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SENATE BILL NO. 222

Offered January 11, 2012

Prefiled January 10, 2012

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

Patron—Herring

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 of incapacitated adults; financial exploitation of certain 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 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.

C. *It shall be unlawful for any person to knowingly, by deception, intimidation, undue influence, coercion, harassment, duress, or misrepresentation, use, obtain, convert, or take control of or endeavor to use, obtain, convert, or take control of an adult's or an incapacitated adult's money, assets, property, or financial resources with the intent to deprive the adult or the incapacitated 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 such person's own use or benefit. A violation of this subsection shall be punishable as larceny. However, any violation of this subsection by a responsible person or a person who has a fiduciary relationship with the adult or the incapacitated adult, including but not limited to a court-appointed or voluntary guardian, trustee, attorney, conservator, executor, or person with a power of attorney, is a Class 3 felony. Venue for the trial of any person charged with a violation of this section shall be in any county or city in which (i) any act was performed in furtherance of the offense; (ii) the person charged with the offense resided at the time of the offense; or (iii) the victim resided at the time of the offense. It shall not constitute a defense to prosecution under this section that the accused did not know the age of the victim.*

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" has the same definition as in § 63.2-1603.

"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.

"Financial resources" includes but is not limited to notes, bills, drafts, checks, credit cards, bank cards, debit cards, gift cards, stocks, bonds, retirement accounts, and certificates of deposit.

"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.

"Property" means anything of value, including but not limited to real property, including things growing on, affixed to, and found in land; and tangible or intangible personal property, including rights, privileges, interests, and claims.

"Responsible person" means a person who has responsibility for the care, custody or control of 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

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59 conditions, whether or not caused by trauma.

60 ~~DE.~~ No responsible person shall be in violation of this section whose conduct was (i) in accordance
61 with the informed consent of the incapacitated person or a person authorized to consent on his behalf;
62 (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia
63 (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance
64 with the wishes of the incapacitated person or a person authorized to consent on behalf of the
65 incapacitated person and in accord with the tenets and practices of a church or religious denomination;
66 (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated
67 person; or (v) a bona fide, recognized or approved practice to provide medical care.

68 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
69 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
70 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
71 **890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to**
72 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
73 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**
74 **Juvenile Justice.**