



General Assembly

Amendment

January Session, 2015

LCO No. 7715



Offered by:

SEN. FLEXER, 29th Dist.
SEN. KELLY, 21st Dist.
SEN. OSTEN, 19th Dist.

REP. SERRA, 33rd Dist.
REP. BOLINSKY, 106th Dist.
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To: Subst. Senate Bill No. 1005

File No. 201

Cal. No. 169

**"AN ACT PROTECTING ELDERLY CONSUMERS FROM
EXPLOITATION AND ADOPTING THE CONNECTICUT UNIFORM
POWER OF ATTORNEY ACT."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 17b-450 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2015*):

5 For purposes of sections 17b-450 to 17b-461, inclusive:

6 (1) The term "elderly person" means any resident of Connecticut
7 who is sixty years of age or older.

8 (2) An elderly person shall be deemed to be "in need of protective
9 services" if such person is unable to perform or obtain services which
10 are necessary to maintain physical and mental health.

11 (3) The term "services which are necessary to maintain physical and
12 mental health" includes, but is not limited to: [,] (A) [the] The provision
13 of medical care for physical and mental health needs, (B) the relocation
14 of an elderly person to a facility or institution able to offer such care,
15 (C) assistance in personal hygiene, food, clothing, adequately heated
16 and ventilated shelter, (D) protection from health and safety hazards,
17 (E) protection from [maltreatment the result of which includes, but is
18 not limited to, malnutrition, deprivation of necessities or physical
19 punishment] abuse, neglect, exploitation or abandonment, and (F)
20 transportation necessary to secure any of the above stated needs,
21 except that this term shall not include taking such person into custody
22 without consent except as provided in sections 17b-450 to 17b-461,
23 inclusive.

24 (4) The term "protective services" means services provided by the
25 state or other governmental or private organizations or individuals
26 which are necessary to prevent abuse, neglect, exploitation or
27 abandonment.

28 [Abuse] (5) The term "abuse" includes, but is not limited to, the
29 wilful infliction of physical pain, injury or mental anguish, or the
30 wilful deprivation by a [caretaker] caregiver of services which are
31 necessary to maintain physical and mental health.

32 [Neglect] (6) The term "neglect" refers to the failure or inability of an
33 elderly person [who is either living alone and not able] to provide for
34 himself or herself the services which are necessary to maintain physical
35 and mental health or [is not receiving such necessary services from the
36 responsible caretaker] the failure to provide or arrange for provision of
37 such necessary services by a caregiver.

38 [Exploitation] (7) The term "exploitation" refers to the act or process
39 of taking advantage of an elderly person by another person or
40 [caretaker] caregiver whether for monetary, personal or other benefit,
41 gain or profit.

42 [Abandonment] (8) The term "abandonment" refers to the desertion
43 or wilful forsaking of an elderly person by a [caretaker] caregiver or
44 the foregoing of duties or the withdrawal or neglect of duties and
45 obligations owed an elderly person by a [caretaker] caregiver or other
46 person.

47 [(5)] (9) The term ["caretaker"] "caregiver" means a person who has
48 the responsibility for the care of an elderly person as a result of family
49 relationship or who has assumed the responsibility for the care of the
50 elderly person voluntarily, by contract or by order of a court of
51 competent jurisdiction.

52 Sec. 2. Section 17b-451 of the general statutes is repealed and the
53 following is substituted in lieu thereof (*Effective October 1, 2015*):

54 (a) [Any] A mandatory reporter, as defined in this section, who has
55 reasonable cause to suspect or believe that any elderly person has been
56 abused, neglected, exploited or abandoned, or is in a condition that is
57 the result of such abuse, neglect, exploitation or abandonment, or is in
58 need of protective services, shall, not later than seventy-two hours
59 after such suspicion or belief arose, report such information or cause a
60 report to be made in any reasonable manner to the Commissioner of
61 Social Services or to the person or persons designated by the
62 commissioner to receive such reports. The term "mandatory reporter"
63 means (1) any physician or surgeon licensed under the provisions of
64 chapter 370, (2) any resident physician or intern in any hospital in this
65 state, whether or not so licensed, (3) any registered nurse, (4) any
66 nursing home administrator, nurse's aide or orderly in a nursing home
67 facility or residential care home, (5) any person paid for caring for a
68 patient in a nursing home facility or residential care home, (6) any staff
69 person employed by a nursing home facility or residential care home,
70 (7) any patients' advocate, (8) any licensed practical nurse, medical
71 examiner, dentist, optometrist, chiropractor, podiatrist, social worker,
72 clergyman, police officer, pharmacist, psychologist or physical
73 therapist, [and] (9) any person paid for caring for an elderly person by
74 any institution, organization, agency or facility, [. Such persons shall

