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SENATE BILL NO. 124

Offered January 12, 2022

Prefiled January 7, 2022

A *BILL to amend and reenact §§ 64.2-1608 and 64.2-1621 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-178.2, relating to misuse of power of attorney; financial exploitation; incapacitated adults; penalty.*

Patrons—Obenshain, Hackworth, Mason and Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-1608 and 64.2-1621 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-178.2 as follows:

§ 18.2-178.2. Misuse of power of attorney; financial exploitation; penalty.

A. As used in this section:

"Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. "Agent" includes an original agent, a coagent, a successor agent, and a person to which an agent's authority is delegated.

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

"Incapacitated adult" means the same as that term is defined in § 18.2-369.

"Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used.

"Principal" means an individual who grants authority to an agent in a power of attorney.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

B. An agent who knowingly or intentionally engages in financial exploitation of an incapacitated adult is guilty of a Class 1 misdemeanor. A violation of this section shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

§ 64.2-1608. Termination of power of attorney or agent's authority.

A. A power of attorney terminates when:

1. The principal dies;
2. The principal becomes incapacitated, if the power of attorney is not durable;
3. The principal revokes the power of attorney;
4. The power of attorney provides that it terminates;
5. The purpose of the power of attorney is accomplished; or
6. The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney; or
7. The agent is convicted of misuse of power of attorney under § 18.2-178.2.

B. An agent's authority terminates when:

1. The principal revokes the authority;
2. The agent dies, becomes incapacitated, or resigns;
3. Unless the power of attorney otherwise provides, an action is filed (i) for the divorce or annulment of the agent's marriage to the principal or their legal separation, (ii) by either the agent or principal for separate maintenance from the other, or (iii) by either the agent or principal for custody or visitation of a child in common with the other; or
4. The power of attorney terminates.

C. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the

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SB124

59 authority terminates under subsection B, notwithstanding a lapse of time since the execution of the
60 power of attorney.

61 D. Termination of an agent's authority or of a power of attorney is not effective as to the agent or
62 another person that, without actual knowledge of the termination, acts in good faith under the power of
63 attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the
64 principal's successors in interest.

65 E. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate
66 the power of attorney as to an agent or other person that, without actual knowledge of the incapacity,
67 acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or
68 unenforceable, binds the principal and the principal's successors in interest.

69 F. The execution of a power of attorney does not revoke a power of attorney previously executed by
70 the principal unless the subsequent power of attorney provides that the previous power of attorney is
71 revoked or that all other powers of attorney are revoked.

72 **§ 64.2-1621. Remedies under other law.**

73 The remedies under this chapter are not exclusive and do not abrogate any right ~~of~~, remedy, *or*
74 *penalty*, including a court-supervised accounting *or criminal prosecution*, under the laws of the
75 Commonwealth other than this chapter.