUMAN SERVICES AND EARLY CHILDHOOD

June 8

1 On page 1 of the printed A-engrossed bill, line 2, after the first semicolon insert “creating new
2 provisions;”.

3 Delete lines 4 through 27.

4 On page 2, delete lines 1 through 21 and insert:

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

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

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

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

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

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

31 “(a) Personal service outside of this state;

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

35 “(c) As to any person other than a natural person, in the manner provided for service of sum-

1 mons in an action or suit; or

2 “(d) Such service as the court may direct.

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

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

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

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

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

15 After line 23, insert:

16 “(a) ‘Designee’ means a person designated by the Department of Human Services to conduct in-
17 vestigations under ORS 430.731 in a county with a population of 650,000 or more persons.”.

18 In line 24, delete “(a)” and insert “(b)”.

19 In line 25, delete “(b)” and insert “(c)”.

20 In line 26, delete “(c)” and insert “(d)”.

21 In line 27, delete “(d)” and insert “(e)”.

22 In line 33, delete “(e)” and insert “(f)”.

23 In line 34, delete the first “or” and insert “of”.

24 In line 35, delete “(f)” and insert “(g)”.

25 On page 3, after line 20, insert:

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,

35 a 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
41 Attorney General certifies that, in the opinion of the Attorney General, the action is of general
42 public importance. In the action, the state is entitled to the same relief as if the Attorney General
43 instituted 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 sum-
19 mons 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 pun-
30 ished 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 desig-
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, re-
16 sulting 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 vulner-
26 able 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
33 the 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 In line 21, delete “3” and insert “7”.
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