

2015 DRAFTING REQUEST

Bill

Received: 11/17/2015 Received By: phurley
For: Robert Wirch (608) 267-8979 Same as LRB:
May Contact: By/Representing: Steven
Subject: Courts - damages Drafter: swalkenh
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Wirch@legis.wisconsin.gov
Carbon copy (CC) to: sarah.walkenhorstbarber@legis.wisconsin.gov
peggy.hurley@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Civil cause of action for financial exploitation

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	swalkenh 1/15/2016	kfollett 1/14/2016	_____	lparisi 1/14/2016		State S&L
/1		kfollett 1/15/2016	_____	sbasford 1/15/2016	sbasford 1/15/2016	State S&L

FE Sent For:

*at intis
2/3/16*

<END>

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/P1	swalkenh	kfollett 1/14/2016	_____	lparisi 1/14/2016		State S&L

FE Sent For:

<END>

*Pls
jacket*

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

4/15/16

Per office



no changes, convert to 11 please

Hurley, Peggy

From: Gillitzer, Steven
Sent: Tuesday, November 17, 2015 8:31 AM
To: Hurley, Peggy
Subject: RE: Drafting request

Good morning, Peggy. Senator Wirch is just focused on the financial exploitation aspect, and we can leave out the part regarding the AG. Thank you!

From: Hurley, Peggy
Sent: Monday, November 16, 2015 5:13 PM
To: Gillitzer, Steven <Steven.Gillitzer@legis.wisconsin.gov>; Matthias, Mary <Mary.Matthias@legis.wisconsin.gov>
Subject: RE: Drafting request

Hi Steve and Mary,

I can draft this for Senator Wirch. It appears the Oregon law allows for the civil suit to be filed for cases of physical abuse and for cases of financial exploitation. Do you wish your bill to include only financial exploitation? Additionally, I see the Oregon law requires service on the attorney general whenever a case is filed. Do you wish to include that in your bill, too?

Peggy Hurley
Legislative Reference Bureau
608 266 8906

From: LRB.Legal
Sent: Monday, November 16, 2015 5:05 PM
To: Hurley, Peggy <Peggy.Hurley@legis.wisconsin.gov>
Subject: FW: Drafting request

From: Gillitzer, Steven
Sent: Monday, November 16, 2015 5:01 PM
To: LRB.Legal <lrblegal@legis.wisconsin.gov>
Subject: Drafting request

Good afternoon. I'm not sure who the proper drafter is, but Senator Wirch is looking to have legislation drafted to deal with elder financial exploitation. He has been working with Mary Matthias at Leg Council on what the legislation would look like, and she sent over the below email, which she said should be sufficient for the drafter to go on. Please let me, or Mary, know if you need more information.

Steve Gillitzer
Office of Sen. Bob Wirch
22nd Senate District

From: Matthias, Mary
Sent: Monday, November 16, 2015 11:33 AM

To: Gillitzer, Steven <Steven.Gillitzer@legis.wisconsin.gov>

Subject: RE: Elder Financial Exploitation Civil Laws

This should be enough for the drafter to go on—the relief provided by ORS 124.100(2):

<http://www.oregonlaws.org/ors/124.100>

<http://www.oregonlaws.org/ors/124.100>**From:** Gillitzer, Steven

Sent: Monday, November 16, 2015 11:11 AM

To: Matthias, Mary <Mary.Matthias@legis.wisconsin.gov>

Subject: Elder Financial Exploitation Civil Laws

Good morning, Mary. Thank you for the research that you did on the elder financial exploitation issue that Senator Wirch raised. Sen. Wirch is planning to move forward with state legislation on the issue similar to what has been enacted in the five states mentioned in the article – Oregon, California, Arizona, Florida and Hawaii. However, I'm having trouble finding information on how the laws in these states work in order to provide drafting instructions to LRB. Do you have any documents or information that can help with this? Thanks in advance.

