I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: Tennessee Adult Protection Act (“TAPA”), Tennessee Code Annotated § 71-6-101, et seq.

A. Conduct

1. Abuse or Neglect:
   (a) Definition
      (i) The infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person’s health or welfare. T.C.A. § 71-6-102(1)(a)
      (ii) Transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult’s caretaker knows or should know that the adult is unable to protect or care for himself or herself without assistance and the caretaker’s conduct results in physical pain, injury, mental anguish, or deprivation of services. T.C.A. § 71-6-102(1)(b)
   
   (b) Exclusions
      Notably, Tennessee excludes certain acts specifically from the definition of abuse or neglect, to include:
      (i) Where the adult relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment. T.C.A. § 71-6-102(1)(a)
      (ii) The provision of medical care to any terminally ill person if such person has executed an unrevoked living will and if the provision of such medical care would conflict with the terms of such living will. T.C.A. § 71-6-102(1)(A)

2. Sexual Abuse
   (a) Definition
(i) When a dependent adult or elderly person is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult’s will. Sexual abuse also occurs when an adult is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person. T.C.A. § 71-6-102(1)(b)

3. **Exploitation**: The improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult. T.C.A. § 71-6-102(8)

B. **Vulnerable Adults**

**State Action**

1. **Types of Impairment**

An “adult” for purposes of TAPA means a person eighteen years of age or older who because of mental or physical dysfunctioning or advanced age, defined as age 60 or older, is unable to manage such person’s own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services. T.C.A. § 71-6-102(2)

Persons aged eighteen years or older who are mentally impaired but still competent are likewise deemed to be a person with mental dysfunction for purposes of TAPA. T.C.A. § 71-6-102(2)

**Private Action**

2. **Types of Impairment**

**Disabled Adult**: A person who is eighteen years of age or older and who meets one of the following criteria T.C.A. § 71-60-120(A)(2)

(a) Has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;

(b) Lacks the capacity to consent;

(c) Has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying purposes; or

(d) Has been found to be incompetent by a court of proper jurisdiction.
Elderly Person or Elder: A person who is 60 years of age or older who has some mental or physical dysfunctioning, including any resulting from age. T.C.A. § 71-60-120(A)(3)

C. Persons/Entities Subject to Statute

TAPA specifically imposes liability on a caretaker, which is defined as

(i) An individual or institution who has assumed the duty to provide for the care of the adult by contract or agreement;

(ii) Includes a parent, spouse, adult child or other relative, both biological or by marriage, who resides with or in the same building with or regularly visits the adult; knows or reasonably should know of the adult’s mental or physical dysfunction or advanced age; and knows or reasonably should know that the adult is unable to adequately provide for the adult's own care. T.C.A. § 71-6-102(5)

Financial institutions are specifically excluded as a caretaker of funds or assets held by the adult unless such institution has entered into an agreement to act as a trustee of such property or has been appointed by a court to act as trustee. T.C.A. § 71-6-102(5)

(iii) With regard to the private cause of action under TAPA, there is no limitation against whom an action may be taken. T.C.A. § 71-6-120

D. Reporting Requirement for Litigation to State

Tennessee employs mandatory reporting requirements for incidents of abuse or neglect or sexual abuse of a protected adult. T.C.A. § 71-6-103. However, the private right of action that arises under TAPA does not trigger a notice requirement to State officials. To that end, the statute specifically provides that nothing shall be construed as requiring the Department of Human Services to initiate any proceedings or to act on behalf of any elderly person or disabled adult pursuant to the statute. T.C.A. § 71-6-120(f)

E. Preclusion of Arbitration

Nothing in the Tennessee Adult Protective Act precludes arbitration for any private right of action that may arise under the statute. Tennessee recognizes the enforceability of arbitration agreements with healthcare providers, including long-term care facilities, subject to ordinary contract defenses.

F. Relationship to Medical Malpractice actions

Actions arising from the Tennessee Healthcare Liability Act are specifically exempted from the statute. T.C.A. § 71-6-120(g). Notably, the Tennessee Healthcare Liability Act includes the rendition of custodial or basic care, as
utilized in a long-term care setting, regardless of the theory of liability asserted on behalf of the patient. T.C.A. § 29-26-101(a)(1); (b).

G. Criminal Provision

It is a Class E felony for any person to knowingly, other than by accidental means, abuse, neglect or exploit any adult under the Tennessee Adult Protection Act. T.C.A. § 71-6-117.

It is also a Class C felony to knowingly, other than by accidental means, physically abuse or grossly neglect an impaired adult if the abuse or neglect results in serious mental or physical harm. T.C.A. § 71-6-119.

H. Statute of Limitations: A private right of action under the Tennessee Adult Protection Act has a one-year statute. T.C.A. § 28-3-104. Tennessee recognizes the tolling of statute of limitations for impaired or for incapacitated adults, until such time that the incapacity is removed. T.C.A. § 28-1-106. Moreover, the Tennessee Adult Protection Act specifically provides that a private right of action will not abate or be extinguished by the death of an elderly person or disabled adult but shall pass on to their respective next of kin or personal representative. T.C.A. § 71-6-120(b).

I. Burden of Proof: Preponderance of the Evidence

II. DAMAGES

A. Damages Available

Compensatory damages and costs, to include reasonable expenses. Upon a heightened showing of clear and convincing evidence of abuse or neglect or sexual abuse, which resulted from intentional, fraudulent or malicious conduct on the part of a defendant, the claimant is also entitled to cover reasonable attorney fees and/or punitive damages. T.C.A. § 71-6-120(d). Injunctive relief is available to the State in order to carry out actions to protect adults under the Tennessee Adult Protection Act. T.C.A. § 71-6-104. Otherwise, a relative of the adult may petition for an order of protection. T.C.A. § 71-6-124.

B. Does Cause of Action Survive Death:

Yes. A right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult. T.C.A. § 71-6-120(b).

C. Attorney’s Fees Available:

Potentially. Upon a showing of clear and convincing evidence that the abuse or neglect resulted from intentional, fraudulent or malicious conduct by the defendant then the claimant is entitled to recover reasonable attorney fees. T.C.A. § 71-6-120(d)
III. LEGISLATION AFFECTING STATUTE

A. **Pending**: None

B. **Anticipated**: None