

REFERENCE TITLE: vulnerable persons; liability limit; neglect

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1320

Introduced by
Senator Huppenthal

AN ACT

AMENDING TITLE 36, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 36-570; AMENDING SECTION 46-451, ARIZONA REVISED STATUTES;
RELATING TO VULNERABLE PERSONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 5.1, article 1, Arizona Revised Statutes,
3 is amended by adding section 36-570, to read:

4 36-570. Limitation of liability; punitive damages

5 A. A SERVICE PROVIDER IS NOT LIABLE FOR BREACHING A DUTY TO PREVENT
6 HARM TO A CLIENT CAUSED BY ANOTHER CLIENT UNLESS BOTH OF THE FOLLOWING
7 CONDITIONS ARE MET:

8 1. THE CLIENT HAS DEMONSTRATED IN THE PAST A THREAT OF SERIOUS
9 PHYSICAL HARM TO ANOTHER CLIENT AND THE CLIENT THAT HAS DEMONSTRATED THE
10 THREAT HAS THE ABILITY TO CARRY OUT THAT HARM.

11 2. THE SERVICE PROVIDER FAILS TO TAKE REASONABLE PRECAUTIONS.

12 B. IN AN ACTION BROUGHT AGAINST A SERVICE PROVIDER FOR HARM CAUSED BY
13 A CLIENT, A SERVICE PROVIDER IS NOT LIABLE, UNLESS THE HARM WAS THE RESULT OF
14 GROSS NEGLIGENCE.

15 C. A SERVICE PROVIDER IS NOT LIABLE FOR PUNITIVE DAMAGES FOR ACTS
16 COMMITTED BY THE SERVICE PROVIDER'S CLIENTS.

17 Sec. 2. Section 46-451, Arizona Revised Statutes, is amended to read:

18 46-451. Definitions; program goals

19 A. In this chapter, unless the context otherwise requires:

20 1. "Abuse" means:

21 (a) Intentional infliction of physical harm.

22 (b) Injury caused by negligent acts or omissions.

23 (c) Unreasonable confinement.

24 (d) Sexual abuse or sexual assault.

25 2. "De facto conservator" means any person who takes possession of the
26 estate of a vulnerable adult, without right or lawful authority. A de facto
27 conservator is subject to all of the responsibilities that attach to a
28 legally appointed conservator or trustee.

29 3. "De facto guardian" means any person who takes possession of the
30 person of a vulnerable adult, without right or lawful authority. A de facto
31 guardian is subject to all of the responsibilities that attach to a legally
32 appointed guardian.

33 4. "Exploitation" means the illegal or improper use of a vulnerable
34 adult or his resources for another's profit or advantage.

35 5. "Informed consent" means any of the following:

36 (a) A written expression by the person that the person fully
37 understands the potential risks and benefits of the withdrawal of food,
38 water, medication, medical services, shelter, cooling, heating or other
39 services necessary to maintain minimum physical or mental health and that the
40 person desires that the services be withdrawn.

41 (b) Consent to withdraw food, water, medication, medical services,
42 shelter, cooling, heating or other services necessary to maintain minimum
43 physical or mental health as permitted by an order of a court of competent
44 jurisdiction.

45 (c) A declaration made pursuant to title 36, chapter 32.

1 (d) Consent by another person under a durable power of attorney
2 relating to health care services to withdraw food, water, medication, medical
3 services, shelter, cooling, heating or other services necessary to maintain
4 minimum physical or mental health.

5 6. "Neglect" means a pattern of conduct without the person's informed
6 consent resulting in deprivation of food, water, medication, medical
7 services, shelter, cooling, heating or other services necessary to maintain
8 minimum physical or mental health. **A SINGLE NEGLIGENT ACT DOES NOT**
9 **CONSTITUTE NEGLIGENCE UNLESS THE ACT WAS CAUSED BY RECKLESSNESS, DELIBERATE**
10 **INDIFFERENCE OR GROSS NEGLIGENCE.**

11 7. "Protective services" means a program of identifiable and
12 specialized social services that may offer social services appropriate to
13 resolve problems of abuse, exploitation or neglect of a vulnerable adult.

14 8. "Protective services worker" means a person who has been selected
15 by and trained under the requirements prescribed by the department to provide
16 protective services.

17 9. "Vulnerable adult" means an individual who is eighteen years of age
18 or older and who is unable to protect himself from abuse, neglect or
19 exploitation by others because of a physical or mental impairment.
20 Vulnerable adult includes an incapacitated person as defined in section
21 14-5101.

22 B. Protective services programs shall seek to maintain the adult in
23 his familiar environment by strengthening his capacity for self-maintenance
24 or by providing supportive services.

25 C. Nothing in this section shall be construed to mean that an adult is
26 abused, neglected or in need of protective services for the sole reason that
27 he relies on treatment from a recognized religious method of healing in lieu
28 of medical treatment.

29 D. A written expression pursuant to subsection A, paragraph 5,
30 subdivision (a) of this section is valid only if the person is of sound mind
31 when the consent is made and if the consent is witnessed by at least two
32 individuals who do not benefit by the withdrawal of services.