Steve Gillitzer

Office of Sen. Bob Wirch

22nd Senate District

2013 ORS § 124.100¹

Definitions for ORS 124.100 to 124.140

- action authorized
- relief
- qualifications for bringing action
- service on Attorney General

- (1) As used in ORS 124.100 (Definitions for ORS 124.100 to 124.140) to 124.140 (Estoppel based on criminal conviction):
- (a) Elderly person means a person 65 years of age or older.
 - (b) Financially incapable has the meaning given that term in ORS 125.005 (Definitions).
 - (c) Incapacitated has the meaning given that term in ORS 125.005 (Definitions).
 - (d) Person with a disability means a person with a physical or mental impairment that:
 - (A) Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; **and**
 - (B) Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the person with the physical or mental impairment.
 - (e) Vulnerable person means:
 - (A) An elderly person;
 - (B) A financially incapable person;
 - (C) An incapacitated person; **or**
 - (D) A person with a disability who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the persons physical or mental impairment.

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

Only financial exploitation for purposes of this draft, per instructions

- (a) An amount equal to three times all economic damages, as defined in ORS 31.710 (Noneconomic damages), resulting from the ~~physical or~~ financial abuse, or \$500, whichever amount is greater.
- (b) An amount equal to three times all noneconomic damages, as defined by ORS 31.710 (Noneconomic damages), resulting from the ~~physical or~~ financial abuse.
- (c) Reasonable attorney fees incurred by the plaintiff.
- (d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

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

- (a) A vulnerable person;
- (b) A guardian, conservator or attorney-in-fact for a vulnerable person;
- (c) A personal representative for the estate of a decedent who was a vulnerable person at the time the cause of action arose; or
- (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable person.

(4) An action may be brought under this section ~~only for physical abuse~~ ~~described in ORS 124.105 (Physical abuse subject to action)~~ or for financial abuse described in ORS 124.110 (Financial abuse subject to action).

Only financial per instructions

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

Only financial per instructions

(6) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced. [1995 c.674 §1; 1997 c.249 §41; 1999 c.305 §1; 2001 c.843 §3; 2003 c.211 §1; 2005 c.87 §1; 2005 c.386 §1a; 2007 c.70 §30]

Do not include per instructions

...

Notes of Decisions

Person is incapacitated if persons ability to protect self is, while being abused, significantly impaired. Herring v. American Medical Response Northwest, 255 Or App 315, 297 P3d 9 (2013)

Person may be incapacitated even if period of time during which impairment occurs does not last as long as period of time during which abuse occurs. Herring v. American Medical Response Northwest, 255 Or App 315, 297 P3d 9 (2013)

Award for noneconomic damages under this provision may exceed limit imposed on award for noneconomic damages under ORS 31.710 (Noneconomic damages). Herring v. American Medical Response Northwest, 255 Or App 315, 297 P3d 9 (2013)

Defendant is not required to have acted with certain mens rea for court to award noneconomic damages under this provision. Herring v. American Medical Response Northwest, 255 Or App 315, 297 P3d 9 (2013)

Related Statutes³

- 124.077
Immunity for disclosure to prospective employer
- 124.105
Physical abuse subject to action
- 124.110
Financial abuse subject to action
- 124.115
Persons not subject to action
- 124.120
Relief available
- 124.125
Action by Attorney General, Department of Human Services or district attorney
- 124.130
Statute of limitation
- 124.135
Remedies not exclusive

- 124.140
Estoppel based on criminal conviction

¹ Legislative Counsel Committee, *CHAPTER 124—Abuse Prevention and Reporting; Civil Action for Abuse*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors124.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 124*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano124.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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2013 ORS § 125.005¹

Definitions

As used in this chapter:

- (1) Conservator means a person appointed as a conservator under the provisions of this chapter.
- (2) Fiduciary means a guardian or conservator appointed under the provisions of this chapter or any other person appointed by a court to assume duties with respect to a protected person under the provisions of this chapter.
- (3) Financially incapable means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. Manage financial resources means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.
- (4) Guardian means a person appointed as a guardian under the provisions of this chapter.
- (5) Incapacitated means a condition in which a persons ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the persons physical health or safety. Meeting the essential requirements for physical health and safety means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.
- (6) Minor means any person who has not attained 18 years of age.
- (7) Protected person means a person for whom a protective order has been entered.
- (8) Protective order means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.

