

# UNDUE INFLUENCE: CONTEXT, PROVISIONS, AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging<sup>1</sup> for the National Center on Elder Abuse<sup>2</sup>

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Research conducted on Westlaw compliments of West Group

**CAUTION:** Read the explanation of this chart before relying upon the chart. You can find the explanation online at

<http://www.abanet.org/aging/about/elderabuse.shtml>.

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Hawaii	Financial	For the purpose of this part, ‘financial and economic exploitation’ means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult’s money, real property, or personal property. ‘Financial and economic exploitation’ can include but is not limited to: (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property; (B) The unauthorized taking of personal assets; (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or (D) The intentional or negligent failure to effectively use a dependent adult’s income and assets for the necessities required for the person’s support and maintenance. The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of <b>undue influence</b> . Haw. Rev. Stat. § 346-222(7)
Iowa	Financial Physical	Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of <b>undue influence</b> , harassment, duress, deception, false representation, or false pretenses. Iowa Code Ann. § 235B.2(5)(1)(c)
Kansas	Financial Physical	‘Exploitation’ means misappropriation of an adult’s property or intentionally taking unfair advantage of an adult’s physical or financial resources for another individual’s personal or financial advantage by the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person. Kan. Stat. Ann. § 39-1430(d)
Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, §§ 14 – 26 ( <i>applicable to persons who are 60 or older</i> )	Financial	‘Financial exploitation’, an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, <b>undue influence</b> , coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to

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		interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A. Mass. Gen. Laws Ann. ch. 19A, § 14
Minnesota	Sexual	<p>‘Abuse’ means: ...</p> <p>For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or <b>undue influence</b>, engages in consensual sexual contact with: (1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or (2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 2(g)</p>
	Financial	<p>‘Financial exploitation’ means: ...</p> <p>(b) In the absence of legal authority a person:</p> <p>(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;</p> <p>(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;</p> <p>(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of <b>undue influence</b>, harassment, duress, deception, or fraud; or</p> <p>(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another. Minn. Stat. Ann. § 626.5572, Subd. 9(b)</p>
	Sexual	<p>‘Neglect’ means: ...</p> <p>(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:</p> <p>(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or <b>undue influence</b>, engages in sexual contact with:</p> <p>(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or</p> <p>(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 17(c)</p>
Montana	Financial	<p>‘Exploitation’ means:</p> <p>(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b>, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the</p>

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		ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b> , or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b> , or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property. Mont. Code Ann. § 52-3-803(3)
Nebraska	Financial	Exploitation shall mean the taking of property of vulnerable adult by means of <b>undue influence</b> , breach of a fiduciary relationship, deception, or extortion or by any unlawful means. Neb. Rev. Stat. § 28-358
Nevada	Financial	‘Exploitation’ means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to: (a) Obtain control, through deception, intimidation or <b>undue influence</b> , over the older person’s or vulnerable person’s money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property; or (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this subsection, ‘ <b>undue influence</b> ’ does not include the normal influence that one member of a family has over another. Nev. Rev. Stat. Ann. § 200.5092(2)
New Hampshire	Financial Physical	‘Exploitation’ means the illegal use of an incapacitated adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of <b>undue influence</b> , harassment, duress, deception, or fraud. N.H. Rev. Stat. Ann. § 161-F:39(IV)

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North Dakota	Financial	‘Financial exploitation’ means the taking or misuse of property or resources of a vulnerable adult by means of <b>undue influence</b> , breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. N.D. Cent. Code § 50-25.2-01(7)
Oklahoma	General	‘Exploitation’ or ‘exploit’ means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense; Okla. Stat. Ann. tit. 43A, § 10-103 (9)
Rhode Island	Financial	‘Exploitation’ means an act or process of taking pecuniary advantage of an elderly person by use of <b>undue Influence</b> , harassment, duress, deception, false representation or false pretenses. R.I. Gen. Laws § 42-66-4.1(3)
South Carolina	Financial	(3) ‘Exploitation’ means: (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) <b>undue influence</b> , (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property. S.C. Code Ann. § 43-35-10(3)
Utah	General	<b>‘Undue influence’</b> occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult. Utah Code Ann. § 62A-3-301(24)

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Vermont	Financial	<p>‘Exploitation’ means:</p> <p>(A) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;</p> <p>(B) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of <b>undue influence</b>, harassment, duress, or fraud;</p> <p>(C) The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;</p> <p>(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status. Vt. Stat. Ann. tit. 33, § 6902(6)</p>
Washington	General	<p>‘Exploitation’ means an act of forcing, compelling, or exerting <b>undue influence</b> over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. Wash. Rev. Code Ann. § 74.34.020(2)(d)</p>
Wyoming	Financial	<p>‘Exploitation’ means the reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to: (A) obtain control through deception, harassment, intimidation or <b>undue influence</b> over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property; Wyo. Stat. Ann. § 35-20-102(a)(ix)</p>

<sup>1</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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