House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 84

HOUSE BILL 2425

AN ACT

AMENDING SECTION 46-455, ARIZONA REVISED STATUTES; RELATING TO VULNERABLE ADULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 46-455, Arizona Revised Statutes, is amended to read:

46-455. Permitting life or health of a vulnerable adult to be endangered by neglect; violation; classification; civil remedy; definition

A. A person who has been employed to provide care, who is a de facto guardian or de facto conservator or who has been appointed by a court to provide care to a vulnerable adult and who causes or permits the life of the adult to be endangered or that person's health to be injured or endangered by neglect is guilty of a class 5 felony.

B. A vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such vulnerable adult for having caused or permitted such conduct. A physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25, while providing services within the scope of that person's licensure, is not subject to civil liability for damages under this section unless either:

1. At the time of the events giving rise to a cause of action under this section, the person was employed or retained by the facility or designated by the facility, with the consent of the person, to serve the function of medical director as that term is defined or used by federal or state law governing a nursing care institution, an assisted living center, an assisted living facility, an assisted living home, an adult day health care facility, a residential care institution, an adult care home, a skilled nursing facility or a nursing facility.

2. At the time of the events giving rise to a cause of action under this section, all of the following applied:

(a) The person was a physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25.

(b) The person was the primary provider responsible for the medical services to the patient while the patient was at one of the facilities listed in paragraph 1 of this subsection.

C. Any person who was the primary provider of medical services to the patient in the last two years before it was recommended that the patient be admitted to one of the facilities listed in subsection B, paragraph 1 of this section is exempt from civil liability for damages under this section.

D. For the purposes of this section, primary provider does not include a consultant or specialist as listed in subsection B, paragraph 2,

subdivision (a) of this section who is requested by the primary provider to provide care to the patient for whom the primary provider is responsible, unless that consultant or specialist assumes the primary care of the patient.

E. The state may file an action pursuant to this section on behalf of those persons endangered or injured to prevent, restrain or remedy the conduct described in this section.

F. The superior court has jurisdiction to prevent, restrain and remedy the conduct described in this section, after making provision for the rights of all innocent persons affected by such conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

G. Before a determination of liability, the orders may include, but are not limited to, entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the court deems proper.

H. After a determination of liability such orders may include, but are not limited to:

1. Ordering any person to divest himself of any direct or indirect interest in any enterprise.

2. Imposing reasonable restrictions, including permanent injunctions, on the future activities or investments of any person including prohibiting any person from engaging in the same type of endeavor or conduct to the extent permitted by the constitutions of the United States and this state.

3. Ordering dissolution or reorganization of any enterprise.

4. Ordering the payment of actual and consequential damages, as well as costs of suit and reasonable attorney fees, to those persons injured by the conduct described in this section. The court or jury may order the payment of punitive damages under common law principles that are generally applicable to the award of punitive damages in other civil actions. The court may order the payment of reasonable attorney fees that do not exceed ~~two times~~ the total amount of compensatory damages that are awarded in the action, except that the court may award additional attorney fees in connection with the action after the court has reviewed and approved a request for additional attorney fees to the plaintiff.

5. Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of this state or the county that incurred such costs and expenses.

I. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.

J. A person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person and the person's attorney. Service of the notice does not limit or otherwise affect the right of this state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name this state or the attorney general as a party to the action. Upon receipt of a complaint the attorney general shall notify the appropriate licensing agency.

K. The initiation of civil proceedings pursuant to this section shall be commenced within two years after actual discovery of the cause of action.

L. Except for the standard of proof provided in subsection H, paragraph 4 of this section, the standard of proof in civil actions brought pursuant to this section is the preponderance of the evidence.

M. Except in cases filed by a county attorney, the attorney general, upon timely application, may intervene in any civil action or proceeding brought under this section if the attorney general certifies that in his opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

N. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as a friend of the court in any proceeding in which a claim under this section has been asserted or in which a court is interpreting section 46-453 or this section.

O. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.

P. The cause of action or the right to bring a cause of action pursuant to subsection B or E of this section shall not be limited or affected by the death of the vulnerable adult.

Q. For the purposes of this section, "enterprise" means any corporation, partnership, association, labor union or other legal entity, or any group of persons associated in fact although not a legal entity, that is involved with providing care to a vulnerable adult.

APPROVED BY THE GOVERNOR APRIL 16, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2010.