- (9) Protective proceeding means a proceeding under this chapter.
- (10) Respondent means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055 (Petitions in protective proceedings).
- (11) Visitor means a person appointed by the court under ORS 125.150 (Appointment of visitors) for the purpose of interviewing and evaluating a respondent or protected person. [1995 c.664 §1; 2007 c.70 §31]

• • •

Notes of Decisions

To establish person is incapacitated requires clear and convincing evidence that person has severely impaired perception or communication skills that cause person to be unable to perform essential functions, resulting in threat to life or health. Schaefer v. Schaefer, 183 Or App 513, 52 P3d 1125 (2002)

Related Statutes³

- 105.772
Preservation of future interests
- 124.100
Definitions for ORS 124.100 to 124.140
- 127.002
Definitions for ORS 127.005 to 127.045
- 130.010
UTC 103. Definitions
- 430.735
Definitions for ORS 430.735 to 430.765
- 471.565
Liability for providing or serving alcoholic beverages to intoxicated person
- 706.005
Definitions for Bank Act

¹ Legislative Counsel Committee, *CHAPTER 125—Protective Proceedings*,
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors125.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 125*,
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano125.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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2013 ORS § 124.110¹

Financial abuse subject to action

- (1) An action may be brought under ORS 124.100 (Definitions for ORS 124.100 to 124.140) for financial abuse in the following circumstances:
- (a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.
 - (b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:
 - (A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; **and**
 - (B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person.
 - (c) When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020 (Ex parte hearing).
- (2) A transfer of money or property that is made for the purpose of qualifying a vulnerable person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful taking or appropriation under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section. [1995 c.671 §3; 1999 c.305 §2; 1999 c.875 §8; 2005 c.386 §3]

...

Notes of Decisions

Taking is wrongful if carried out in pursuit of improper motive or by improper means. *Church v. Woods*, 190 Or App 112, 77 P3d 1150 (2003)

Related Statutes³

- 112.455
Definitions for ORS 112.455 to 112.555
- 112.457
Application to abuser
- 124.100
Definitions for ORS 124.100 to 124.140
- 124.115
Persons not subject to action
- 124.120
Relief available
- 124.125
Action by Attorney General, Department of Human Services or district attorney
- 124.130
Statute of limitation

¹ Legislative Counsel Committee, *CHAPTER 124—Abuse Prevention and Reporting; Civil Action for Abuse*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors124.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 124*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano124.html (2013) (last accessed Apr. 27, 2014).

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www.oregonlaws.org

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Call w/ Fee:

Confirmed that office is limiting scope of request to creating cause of action for financial exploitation of vulnerable person

Include penalties - fees, etc.

Do not need to include additional legislative pieces used in Oregon statutes



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 1/14/16

Requested - Today, if possible, or tomorrow

Gen

1 **AN ACT ...; relating to: civil cause of action for financial exploitation.**

Analysis by the Legislative Reference Bureau

xx
x
This bill creates a civil cause of action for financial exploitation of a vulnerable person. The bill defines the term "vulnerable person" to include persons who are elderly, financially incapable, incapacitated, or those with a disability who are susceptible to force, threat, duress, coercion, persuasion, or physical or emotional injury because of a physical or mental impairment. Under the bill, a court must award a person who brings a successful action enhanced damages, attorney fees, and reasonable fees for any necessary services of a conservator or guardian ad litem.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 895.033 of the statutes is created to read:

3 **895.033 Financial exploitation of a vulnerable individual.** (1) In this
4 section:

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

SECTION 1

1 (b) “Financially incapable person” means a person who is unable to manage
2 financial resources of the person effectively for reasons including mental illness,
3 intellectual disability, physical illness or disability, chronic use of drugs or controlled
4 substances, chronic intoxication, confinement, detention by a foreign power, or
5 disappearance.

