LEGAL SERVICES FOR MAINE ELDERS

LD 1027 - An Act to Strengthen the Law Regarding Relief for Improvident Transfers of Title

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders Joint Standing Committee on Judiciary

March 24, 2025

Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary.

My name is John Brautigam, and I am here today on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake.

I want to thank Senator Stewart for sponsoring this bill.

This bill presents a relatively straightforward issue: When a court determines that a person has been harmed as a result of a violation of the Improvident Transfer of Title Act, should that person bear their own costs and thus absorb a loss that they will not recover? Or will they be allowed to recover the cost of bringing that case to court from the other party?

This is significant, because this type of case is not one that a plaintiff can handle on their own. When litigating over title matters, a person definitely needs the help of an attorney.

A little background on this bill. A 2019 Executive Order from Governor Mills established the Elder Justice Coordinating Partnership pulling together private sector and public sector experts representing a wide array of disciplines. Their task was to identify challenges to the prevention of elder abuse, develop priorities for responding to elder abuse, and make recommendations, including legislative changes. LSE participated fully in this process.

When the Partnership issued its report, one of the priority recommendations was adding an attorney fees provision to the Improvident Transfer of Title Act.¹ That is the bill before you today, sponsored by Senator Stewart at our request.

¹ Elder Justice Roadmap: <u>https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/EJCP_Roadmap_0.pdf</u>. *See* pages 26, 89.

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In Maine, there are many types of cases where attorney fees can be awarded by a court. A computer search shows over 300 instances of the words "attorney fees" in Maine law.² Some examples are attached to my testimony.

The cases where the statute allows for attorney fees are a special type. They generally involve a broader interest than a simple contest between a plaintiff and a defendant over a sum of money. Most cases where statutory attorney fees are possible involve larger issues such as vindicating the rights of those who are especially vulnerable or deterring future conduct that is socially detrimental. In these cases, there is a public interest served by making it possible to collect attorney fees. These are the public interests behind LD 1027.

The Improvident Transfer of Title Act, 33 MRS § 1021, comes into play when a dependent person is taken advantage of by another person with whom the dependent person has a confidential or fiduciary relationship. What this means specifically is that the elder person suffered a loss because their property was sold or transferred at less than the full value.

This is a limited cause of action. It does not apply to small assets – it only applies when the asset has a value at least equal to ten percent of the person's entire estate. It also only applies when the person is elderly and is wholly or partially dependent for care or support <u>and</u> either (a) suffers from a significant physical or mental limitation; or (b) has had major illness or surgery. The plaintiff bringing a successful case under this law is – by definition – in a dependent relationship with someone in whom the plaintiff has placed their trust.

These considerations distinguish this from the standard arms-length contract or commercial arrangement. And that is why the Elder Justice Coordinating Council determined that adding an attorney fees provision is warranted here.

Attorney fees are included in the national model act, which is entitled the Model Civil Provisions on Elder Financial Exploitation. That act also includes treble damages, which is not included in LD 1027. A number of other states have followed the model act. Both the model act language and examples of other state laws are attached to this testimony.

As already noted, this is not about money for lawyers. It's about whether the person who was harmed must bear the cost of defending themselves and vindicating their interests. We think it fair and equitable for the party that has taken advantage to bear the costs.

I am happy to discuss further or answer any questions.

Thank you.

² The search result is accessible here:

https://docs.google.com/spreadsheets/d/1SiWhE99Uesc9FouctpbFHEhOCZ2HOAudOmbJAlThSuw/edit?usp=sharing

Examples of Attorney Fee Provisions in Maine Statute

- 1. For a violation of the laws on monopolies and profiteering, "If the court finds for the plaintiff, the plaintiff is entitled to recover 3 times the amount of the damages sustained and cost of suit, including necessary and reasonable investigative costs, reasonable experts' fees and reasonable attorney's fees. The State may recover equitable monetary relief, including restitution and disgorgement." 10 MRS § 1104.
- 2. In actions regarding alleged unconscionability of a consumer lease, "(a). If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee; (b). If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action the lessee knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made;" 11 MRS § 2-1108(4).
- 3. For violations of the Funded Settlement Act (mortgages), "the consumer has the right to recover the greater of actual damages in an amount determined by the court or, except as provided in subsection 2, an amount determined by the court not less than \$250 nor more than \$1,000, plus costs of the action together with reasonable attorney's fees." 9 MRS § 526(1).
- 4. For violations of the Family Medical Leave law, "... in addition to any judgment awarded to the employee, the court shall award reasonable attorney's fees and other costs of the action to be paid by the employer." 26 MRS § 848(3).
- For filing false claims against the Department of Health and Human Services, the person may be liable for "cost of suit . . . costs of investigation . . . [and] attorney's fees." 22 MRS § 15(4)-(6).
- 6. For trespassing, the violator is liable for damages claimed by the owner, including "Reasonable attorney's fees for preparing the claim and bringing the court action under this section plus costs." 14 MRS § 7551-B.
- When foreclosing on a property for failing to pay taxes, a municipality may take "reasonable attorney fees" incurred in the foreclosure process or in the sale of the property. 36 MRS § 943-C(3)(C)(5)-(6).
- 8. In cases involving allegations of fraudulent insurance acts, "the court may award reasonable attorney's fees and costs to the insurer . . . " or if the insurer alleges a fraudulent act but fails to prove it at trial, "the court may award reasonable attorney's fees and costs to the party if the allegation is not supported by any reasonable basis of law or fact." 24-A MRS § 2186(7).
- For violations of the law regarding unfair listings of real estate for sale, a party "may recover actual damages, costs and attorney's fees as may be proven" against the other party. 32 MRS § 13177-B(5).

