

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 63.2-1603, 63.2-1606, and 63.2-1609 of the Code of Virginia, relating*  
 3 *to emergency order for adult protective services; acts of violence, force, or threat or financial*  
 4 *exploitation; penalty.*

[S 1297]

Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That §§ 63.2-1603, 63.2-1606, and 63.2-1609 of the Code of Virginia are amended and reenacted**  
 9 **as follows:**10 **§ 63.2-1603. Protection of adults; definitions.**

11 As used in this article:

12 *"Act of violence, force, or threat" means the same as that term is defined in § 19.2-152.7:1.*13 *"Adult" means any person 60 years of age or older, or any person 18 years of age or older who is*  
 14 *incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying*  
 15 *nonresidents who are temporarily in the Commonwealth and who are in need of temporary or*  
 16 *emergency protective services.*17 *"Emergency" means (i) that an adult is living in conditions that present a clear and substantial risk of*  
 18 *death or immediate and serious physical harm to himself or others or (ii) that an adult has been, within*  
 19 *a reasonable period of time, subjected to an act of violence, force, or threat or been subjected to*  
 20 *financial exploitation.*21 *"Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds,*  
 22 *property, benefits, resources, or other assets of an adult for another's profit, benefit, or advantage,*  
 23 *including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful*  
 24 *use of or access to such funds, property, benefits, resources, or other assets. "Financial exploitation"*  
 25 *includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional*  
 26 *failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii)*  
 27 *the acquisition, possession, or control of an adult's financial resources or property through the use of*  
 28 *undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services*  
 29 *against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked,*  
 30 *misled, or defrauded into agreeing, to pay for such goods or services.*31 *"Financial institution staff" means any employee, agent, qualified individual, or representative of a*  
 32 *bank, trust company, savings institution, loan association, consumer finance company, credit union,*  
 33 *investment company, investment advisor, securities firm, accounting firm, or insurance company.*34 *"Incapacitated person" means any adult who is impaired by reason of mental illness, intellectual*  
 35 *disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks*  
 36 *sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning*  
 37 *his or her well-being.*38 **§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.**39 **A.** Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported  
 40 immediately upon the reporting person's determination that there is such reason to suspect. Medical  
 41 facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately  
 42 while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of  
 43 the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall  
 44 be made to the local department or the adult protective services hotline in accordance with requirements  
 45 of this section by the following persons acting in their professional capacity:46 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with  
 47 the exception of persons licensed by the Board of Veterinary Medicine;

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

49 3. Any emergency medical services provider certified by the Board of Health pursuant to  
 50 § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation  
 51 directly to the attending physician at the hospital to which the adult is transported, who shall make such  
 52 report forthwith;

53 4. Any guardian or conservator of an adult;

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

56 6. Any person providing full, intermittent or occasional care to an adult for compensation, including,

57 but not limited to, companion, chore, homemaker, and personal care workers; and

58 7. Any law-enforcement officer.

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

82 C. Any financial institution staff who suspects that an adult has been exploited financially may report  
83 such suspected financial exploitation and provide supporting information and records to the local  
84 department of the county or city wherein the adult resides or wherein the exploitation is believed to  
85 have occurred or to the adult protective services hotline. For purposes of this section:

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

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

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

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

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

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

116 H. Any person who fails to make a required report or notification pursuant to subsection A shall be  
117 subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more

118 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a  
119 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be  
120 determined by the Commissioner for Aging and Rehabilitative Services or his designee. The  
121 Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing  
122 and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to  
123 § 2.2-4026 of the Administrative Process Act.