6 (c) “Incapacitated” has the meaning given in s. 701.0103 (12).

7 (d) “Noneconomic damages” has the meaning given in s. 893.55 (4) (a).

8 (e) “Person with a disability” means a person with a physical or mental
9 impairment that has all of the following characteristics:

10 1. Is likely to continue without substantial improvement for no fewer than 12
11 months or to result in death.

12 2. Prevents performance of substantially all of the ordinary duties of
13 occupations in which an individual not having the physical or mental impairment is
14 capable of engaging, having due regard for the training, experience, and
15 circumstances of the person with the physical or mental impairment.

16 (f) “Vulnerable person” means any of the following:

17 1. An elderly person.

18 2. A financially incapable person.

19 3. An incapacitated person.

20 4. A person with a disability who is susceptible to force, threat, duress, coercion,
21 persuasion, or physical or emotional injury because of the person’s physical or mental
22 impairment.

23 (2) Any of the following persons may, on behalf of a vulnerable person who
24 suffers injury or damage by reason of financial exploitation, bring an action under

1 this section against a person who has caused the financial exploitation or has
2 permitted another person to engage in financial exploitation:

3 (a) A vulnerable person.

4 (b) A guardian or conservator for a vulnerable person.

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

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

9 (3) An action may be brought under this section for financial exploitation of a
10 vulnerable person if any of the following circumstances exist:

11 (a) A person wrongfully takes or appropriates money or property of a
12 vulnerable person, without regard to whether the person taking or appropriating the
13 money or property has a fiduciary relationship with the vulnerable person.

14 (b) A vulnerable person requests that another person transfer to the vulnerable
15 person any money or property that the other person holds or controls and that
16 belongs to or is held in express trust, constructive trust, or resulting trust for the
17 vulnerable person, and the other person, without good cause, either continues to hold
18 the money or property or fails to take reasonable steps to make the money or property
19 readily available to the vulnerable person when all of the following are true:

20 1. The other person or someone acting in concert with the other person acquires
21 ownership or control of the money or property in whole or in part from the vulnerable
22 person.

23 2. The other person acts in bad faith, or knew or should have known of the right
24 of the vulnerable person to have the money or property transferred as requested or
25 otherwise made available to the vulnerable person.

SECTION 1

1 (4) A person may bring an action under this section against a person for
2 permitting another person to engage in financial exploitation of a vulnerable person
3 if the person knowingly acts or fails to act under circumstances in which a reasonable
4 person should have known of the financial exploitation.

5 (5) A transfer of money or property that is made for the purpose of qualifying
6 a vulnerable person for Medical Assistance benefits or for any other state or federal
7 assistance program, or the holding and exercise of control over money or property
8 after such a transfer, does not constitute a wrongful taking or appropriation under
9 sub. (3) (a) or the holding of money or property without good cause under sub. (3) (b).

10 (6) The court shall award all of the following to a plaintiff who prevails in an
11 action under this section:

12 (a) An amount equal to 3 times all economic damages resulting from the
13 financial exploitation, or \$500, whichever amount is greater.

14 (b) An amount equal to 3 times all noneconomic damages resulting from the
15 financial exploitation.

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

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

****NOTE: Based on the instructions provided, I drafted this bill following the language used in the Oregon statute. I note, however, that Wisconsin has an existing definition of financial exploitation in s. 46.90 (1) (ed). That section includes reference to acts punishable as crimes under Wisconsin law. One alternative would be to eliminate sub. (3) in this draft and instead utilize the existing definition in s. 46.90 for the scope of circumstances constituting financial exploitation. Section 46.90 does not limit the definition to acts against vulnerable persons. Please let me know if you would like to change the draft or discuss further.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3890/P1
SWB:kjf