75 include an] including without limitation, any employee of a
76 community-based services provider, senior center, home care agency,
77 homemaker and companion agency, adult day care center, village-
78 model community and congregate housing facility, [who has
79 reasonable cause to suspect or believe that any elderly person has been
80 abused, neglected, exploited or abandoned, or is in a condition that is
81 the result of such abuse, neglect, exploitation or abandonment, or is in
82 need of protective services, shall, not later than seventy-two hours
83 after such suspicion or belief arose, report such information or cause a
84 report to be made in any reasonable manner to the Commissioner of
85 Social Services or to the person or persons designated by the
86 commissioner to receive such reports. Any person required to report
87 under the provisions of this section] and (10) any person licensed or
88 certified as an emergency medical services provider pursuant to
89 chapter 368d or chapter 384d, including any such emergency medical
90 services provider who is a member of a municipal fire department.
91 Any mandatory reporter who fails to make such report within the
92 prescribed time period shall be fined not more than five hundred
93 dollars, except that, if such person intentionally fails to make such
94 report within the prescribed time period, such person shall be guilty of
95 a class C misdemeanor for the first offense and a class A misdemeanor
96 for any subsequent offense. Any institution, organization, agency or
97 facility employing individuals to care for persons sixty years of age or
98 older shall provide mandatory training on detecting potential abuse,
99 [and] neglect, exploitation and abandonment of such persons and
100 inform such employees of their obligations under this section.

101 (b) Such report shall contain the name and address of the involved
102 elderly person, information regarding the nature and extent of the
103 abuse, neglect, exploitation or abandonment, and any other
104 information which the reporter believes might be helpful in an
105 investigation of the case and the protection of such elderly person.

106 (c) Any other person having reasonable cause to suspect or believe
107 that an elderly person is being, or has been, abused, neglected,

108 exploited or abandoned, or who is in need of protective services, may
109 report such information in any reasonable manner to the commissioner
110 or the commissioner's designee.

111 (d) (1) Subject to subdivision (2) of this subsection, any person who
112 makes any report pursuant to sections 17b-450 to 17b-461, inclusive, or
113 who testifies in any administrative or judicial proceeding arising from
114 such report shall be immune from any civil or criminal liability on
115 account of such report or testimony, except for liability for perjury.

116 (2) Any person who makes any report pursuant to sections 17b-450
117 to 17b-461, inclusive, is guilty of making a fraudulent or malicious
118 report or providing false testimony when such person (A) wilfully
119 makes a fraudulent or malicious report to the commissioner pursuant
120 to the provisions of this section, (B) conspires with another person to
121 make or cause to be made such report, or (C) wilfully testifies falsely in
122 any administrative or judicial proceeding arising from such report as
123 to the abuse, neglect, exploitation or abandonment of, or need of
124 protective services for, an elderly person. Making a fraudulent or
125 malicious report or providing false testimony is a class A
126 misdemeanor.

127 (e) Any person who is discharged or in any manner discriminated
128 or retaliated against for making, in good faith, a report pursuant to this
129 section shall be entitled to all remedies available under law including,
130 but not limited to, remedies available under sections 19a-532 and 31-
131 51m, as applicable.

132 (f) For the purposes of sections 17b-450 to 17b-461, inclusive, the
133 treatment of any elderly person by a Christian Science practitioner, in
134 lieu of treatment by a licensed practitioner of the healing arts, or the
135 refusal of treatment by an elderly person for religious reasons shall not
136 of itself constitute grounds for the implementation of protective
137 services.

138 Sec. 3. (NEW) (*Effective October 1, 2015*) (a) An elderly person who

139 has been the victim of abuse, neglect, exploitation or abandonment, as
140 such terms are defined in section 17b-450 of the general statutes, as
141 amended by this act, may have a cause of action against any
142 perpetrator and may recover actual and punitive damages for such
143 abuse, neglect, exploitation or abandonment together with costs and a
144 reasonable attorney's fee. The action may be brought by the elderly
145 person, or the elderly person's guardian or conservator, by a person or
146 organization acting on behalf of the elderly person with the consent of
147 such elderly person or the elderly person's guardian or conservator, or
148 by the personal representative of the estate of a deceased elderly
149 victim.