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

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

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

137 L. Financial institution staff may refuse to execute a transaction, may delay a transaction, or may  
138 refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or  
139 disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or  
140 (ii) makes, or has actual knowledge that another person has made, a report to the local department or  
141 adult protective services hotline stating a good faith belief that the transaction or disbursement may  
142 involve, facilitate, result in, or contribute to the financial exploitation of an adult. The financial  
143 institution staff may continue to refuse to execute a transaction, delay a transaction, or refuse to disburse  
144 funds for a period no longer than 30 business days after the date upon which such transaction or  
145 disbursement was initially requested based on a good faith belief that the transaction or disbursement  
146 may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless otherwise  
147 ordered by a court of competent jurisdiction. Upon refusing to execute a transaction, delaying a  
148 transaction, or refusing to disburse funds, the financial institution shall report such refusal or delay  
149 within five business days to the local department or the adult protective services hotline. Upon request,  
150 and to the extent permitted by state and federal law, financial institution staff making a report to the  
151 local department of social services may report any information or records relevant to the report or  
152 investigation. Absent gross negligence or willful misconduct, the financial institution and its staff shall  
153 be immune from civil or criminal liability for refusing to execute a transaction, delaying a transaction,  
154 or refusing to disburse funds pursuant to this subsection. The authority of a financial institution staff to  
155 refuse to execute a transaction, to delay a transaction, or to refuse to disburse funds pursuant to this  
156 subsection shall not be contingent upon whether financial institution staff has reported suspected  
157 financial exploitation of the adult pursuant to subsection C.

158 **§ 63.2-1609. Emergency order for adult protective services.**

159 A. Upon petition by the local department to the circuit court, the court may issue an order  
160 authorizing the provision of adult protective services on an emergency basis to an adult after finding on  
161 the record, based on a preponderance of the evidence, that:

- 162 1. The adult is incapacitated;
- 163 2. An emergency exists;
- 164 3. The adult lacks the capacity to consent to receive adult protective services; and
- 165 4. The proposed order is substantially supported by the findings of the local department that has  
166 investigated the case, or if not so supported, there are compelling reasons for ordering services.

167 B. In issuing an emergency order, the court shall adhere to the following limitations:

168 1. Only such adult protective services as are necessary to improve or correct the conditions creating  
169 the emergency shall be ordered, and the court shall designate the approved services in its order. In  
170 ordering adult protective services the court shall consider the right of a person to rely on nonmedical  
171 remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

172 2. The court shall specifically find in the emergency order whether hospitalization or a change of  
173 residence is necessary. Approval of the hospitalization or change of residence shall be stated in the  
174 order. No adult may be committed to a mental health facility under this section.

175 3. Adult protective services may be provided through an appropriate court order only for a period of  
176 15 days. The original order may be renewed once for a five-day period upon a showing to the court that  
177 continuation of the original order is necessary to remove the emergency.

178 4. In its order the court shall appoint the petitioner or another interested person, as temporary

179 guardian of the adult with responsibility for the adult's welfare and authority to give consent for the  
180 adult for the approved adult protective services until the expiration of the order.

181 5. When applicable, the court shall appoint the petitioner or another interested person as temporary  
182 conservator of the adult with responsibility and authority limited to managing the adult's estate and  
183 financial affairs related to the approved adult protective services until the expiration of the order.

184 6. The issuance of an emergency order and the appointment of a temporary guardian or temporary  
185 conservator shall not deprive the adult of any rights except to the extent provided for in the order or  
186 appointment.

187 7. The court shall set the bond of the temporary guardian and the bond and surety, if any, of the  
188 temporary conservator.

189 8. *Upon a finding that the adult has been, within a reasonable period of time, subjected to an act of*  
190 *violence, force, or threat or been subjected to financial exploitation, the court may include in its order*  
191 *one or more of the following conditions to be imposed on the alleged perpetrator: (i) prohibition on*  
192 *acts of violence, force, or threat or criminal offenses that may result in injury to person or property; (ii)*  
193 *prohibition on such other contacts by the alleged perpetrator with the adult or the adult's family or*  
194 *household members as the court deems necessary for the health and safety of such persons; or (iii) such*  
195 *other conditions as the court deems necessary to prevent (a) acts of violence, force, or threat; (b)*  
196 *criminal offenses that may result in injury to persons or property; (c) communication or other contact of*  
197 *any kind by the alleged perpetrator; or (d) financial exploitation by the alleged perpetrator. Any person*  
198 *who violates a condition imposed pursuant to this subdivision is guilty of a Class 1 misdemeanor.*

