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SENATE BILL NO. 1413

Offered January 14, 2009

A *BILL to amend and reenact § 63.2-1606 of the Code of Virginia, relating to the duty to report financial abuse of elder or dependent adults.*

Patron—Edwards

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1606 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the:

1. *The abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:*

4a. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2b. Any mental health services provider as defined in § 54.1-2400.1;

3c. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5;

4d. Any guardian or conservator of an adult;

5e. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6f. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and

7g. Any law-enforcement officer.

2. *The financial abuse of an elder or dependent adult shall be reported immediately by any person employed by a financial institution, as such term is defined in § 6.1-125.1, who (i) has observed or has knowledge, through direct contact with the elder or dependent adult or from review of the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to the elder or dependent adult within the scope of his employment or professional practice, of an incident that reasonably appears to be financial abuse, or (ii) reasonably suspects, based solely on the information before him at the time of reviewing or approving the document, record, or transaction, that such a person is being financially abused. Such person shall report the observed, known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law-enforcement agency. As used in this subdivision:*

"Elder or dependent adult" means any person residing in the Commonwealth (i) 65 years of age or older or (ii) between the ages of 18 and 64 years who has physical or mental limitations that restrict his ability to carry out normal activities or to protect his rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

"Financial abuse" of an elder or dependent adult occurs when a person (i) takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud or (ii) assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud. A person shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith. A person shall be deemed to have acted in bad faith if the person knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his conservator, trustee, or other representative of the estate of an elder or dependent adult or an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney. A person should have known of a right to have the property transferred or made readily available to the elder or dependent adult or to his conservator, trustee, or other

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59 *representative of the estate of an elder or dependent adult or an attorney-in-fact of an elder or*
60 *dependent adult who acts within the authority of the power of attorney if, on the basis of the*
61 *information received by the person, it is obvious to a reasonable person that the elder or dependent*
62 *adult has such a right.*

63 B. The report shall be made in accordance with subsection A to the local department of the county
64 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
65 occurred or to the adult protective services hotline. Nothing in this section shall be construed to
66 eliminate or supersede any other obligation to report as required by law. If a person required to report
67 under this section receives information regarding abuse, neglect or exploitation while providing
68 professional services in a hospital, nursing facility or similar institution, then he may, in lieu of
69 reporting, notify the person in charge of the institution or his designee, who shall report such
70 information, in accordance with the institution's policies and procedures for reporting such matters,
71 immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any
72 person required to make the report or notification required by this subsection shall do so either orally or
73 in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or
74 exploitation. Upon request, any person required to make the report shall make available to the adult
75 protective services worker and the local department investigating the reported case of adult abuse,
76 neglect or exploitation any information, records or reports which document the basis for the report. All
77 persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the
78 investigating adult protective services worker of a local department and shall make information, records
79 and reports which are relevant to the investigation available to such worker to the extent permitted by
80 state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be
81 further disseminated by the investigating agency nor shall they be subject to public disclosure; such
82 reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 and,
83 if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.

84 C. ~~Any financial institution staff who suspects that an adult has been exploited financially may report~~
85 ~~such suspected exploitation to the local department of the county or city wherein the adult resides or~~
86 ~~wherein the exploitation is believed to have occurred or to the adult protective services hotline. For~~
87 ~~purposes of this section, financial institution staff means any employee of a bank, savings institution,~~
88 ~~credit union, securities firm, accounting firm, or insurance company.~~

89 D. Any person other than those specified in subsection A who suspects that an adult is an abused,
90 neglected or exploited adult may report the matter to the local department of the county or city wherein
91 the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the
92 adult protective services hotline.

93 E. Any person who makes a report or provides records or information pursuant to subsection A, or
94 C or D, or who testifies in any judicial proceeding arising from such report, records or information, or
95 who takes or causes to be taken with the adult's or the adult's legal representative's informed consent
96 photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report
97 shall be immune from any civil or criminal liability on account of such report, records, information,
98 photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in
99 bad faith or with a malicious purpose.

100 F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting
101 directly to the local department or to the adult protective services hotline. Employers whose employees
102 are mandated reporters shall notify employees upon hiring of the requirement to report.

103 G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse,
104 neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any
105 subsequent conviction of this provision shall be a Class 2 misdemeanor.

106 H. Any person who fails to make a required report or notification pursuant to subsection A shall be
107 subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more
108 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 1 g shall be determined
109 by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be
110 determined by the Commissioner or his designee. The Board shall establish by regulation a process for
111 imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty
112 pursuant to § 2.2-4026 of the Administrative Process Act.

113 I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of
114 abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the
115 appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a
116 licensed physician. The medical examiner and the law-enforcement agency shall receive the report and
117 determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is
118 conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the
119 local department or to the adult protective services hotline.

120 J. No person or entity shall be obligated to report any matter if the person or entity has actual

121 knowledge that the same matter has already been reported to the local department or to the adult
122 protective services hotline.
123 ~~K~~J. All law-enforcement departments and other state and local departments, agencies, authorities and
124 institutions shall cooperate with each adult protective services worker of a local department in the
125 detection, investigation and prevention of adult abuse, neglect and exploitation.

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