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HOUSE BILL NO. 882

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact §§ 32.1-126.01, 32.1-162.9:1, 37.2-314, and 63.2-1720 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-178.1, relating to financial exploitation of elderly persons or vulnerable adults; barrier crimes; penalties.*

Patron—Sickles

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-126.01, 32.1-162.9:1, 37.2-314, and 63.2-1720 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-178.1 as follows:

§ 18.2-178.1. Financial exploitation of elderly persons or vulnerable adults; penalties.

A. As used in this section, unless the context requires a different meaning:

"Caregiver" means an adult who has been entrusted with or has assumed responsibility for the care or property of an elderly person or vulnerable adult.

"Elderly person" means any person 65 years of age or older.

"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.

"Position of trust" means any person who has a fiduciary relationship with the elderly person or vulnerable adult, including but not limited to a court-appointed or voluntary guardian, trustee, attorney, conservator, executor, or person with a power of attorney.

"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.

"Undue influence" means domination, intimidation, force, coercion, or manipulation exercised by another person to the extent that an elderly person or vulnerable adult was prevented from exercising free judgment and choice.

"Vulnerable adult" means any person 18 years of age or older who suffers from a mental illness, mental retardation, dementia, organic brain dysfunction, developmental disability, physical illness or disability, or other causes that would impair the person's mental or physical ability to manage his money, assets, property, or financial resources to the extent that the adult lacks sufficient understanding or capacity to make, communicate, or carry out reasonable decisions regarding his money, assets, property, or financial resources.

B. 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 elderly person's or vulnerable adult's money, assets, property, or financial resources with the intent to temporarily or permanently deprive the elderly person or vulnerable adult of the use, benefit, or possession of the money, assets, property, or financial resources.

C. A violation of this section is a Class 5 felony. However, any violation of this section by a caregiver or a person in a position of trust is a Class 3 felony.

D. 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 or (ii) the person charged with the offense resided at the time of the offense.

E. It shall not constitute a defense to prosecution under this section that the accused did not know the age of the victim.

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,

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59 arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, *financial exploitation as set*
60 *out in § 18.2-178.1*, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of
61 violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a
62 sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out
63 in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in
64 § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and
65 neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as
66 set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as
67 set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and
68 neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an
69 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in
70 § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in
71 § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.
72 However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor
73 specified in this section not involving abuse or neglect, if five years have elapsed following the
74 conviction.

75 Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn
76 statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether
77 within or without the Commonwealth. Any person making a materially false statement when providing
78 such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a
79 Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is
80 prohibited other than to a federal or state authority or court as may be required to comply with an
81 express requirement of law for such further dissemination.

82 A nursing home shall, within 30 days of employment, obtain for any compensated employees an
83 original criminal record clearance with respect to convictions for offenses specified in this section or an
84 original criminal history record from the Central Criminal Records Exchange. The provisions of this
85 section shall be enforced by the Commissioner. If an applicant is denied employment because of
86 convictions appearing on his criminal history record, the nursing home shall provide a copy of the
87 information obtained from the Central Criminal Records Exchange to the applicant.

88 The provisions of this section shall not apply to volunteers who work with the permission or under
89 the supervision of a person who has received a clearance pursuant to this section.

90 B. A person who complies in good faith with the provisions of this section shall not be liable for
91 any civil damages for any act or omission in the performance of duties under this section unless the act
92 or omission was the result of gross negligence or willful misconduct.

93 C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this
94 section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

95 § 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited;
96 criminal records check required; drug testing; suspension or revocation of license.

97 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
98 exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in
99 § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder or
100 manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding
101 by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for
102 immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4
103 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in
104 § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in
105 § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as
106 set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, *financial exploitation as set out in*
107 *§ 18.2-178.1*, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence
108 as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off
109 shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in
110 § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in
111 § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and
112 neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as
113 set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as
114 set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and
115 neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an
116 act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in
117 § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in
118 § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

119 However, a home care organization or hospice may hire an applicant convicted of one misdemeanor
120 specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining a drug-free workplace, which may include drug testing when the employer has cause to believe that the person has engaged in the use of illegal drugs and periodically during the course of employment. All positive results from drug testing administered pursuant to this section shall be reported to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

C. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

D. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice.