199 C. The petition for an emergency order shall set forth the name, address, and interest of the  
200 petitioner; the name, age, and address of the adult in need of adult protective services; the nature of the  
201 emergency, *including the nature of any acts of violence, force, or threat or financial exploitation; the*  
202 *date and location of any acts of violence, force, or threat or financial exploitation; the nature of the*  
203 *adult's incapacity, if determinable; the proposed adult protective services; the petitioner's reasonable*  
204 *belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1*  
205 *through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and*  
206 *the outcomes of such attempts.*

207 D. Written notice of the time, date, and place for the hearing shall be given to the adult, to his  
208 spouse, or if none, to his nearest known next of kin, *and to the alleged perpetrator if the petition*  
209 *alleges the adult has been subjected to an act of violence, force, or threat or financial exploitation*, and  
210 a copy of the petition shall be attached. Such notice shall be given at least 24 hours prior to the hearing  
211 for emergency intervention. The court may waive the 24-hour notice requirement upon showing that (i)  
212 immediate and reasonably foreseeable physical harm to the adult or others will result from the 24-hour  
213 delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest  
214 known next of kin, *and the alleged perpetrator if the petition alleges the adult has been subjected to an*  
215 *act of violence, force, or threat or financial exploitation.*

216 E. Upon receipt of a petition for an emergency order for adult protective services, the court shall  
217 hold a hearing. The adult who is the subject of the petition shall have the right to be present and be  
218 represented by counsel at the hearing. If it is determined that the adult is indigent, or, in the  
219 determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and  
220 appoint a guardian ad litem. If the adult is indigent, the cost of the proceeding shall be borne by the  
221 Commonwealth. If the adult is not indigent, the court may order that the cost of the proceeding shall be  
222 borne by such adult. This hearing shall be held no earlier than 24 hours *and no later than 72 hours*  
223 *after the notice required in subsection D has been given, unless such notice has been waived by the*  
224 *court.*

225 F. The adult, the temporary guardian, temporary conservator, or any interested person may petition  
226 the court to have the emergency order set aside or modified at any time there is evidence that a  
227 substantial change in the circumstances of the adult for whom the emergency services were ordered has  
228 occurred.

229 G. Where adult protective services are rendered on the basis of an emergency order, the temporary  
230 guardian or temporary conservator shall submit to the court a report describing the circumstances thereof  
231 including the name, place, date, and nature of the services provided. This report shall become part of the  
232 court record. Such report shall be confidential and open only to such persons as may be directed by the  
233 court.

234 H. If the person continues to need adult protective services after the renewal order provided in  
235 subdivision B 3 has expired, the temporary guardian, temporary conservator, or local department shall  
236 immediately petition the court to appoint a guardian and, if applicable, a conservator pursuant to Chapter  
237 20 (§ 64.2-2000 et seq.) of Title 64.2.

238 I. *If the court finds the adult has been, within a reasonable period of time, subjected to an act of*  
239 *violence, force, or threat or been subjected to financial exploitation and enters an order containing any*

240 of the conditions permitted pursuant to subdivision B 8, the clerk of the circuit court shall forthwith  
241 forward an attested copy of the order containing the perpetrator's identifying information and the name,  
242 date of birth, sex, and race of each protected person provided to the court to the primary  
243 law-enforcement agency providing service and entry of protective orders and, upon receipt of the order,  
244 the primary law-enforcement agency shall enter the name of the person subject to the order and other  
245 appropriate information required by the Department of State Police into the Virginia Criminal  
246 Information Network established and maintained by the Department of State Police pursuant to Chapter  
247 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the perpetrator in person as  
248 provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service  
249 and other appropriate information required by the Department of State Police into the Virginia Criminal  
250 Information Network and make due return to the court.

251 Upon receipt of the return of service or other proof of service pursuant to subsection C of  
252 § 16.1-264, the clerk shall forthwith forward an attested copy of the order to the primary  
253 law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary  
254 into the Virginia Criminal Information Network as described in this subsection. If the order is later set  
255 aside or modified, a copy of such order shall also be attested, forwarded forthwith to the primary  
256 law-enforcement agency responsible for service and entry of protective orders and, upon receipt of the  
257 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any  
258 modification as necessary to the identifying information and other appropriate information required by  
259 the Department of State Police into the Virginia Criminal Information Network as described in this  
260 subsection, and the order shall be served forthwith and due return made to the court.