I. Criminal Statute Protecting Dependent Adults or Elders from Neglect or Abuse: *Nebraska Revised Statutes 28-348, et seq.*

A. Conduct

1. Neglect:

Any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

2. Abuse:

Any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.

3. Exploitation:

The taking of property of a vulnerable adult by any person by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

B. Vulnerable Adults

1. Types of Impairment

Any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian has been appointed under the Nebraska Probate Code.

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1 The authors gratefully acknowledge the assistance of Summer Associate, Mohammad Khaleelullah.

2 Under the Nebraska Revised Statutes, the APSA program is codified under the state’s criminal code.


5 Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.

C. Persons/Entities Excluded From Statute

Any person participating in an investigation or the making of a report pursuant to the Adult Protective Services Act (the “APSA”) or participating in a judicial proceeding resulting there from shall be immune from any liability except (1) as otherwise provided in the APSA; (2) for malfeasance in office or willful or wanton neglect of duty; or (3) for false statements of fact made with a malicious intent.8

D. Mandatory Reporting of Abuse Requirement - The statute does not provide specific notice and process requirements to the state for litigation.

E. Preclusion of Arbitration

A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.9

F. Relationship to Medical Malpractice Actions

The APSA is not expressly limited by any other civil remedy including those available for medical malpractice actions.

G. Criminal Provisions10

Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult is a Class IIIA felony [emphasis added]. A person commits knowing and intentional abuse, neglect, or exploitation of a vulnerable adult if he or she through a knowing and intentional act causes or permits a vulnerable adult to be:

   a) Physically injured;
   b) Unreasonably confined;
   c) Sexually abused;
   d) Exploited;
   e) Cruelly punished;
   f) Neglected; or
   g) Sexually exploited.

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H.  **Statute of Limitations**

Actions for an injury to the rights of plaintiff, not arising on contract, must be brought within four years. See **Neb. Rev. Stat. § 25-207**. Actions to recover damages based on professional negligence must be brought within two years after injury or one year within reasonable date of discovery but no more than 10 years after injury.\(^{11}\)

I.  **Burden of Proof**

In Nebraska, the burden is on plaintiff to prove a right to recover. **Thelen v. J. C. Penney Co.**, 186 Neb. 53, 180 N.W.2d 693 (1970). In personal injury cases, the burden of proof is upon the plaintiff to sustain his claim by a preponderance of the evidence. **Parrish v. Karl Kehm & Sons Contractors**, 186 Neb. 252, 182 N.W.2d 422 (1970). In criminal cases, the burden of proof is on the State to prove beyond a reasonable doubt all of the material elements of the crime charged. **State v. Kipf**, 450 NW 2d. 397 (1990).

J.  **Can Regulations Establish Standard of Care:**

No. A violation of a statute in Nebraska is not negligence per se, but only evidence of negligence. **Krehnke v. Farmers Union Co-operative Ass’n**, 199 Neb. 632, 643 (Neb. 1977).

II. **DAMAGES**

A.  **Damages Available**

1. Actual damages

2. Costs of suit

3. If judgment be given for the plaintiff, he or she shall recover the damages which he or she shall have sustained.\(^{12}\)

4. Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.\(^{13}\)

B.  **Does Pain and Suffering of Decedent/Resident Survive Death**

Yes. An action does not abate by the death or other disability of a party, or by the transfer of any interest therein during its pendency, if the cause of action survives or continues. In the case of the death or other disability of a party, the court may

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\(^{11}\) **Neb. Rev. Stat. § 28-222**.

\(^{12}\) **Neb. Rev. Stat. § 28-2165**.

\(^{13}\) **Neb. Rev. Stat. § 28-1146**.
allow the action to continue by or against his or her representative or successor in interest.  

C. Attorney’s Fees Available: Yes

III. LEGISLATION AFFECTING STATUTE

A. Pending: None

B. Anticipated: None

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