8/1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 1/15/16

Requested today
please

Jacket for Senate
please

1 AN ACT *to create* 895.033 of the statutes; **relating to:** civil cause of action for
2 financial exploitation.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for financial exploitation of a vulnerable person. The bill defines the term “vulnerable person” to include persons who are elderly, financially incapable, incapacitated, or those with a disability who are susceptible to force, threat, duress, coercion, persuasion, or physical or emotional injury because of a physical or mental impairment. Under the bill, a court must award a person who brings a successful action enhanced damages, attorney fees, and reasonable fees for any necessary services of a conservator or guardian ad litem.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.033 of the statutes is created to read:
4 **895.033 Financial exploitation of a vulnerable individual.** (1) In this
5 section:
6 (a) “Elderly person” means a person 65 years of age or older.

Jacket
please

SECTION 1

1 (b) “Financially incapable person” means a person who is unable to manage
2 financial resources of the person effectively for reasons including mental illness,
3 intellectual disability, physical illness or disability, chronic use of drugs or controlled
4 substances, chronic intoxication, confinement, detention by a foreign power, or
5 disappearance.

6 (c) “Incapacitated” has the meaning given in s. 701.0103 (12).

7 (d) “Noneconomic damages” has the meaning given in s. 893.55 (4) (a).

8 (e) “Person with a disability” means a person with a physical or mental
9 impairment that has all of the following characteristics:

10 1. Is likely to continue without substantial improvement for no fewer than 12
11 months or to result in death.

12 2. Prevents performance of substantially all of the ordinary duties of
13 occupations in which an individual not having the physical or mental impairment is
14 capable of engaging, having due regard for the training, experience, and
15 circumstances of the person with the physical or mental impairment.

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17 1. An elderly person.

18 2. A financially incapable person.

19 3. An incapacitated person.

20 4. A person with a disability who is susceptible to force, threat, duress, coercion,
21 persuasion, or physical or emotional injury because of the person’s physical or mental
22 impairment.

23 (2) Any of the following persons may, on behalf of a vulnerable person who
24 suffers injury or damage by reason of financial exploitation, bring an action under

1 this section against a person who has caused the financial exploitation or has
2 permitted another person to engage in financial exploitation:

3 (a) A vulnerable person.

4 (b) A guardian or conservator for a vulnerable person.

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

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

9 **(3)** An action may be brought under this section for financial exploitation of a
10 vulnerable person if any of the following circumstances exist:

11 (a) A person wrongfully takes or appropriates money or property of a
12 vulnerable person, without regard to whether the person taking or appropriating the
13 money or property has a fiduciary relationship with the vulnerable person.

14 (b) A vulnerable person requests that another person transfer to the vulnerable
15 person any money or property that the other person holds or controls and that
16 belongs to or is held in express trust, constructive trust, or resulting trust for the
17 vulnerable person, and the other person, without good cause, either continues to hold
18 the money or property or fails to take reasonable steps to make the money or property
19 readily available to the vulnerable person when all of the following are true:

20 1. The other person or someone acting in concert with the other person acquires
21 ownership or control of the money or property in whole or in part from the vulnerable
22 person.

23 2. The other person acts in bad faith, or knew or should have known of the right
24 of the vulnerable person to have the money or property transferred as requested or
25 otherwise made available to the vulnerable person.

1 (4) A person may bring an action under this section against a person for
2 permitting another person to engage in financial exploitation of a vulnerable person
3 if the person knowingly acts or fails to act under circumstances in which a reasonable
4 person should have known of the financial exploitation.

5 (5) A transfer of money or property that is made for the purpose of qualifying
6 a vulnerable person for Medical Assistance benefits or for any other state or federal
7 assistance program, or the holding and exercise of control over money or property
8 after such a transfer, does not constitute a wrongful taking or appropriation under
9 sub. (3) (a) or the holding of money or property without good cause under sub. (3) (b).

10 (6) The court shall award all of the following to a plaintiff who prevails in an
11 action under this section:

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13 financial exploitation, or \$500, whichever amount is greater.

14 (b) An amount equal to 3 times all noneconomic damages resulting from the
15 financial exploitation.

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

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

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