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## SENATE BILL NO. 391

Offered January 8, 2020

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*A BILL to amend and reenact § 63.2-1606 of the Code of Virginia, relating to adult abuse; financial exploitation; required report by financial institution.*

Patron—McPike

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 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:

1. 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;

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

3. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

4. Any guardian or conservator of an adult;

5. 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;

6. 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

7. Any law-enforcement officer; and

8. *Financial institution staff if the matter gives reason to suspect the financial exploitation by any person of an adult who is a client or customer of the financial institution.*

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review team.

C. ~~Any financial institution staff who suspects that an adult has been exploited financially may report~~

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59 such suspected financial exploitation and provide supporting information and records to the local  
60 department of the county or city wherein the adult resides or wherein the exploitation is believed to  
61 have occurred or to the adult protective services hotline. For purposes of this section:

62 "Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds,  
63 property, benefits, resources, or other assets of an adult, as defined in § 63.2-1603, for another's profit,  
64 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the  
65 adult of his rightful use of or access to such funds, property, benefits, resources, or other assets.  
66 "Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his  
67 detriment or an intentional failure to use the financial resources of an adult in a manner that results in  
68 neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or  
69 property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to  
70 pay for goods or services against his will for another's profit, benefit, or advantage if the adult did not  
71 agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.

72 "Financial institution staff" means any employee, agent, qualified individual, or representative of a  
73 bank, trust company, savings institution, loan association, consumer finance company, credit union,  
74 investment company, investment advisor, securities firm, accounting firm, or insurance company.

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

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

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

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

92 H. G. Any person who fails to make a required report or notification pursuant to subsection A shall  
93 be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more  
94 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a  
95 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be  
96 determined by the Commissioner for Aging and Rehabilitative Services or his designee. The  
97 Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing  
98 and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to §  
99 2.2-4026 of the Administrative Process Act.

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

107 J. I. No person or entity shall be obligated to report any matter if the person or entity has actual  
108 knowledge that the same matter has already been reported to the local department or to the adult  
109 protective services hotline.

110 K. J. All law-enforcement departments and other state and local departments, agencies, authorities  
111 and institutions shall cooperate with each adult protective services worker of a local department in the  
112 detection, investigation and prevention of adult abuse, neglect and exploitation.

113 L. K. *If a financial institution has adopted policies and procedures for reporting suspected financial*  
114 *exploitation of adults that is discovered by its staff, financial institution staff required to report under*  
115 *subdivision A 8 may, in lieu of reporting, notify the person in charge of the financial institution or his*  
116 *designee, who shall report such information in accordance with the financial institution's policies and*  
117 *procedures for reporting such matters immediately upon his determination that there is reason to*  
118 *suspect financial exploitation. Upon request, and to the extent permitted by state and federal law,*  
119 *financial institution staff, or any other person making a report pursuant to the financial institution's*  
120 *policies and procedures in accordance with the provisions of this subsection, to the local department of*

121 *social services may report any information or records relevant to the report or investigation.*

122 Financial institution staff may refuse to execute a transaction, may delay a transaction, or may refuse  
 123 to disburse funds if the financial institution staff (i) believes in good faith that the transaction or  
 124 disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or  
 125 (ii) makes, or has actual knowledge that another person has made, a report to the local department or  
 126 adult protective services hotline stating a good faith belief that the transaction or disbursement may  
 127 involve, facilitate, result in, or contribute to the financial exploitation of an adult. The financial  
 128 institution staff may continue to refuse to execute a transaction, delay a transaction, or refuse to disburse  
 129 funds for a period no longer than 30 business days after the date upon which such transaction or  
 130 disbursement was initially requested based on a good faith belief that the transaction or disbursement  
 131 may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless otherwise  
 132 ordered by a court of competent jurisdiction. ~~Upon request, and to the extent permitted by state and~~  
 133 ~~federal law, financial institution staff making a report to the local department of social services may~~  
 134 ~~report any information or records relevant to the report or investigation.~~

135 Absent gross negligence or willful misconduct, the financial institution and its staff shall be immune  
 136 from civil or criminal liability for refusing to execute a transaction, delaying a transaction, or refusing to  
 137 disburse funds pursuant to this subsection. The authority of a financial institution staff to refuse to  
 138 execute a transaction, to delay a transaction, or to refuse to disburse funds pursuant to this subsection  
 139 shall not be contingent upon whether financial institution staff has reported suspected financial  
 140 exploitation of the adult pursuant to *subdivision A 8 or this subsection C.*

141 *L. For purposes of this section:*

142 *"Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds,*  
 143 *property, benefits, resources, or other assets of an adult, as defined in § 63.2-1603, for another's profit,*  
 144 *benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives*  
 145 *the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets.*  
 146 *"Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his*  
 147 *detriment or an intentional failure to use the financial resources of an adult in a manner that results in*  
 148 *neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or*  
 149 *property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult*  
 150 *to pay for goods or services against his will for another's profit, benefit, or advantage if the adult did*  
 151 *not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.*

152 *"Financial institution staff" means any employee, agent, qualified individual, or representative of a*  
 153 *bank, trust company, savings institution, loan association, consumer finance company, credit union,*  
 154 *investment company, investment advisor, securities firm, accounting firm, or insurance company.*