150 (b) In any action to recover damages based upon a claim of
151 exploitation, as defined in section 17b-450, of the general statutes, as
152 amended by this act, the Superior Court shall have jurisdiction to
153 render an order pursuant to chapter 904 of the general statutes
154 prohibiting the defendant from transferring, depleting or otherwise
155 alienating or diminishing any funds, assets or property.

156 (c) Notwithstanding the preceding provisions of this section, no
157 cause of action for "neglect" or "abandonment" may be brought against
158 any person who has no contractual obligation to provide care to an
159 elderly person unless such neglect was wilful or criminal.

160 Sec. 4. Section 45a-447 of the general statutes is repealed and the
161 following is substituted in lieu thereof (*Effective October 1, 2015*):

162 (a) (1) A person finally adjudged guilty, either as the principal or
163 accessory, of any crime under section 53a-54a, 53a-54b, 53a-54c, 53a-
164 54d, 53a-55, [or] 53a-55a, 53a-122, 53a-123, or 53a-321, or in any other
165 jurisdiction, of any crime, the essential elements of which are
166 substantially similar to such crimes, or a person determined to be
167 guilty under any of said sections pursuant to this subdivision, shall not
168 inherit or receive any part of the estate of (A) the deceased victim,
169 whether under the provisions of any act relating to intestate
170 succession, or as devisee or legatee, or otherwise under the will of the

171 deceased victim, or receive any property as beneficiary or survivor of
172 the deceased victim, or (B) any other person when such homicide or
173 death terminated an intermediate estate, or hastened the time of
174 enjoyment. For the purposes of this subdivision, an interested person
175 may bring an action in the Superior Court for a determination, by a
176 preponderance of the evidence, that an heir, devisee, legatee or
177 beneficiary of the deceased victim who has predeceased the interested
178 person would have been adjudged guilty, either as the principal or
179 accessory, under section 53a-54a, 53a-54b, 53a-54c, 53a-54d, 53a-55, [or]
180 53a-55a, 53a-122, 53a-123, or 53a-321, had the heir, devisee, legatee or
181 beneficiary survived.

182 (2) With respect to inheritance under the will of the deceased victim,
183 or rights to property as heir, devisee, legatee or beneficiary of the
184 deceased victim, the person whose participation in the estate of
185 another or whose right to property as such heir, devisee, legatee or
186 beneficiary is so prevented under the provisions of this section shall be
187 considered to have predeceased the [person killed] deceased victim.

188 (3) With respect to real property owned in joint tenancy with rights
189 of survivorship with the deceased victim, such final adjudication as
190 guilty shall be a severance of the joint tenancy, and shall convert the
191 joint tenancy into a tenancy in common as to the person so adjudged
192 and the deceased victim but not as to any remaining joint tenant or
193 tenants, such severance being effective as of the time such adjudication
194 of guilty becomes final. When such jointly owned property is real
195 property, a certified copy of the final adjudication as guilty shall be
196 recorded by the fiduciary of the [deceased's] deceased victim's estate,
197 or may be recorded by any other interested party in the land records of
198 the town where such real property is situated.

199 (4) With respect to personal property owned in joint tenancy with
200 rights of survivorship with the deceased victim, such final adjudication
201 as guilty shall convert the personal property to property owned solely
202 by the deceased victim except to the extent that the adjudged guilty
203 person can prove by a preponderance of the evidence the adjudged

204 guilty person's financial contributions to such property.

205 (b) In all other cases where a defendant has been convicted [of
206 killing another person] under section 53a-54a, 53a-54b, 53a-54c, 53a-
207 54d, 53a-55, 53a-55a, 53a-122, 53a-123, or 53a-321, the right of such
208 [defendant] adjudged guilty person to inherit or take any part of the
209 estate of the [person killed] deceased victim or to inherit or take any
210 estate as to which [such homicide] the death of such deceased victim
211 terminated an intermediate estate, or hastened the time of enjoyment,
212 or to take any property as beneficiary or survivor of the deceased
213 victim shall be determined by the common law, including equity.

214 (c) (1) A named beneficiary of a life insurance policy or annuity who
215 intentionally causes the death of the person upon whose life the policy
216 is issued or the annuitant, or who is finally adjudged guilty under
217 section 53a-122, 53a-123, or 53a-321, is not entitled to any benefit under
218 the policy or annuity, and the policy or annuity becomes payable as
219 though such beneficiary had predeceased the [decedent] deceased
220 victim.