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the individual.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter, as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41; abduction, as set out in subsection A of § 18.2-47; abduction for immoral purposes, as set out in § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58; carjacking, as set out in § 18.2-58.1; extortion by threat, as set out in § 18.2-59; threat, as set out in § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; sexual assault, as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson, as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary, as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; *financial exploitation as set out in § 18.2-178.1*, any felony violation relating to distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting, as set out in § 18.2-286.1; use of a machine gun in a crime of violence, as set out in § 18.2-289; aggressive use of a machine gun, as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence, as set out in subsection A of § 18.2-300; pandering, as set out in § 18.2-355; crimes against nature involving children, as set out in § 18.2-361; taking indecent liberties with children, as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children, as set out in § 18.2-371.1, including failing to secure medical attention for an injured child, as set out in § 18.2-314; obscenity offenses, as set out in § 18.2-374.1; possession of child pornography, as set out in § 18.2-374.1:1; electronic facilitation of pornography, as set out in § 18.2-374.3; incest, as set out in § 18.2-366; abuse or neglect of incapacitated adults, as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners, as set out in § 18.2-474.1; escape from jail, as set out in § 18.2-477; felonies by prisoners, as set out in § 53.1-203; or an equivalent offense in another state; (ii)

182 convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et
183 seq.) of Chapter 7 of Title 18.2, in the five years prior to the application date for employment; or (iii)
184 convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et
185 seq.) of Chapter 7 of Title 18.2, and continue on probation or parole or have failed to pay required court
186 costs.

187 C. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that
188 no record exists, shall submit a report to the state facility or to the Department. If an individual is
189 denied employment because of information appearing on his criminal history record and the applicant
190 disputes the information upon which the denial was based, the Central Criminal Records Exchange shall,
191 upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history
192 record from the FBI. The information provided to the state facility or Department shall not be
193 disseminated except as provided in this section.

194 D. Those individuals listed in clause (i) of subsection A also shall provide to the state facility or
195 Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any
196 investigation of child abuse or neglect undertaken on them.

197 E. The Board may adopt regulations to comply with the provisions of this section. Copies of any
198 information received by the state facility or Department pursuant to this section shall be available to the
199 Department and to the applicable state facility but shall not be disseminated further, except as permitted
200 by state or federal law. The cost of obtaining the criminal history record and the central registry
201 information shall be borne by the applicant, unless the Department or state facility decides to pay the
202 cost.

203 § 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain
204 offenses prohibited; background check required; penalty.

205 A. An assisted living facility, adult day care center or child welfare agency licensed or registered in
206 accordance with the provisions of this chapter, or family day homes approved by family day systems,
207 shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719.
208 Such employees shall undergo background checks pursuant to subsection D. In the case of child welfare
209 agencies, the provisions of this section shall apply to employees who are involved in the day-to-day
210 operations of such agency or who are alone with, in control of, or supervising one or more children.

211 B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one
212 misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the
213 conviction. *In addition to the requirements of subsection A, an assisted living facility or adult day care*
214 *center shall not hire for compensated employment persons who have been convicted of § 18.2-178.1,*
215 *financial exploitation of elderly persons or vulnerable adults.*

216 C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
217 employment persons who have been convicted of not more than one misdemeanor offense under
218 § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense
219 while employed in a child day center or the object of the offense was a minor.

220 D. Background checks pursuant to this section require:

221 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
222 subject of any pending criminal charges within or outside the Commonwealth and, in the case of child
223 welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse
224 or neglect within or outside the Commonwealth;

225 2. A criminal history record check through the Central Criminal Records Exchange pursuant to
226 § 19.2-389; and

227 3. In the case of child welfare agencies, a search of the central registry maintained pursuant to
228 § 63.2-1515 for any founded complaint of child abuse and neglect.

229 E. Any person desiring to work as a compensated employee at a licensed assisted living facility,
230 licensed adult day care center, a licensed or registered child welfare agency, or a family day home
231 approved by a family day system shall provide the hiring or approving facility, center or agency with a
232 sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false
233 statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be
234 guilty of a Class 1 misdemeanor.

235 F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child
236 welfare agency, or a family day home approved by a family day system shall obtain for any
237 compensated employees within 30 days of employment (i) an original criminal record clearance with
238 respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from
239 the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare
240 agencies or family day homes approved by family day systems, a copy of the information from the
241 central registry. If an applicant is denied employment because of information from the central registry or
242 convictions appearing on his criminal history record, the assisted living facility, adult day care center or
243 child welfare agency shall provide a copy of the information obtained from the central registry or the

Central Criminal Records Exchange or both to the applicant.

G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

H. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

I. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

K. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

L. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

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