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SENATE BILL NO. 431

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 1, 2012)

(Patrons Prior to Substitute—Senators Stuart, Herring [SB 222 and SB 285], and Vogel [SB 443])

A *BILL to amend the Code of Virginia by adding a section numbered 18.2-178.1 and by adding in Chapter 22.2 of Title 19.2 a section numbered 19.2-386.33, relating to financial exploitation of incapacitated adults; penalties.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-178.1 and by adding in Chapter 22.2 of Title 19.2 a section numbered 19.2-386.33 as follows:

§ 18.2-178.1. Financial exploitation of incapacitated 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 incapacitated adult.

"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.

"Incapacitated adult" means any person 18 years of age or older who has a mental illness, intellectual disability, dementia, organic brain dysfunction, developmental disability, physical illness or disability, advanced age, or other causes that would impair the person's mental or physical ability to manage his money, assets, property, or financial resources.

"Position of trust" means any person who has a fiduciary relationship with 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.

"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 incapacitated adult was prevented from exercising free judgment and choice.

B. It shall be unlawful for any person to knowingly, without legal justification, 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 incapacitated adult's money, assets, property, or financial resources with the intent to permanently deprive the incapacitated adult of the use, benefit, or possession of the money, assets, property, or financial resources.

C. A violation of this section is a felony punishable by imprisonment in a state correctional facility for not less than one nor more than 20 years and a fine of not more than \$2,500. 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.

§ 19.2-386.33. Seizure and forfeiture of property used in connection with the financial exploitation of incapacitated adults.

All vehicles, tools, machinery, equipment, and other personal property used in connection with the financial exploitation of incapacitated adults that constitutes a violation of § 18.2-178.1 shall be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture to the Commonwealth pursuant to Chapter 22 (§ 19.2-369 et seq.) by order of the court in which a conviction under § 18.2-178.1 is obtained. A forfeiture under this section shall not extinguish the rights of any person without knowledge of the illegal use of the property who (i) is the lawful owner or (ii) has a valid and perfected lien on the property.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.