221 (2) (A) A conviction under section 53a-54a, 53a-54b, 53a-54c, 53a-
222 54d, 53a-55, [or] 53a-55a, 53a-122, 53a-123, or 53a-321, or a
223 determination pursuant to subparagraph (B) of this subdivision that a
224 named beneficiary would have been found guilty under any of said
225 sections had the named beneficiary survived, shall be conclusive for
226 the purposes of this subsection.

227 (B) For the purposes of this subsection, an interested person may
228 bring an action in the Superior Court for a determination, by a
229 preponderance of the evidence, that a named beneficiary who has
230 predeceased the interested person would have been found guilty
231 under section 53a-54a, 53a-54b, 53a-54c, 53a-54d, 53a-55, [or] 53a-55a,
232 53a-122, 53a-123, or 53a-321 had the named beneficiary survived.

233 (C) In the absence of such a conviction or determination, the
234 Superior Court may determine by the common law, including equity,

235 whether the named beneficiary is entitled to any benefit under the
236 policy or annuity.

237 (D) In any proceeding brought under this subsection, the burden of
238 proof shall be upon the person challenging the eligibility of the named
239 beneficiary for benefits under a life insurance policy or annuity.

240 (3) Any insurance company making payment according to the terms
241 of its policy or annuity is not liable for any additional payment by
242 reason of this section unless it has received at its home office or
243 principal address written notice of a claim under this section prior to
244 such payment.

245 (d) Notwithstanding the provisions of subsections (a) to (c),
246 inclusive, of this section, the Superior Court may allow a defendant
247 adjudged guilty under section 53a-122, 53a-123 or 53a-321 to petition a
248 court in equity to override the prohibitions on inheritance or other
249 benefit to the adjudged guilty person under such sections if the court
250 shall determine that overriding such prohibitions would fulfill the
251 intent of the deceased victim or that application of such prohibitions
252 would be grossly inequitable under all of the circumstances, which
253 could include, without limitation, restitution or other substantial
254 benefit provided to the deceased victim during the deceased victim's
255 lifetime or express forgiveness by the deceased victim. The burden of
256 proof and persuasion shall be upon the petitioner.

257 Sec. 5. (Effective October 1, 2015) (a) The Commission on Aging, in
258 consultation with the Connecticut Elder Justice Coalition Coordinating
259 Council, the Department of Social Services, the Department on Aging,
260 the Office of the Long-Term Care Ombudsman and the Chief State's
261 Attorney, shall conduct a study concerning best practices for reporting
262 and identification of the abuse, neglect, exploitation and abandonment
263 of elderly persons. The study shall review: (1) Models nationwide for
264 reporting of such abuse, neglect, exploitation or abandonment, (2)
265 standardized definitions, measurements and uniform reporting
266 mechanisms to accurately capture the nature and scope of such abuse,

267 neglect, exploitation or abandonment in the state, and (3) methods to
268 promote and coordinate communication about such reporting among
269 local and state governmental entities, including law enforcement.

270 (b) Not later than January 1, 2016, the Commission on Aging shall
271 submit a report, in accordance with the provisions of section 11-4a of
272 the general statutes, to the joint standing committee of the General
273 Assembly having cognizance of matters relating to aging on the results
274 of the study conducted pursuant to subsection (a) of this section.

275 (c) The Commission on Aging shall establish a forum and clearing
276 house for best practices and free training resources to help financial
277 institutions and financial agents detect potential fraud, exploitation
278 and financial abuse. Not later than January 1, 2016, the Commission
279 on Aging shall establish a single portal for training resources and
280 materials.

281 Sec. 6. (NEW) (*Effective October 1, 2015*) (a) For purposes of this
282 section, "financial agent" means an officer or employee of a financial
283 institution, as defined in section 32-350, of the general statutes who (1)
284 has direct contact with an elderly person within the officer's or
285 employee's scope of employment or professional practice, or (2)
286 reviews or approves an elderly person's financial documents, records
287 or transactions.

288 (b) A financial agent shall participate in mandatory training to
289 detect potential fraud, exploitation and financial abuse of elderly
290 persons, including utilizing the resources available on the Commission
291 on Aging portal established pursuant to section 5 of this act. All
292 financial agents shall complete such training within six months from
293 availability of training resources on the Commission on Aging web
294 portal, or within the first six months of their employment, if later."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	17b-450

Sec. 2	<i>October 1, 2015</i>	17b-451
Sec. 3	<i>October 1, 2015</i>	New section
Sec. 4	<i>October 1, 2015</i>	45a-447
Sec. 5	<i>October 1, 2015</i>	New section
Sec. 6	<i>October 1, 2015</i>	New section