Laws in other states allowing attorney fees for financial exploitation of adults:

A. Minnesota: Minnesota Statutes § 626.557 Subd. 20 provides a civil cause of action for financial exploitation of a vulnerable adult. This law allows the victim or a representative to sue the exploiter for damages, and it includes a provision for the recovery of attorney fees and costs.

§Subd. 20. Cause of action for financial exploitation; damages.

(a) A vulnerable adult who is a victim of financial exploitation as defined in section $\underline{626.5572}$, subdivision 9, has a cause of action against a person who committed the financial exploitation. In an action under this subdivision, the vulnerable adult is entitled to recover damages equal to three times the amount of compensatory damages or \$10,000, whichever is greater.

(b) In addition to damages under paragraph (a), the vulnerable adult is entitled to recover reasonable attorney fees and costs, including reasonable fees for the services of a guardian or conservator or guardian ad litem incurred in connection with a claim under this subdivision.

(c) An action may be brought under this subdivision regardless of whether there has been a report or final disposition under this section or a criminal complaint or conviction related to the financial exploitation.

B. Utah: In Utah, the Protection of Vulnerable Adults Act (Utah Code § 62A-3-314) permits a vulnerable adult or their representative to file a civil lawsuit for damages due to financial exploitation. [Note: this was recodified in 2023 into a different section.] This <u>statute</u> includes language allowing for the recovery of attorney fees, costs, and other associated expenses.

26B-6-213 Private right of action -- Estate asset -- Attorney fees. (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator. (2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult. (3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff. (4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

B. California: California's Elder Abuse and Dependent Adult Civil Protection Act (California Welfare and Institutions Code § 15657.5) provides for a civil cause of action in cases of financial abuse. The law includes a provision that allows the court to award attorney fees and costs to a prevailing plaintiff, which is especially helpful for victims who may not have the financial means to initiate a lawsuit.

California Code, Welfare and Institutions Code - WIC § 15657.5

Current as of January 01, 2023 |

(a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in <u>Section 15610.30</u>, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in <u>Section 15610.30</u>, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney's fees and costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by <u>Section 377.34 of the Code of Civil Procedure</u> on the damages recoverable shall not apply.

C. Connecticut: Connecticut General Statutes § 17b-462 authorizes civil actions in cases of elder abuse, including financial exploitation. This law allows the court to award attorney fees to the victim, in addition to other types of damages.

2022 Connecticut General Statutes Title 17b - Social Services Chapter 319dd - Protective Services for the Elderly Section 17b-462. - Cause of action by elderly victim. Civil attachment jurisdiction.

Universal Citation: CT Gen Stat § 17b-462. (2022)

(a) An elderly person who has been the victim of abuse, neglect, exploitation or abandonment, as such terms are defined in section 17b-450, may have a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, exploitation or abandonment together with costs and a reasonable attorney's fee. The action may be brought by the elderly person, or the elderly person's guardian or conservator, by a person or organization acting on behalf of the elderly person with the consent of such elderly person or the elderly person's guardian or conservator, or by the personal representative of the estate of a deceased elderly victim.

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

D. Washington: Under RCW § 74.34.200, Washington allows a vulnerable adult or their representative to seek compensatory damages and recover attorney fees from a perpetrator of abuse or exploitation.

RCW 74.34.200

Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent.

(1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter <u>70.127</u> RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombuds or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorneys' fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section.

E. Oregon: Oregon Revised Statutes § 124.100 provides elder financial abuse victims with a civil cause of action that includes the right to recover economic and non-economic damages, plus attorney fees and costs.

ORS 124.100

Definitions for ORS 124.100 to 124.140

...(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:

(a)

An amount equal to three times all economic damages, as defined in <u>ORS 31.705 (Economic and</u> <u>noneconomic damages separately set forth in verdict)</u>, 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 in <u>ORS 31.705 (Economic and noneconomic damages separately set forth in verdict)</u>, 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.

Maine Uniform Power of Attorney Act

18-C MRS 5-917.

§5-917. Agent's liability

An agent that violates this Part is liable to the principal or the principal's successors in interest for the amount required to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Restore property. Restore the value of the principal's property to what it would have been had the violation not occurred; and

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Reimburse fees and costs. Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

National Model Act

The National Center for Victims of Crime, in collaboration with the American Bar Association Commission on Law and Aging, developed The Model Civil Provisions on Elder Financial Exploitation

Remedies

- A The Court shall award to a plaintiff who prevails in an action under this section:
 - Compensatory damages (general and special/economic and non-economic);
 - Treble damages;
 - Reasonable attorneys' fees;
 - Litigation costs;
 - Costs include, but are not limited to, the reasonable fees for a conservator, guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section.
 - Prejudgment interest; and
 - Where appropriate, punitive damages.
- B. Relief available: Where a court finds that a contract, transfer of property, or execution of a guaranty was the result of undue influence, it shall grant appropriate relief enabling the elder to avoid the contract, transfer or execution, including the rescission or reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining the use of or entry on property or commanding the return of property and/or disgorgement of any profit. Nothing in this section may be construed to abrogate any other relief at law or equity to which an elder is entitled under other law or at common law.

https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/model_civil_provisions_on_elder_financial_exploitation.pdf