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HOUSE BILL NO. 409

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 18.2-369 of the Code of Virginia, relating to relating to financial exploitation of certain adults; penalty.

Patrons—Watts and Filler-Corn

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-369 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-369. Abuse and neglect, financial exploitation of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any person who knowingly exploits the impaired mental or physical capacity of an incapacitated adult or an adult by deception, intimidation, undue influence, coercion, harassment, duress, or misrepresentation to use, obtain, convert, or take control of or to endeavor to use, obtain, convert, or take control of the incapacitated adult's or adult's money, assets, property, or financial resources with the intent to deprive the incapacitated adult or adult of the use, benefit, or possession of the money, assets, property, or financial resources and to convert such money, assets, property, or financial resources to the perpetrator's own use or benefit is guilty of a Class 5 felony. However, any responsible person or a person who has a fiduciary relationship with the incapacitated adult or adult, including but not limited to a court-appointed or voluntary guardian, trustee, attorney, conservator, executor, or person with a power of attorney, who violates this section is guilty of a Class 3 felony. It shall not constitute a defense that the accused did not know the age of the victim.

C. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

D. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Adult" means any person 60 years of age or older who resides in the Commonwealth, provided, however, "adult" may include nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Incapacitated adult" means any person 18 years or older who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an adult or an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

E. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the

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59 incapacitated person and in accord with the tenets and practices of a church or religious denomination;
60 (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated
61 person; or (v) a bona fide, recognized or approved practice to provide medical care.
62 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
63 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
64 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
65 **890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to**
66 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
67 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**
68 **Juvenile Justice.**