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HOUSE BILL NO. 1728

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 26, consisting of sections numbered 8.01-227.24 and 8.01-227.25, relating to the Virginia Vulnerable Adult Protection Act.*

Patron—Toscano

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 26, consisting of sections numbered 8.01-227.24 and 8.01-227.25, as follows:

*Article 26.**Virginia Vulnerable Adult Protection Act.***§ 8.01-227.24. Definitions.**

"Position of trust" means any individual who has a fiduciary relationship with the vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, conservator, executor, or agent pursuant to a power of attorney; however, it does not include banks, financial institutions, or other entities serving as institutional fiduciaries.

"Vulnerable adult" means any person 18 years of age or older who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age, or other causes to the extent that the adult lacks sufficient capacity to manage his assets or property.

§ 8.01-227.25. Duty to a vulnerable adult; liability.

A. An individual who is in a position of trust to a vulnerable adult shall use the vulnerable adult's assets or property solely for the benefit of the vulnerable adult and not for the benefit of the individual who is in a position of trust or any other person unless such use is authorized (i) by a court of competent jurisdiction or (ii) in a valid durable power of attorney or trust instrument executed by the vulnerable adult at a time when the vulnerable adult had capacity to manage his assets or property.

B. An individual who violates subsection A shall be liable for the actual damages sustained by the vulnerable adult, in addition to reasonable attorney fees and court costs. If compensatory damages are awarded, the vulnerable adult may also be awarded punitive damages in an amount not to exceed two times the amount of actual damages.

C. The vulnerable adult, his guardian, or his conservator, or the personal representative of the vulnerable adult's estate may file an action under this section against an individual who is in a position of trust to a vulnerable adult and violates subsection A. If no action is filed by the vulnerable adult, guardian, conservator, or personal representative, any other interested person may petition the court for leave to file an action on behalf of the vulnerable adult or his estate.

D. In addition to the relief set forth in subsection B, upon a finding that an individual who is in a position of trust to a vulnerable adult violated subsection A, the court may:

1. Order that such individual shall be barred of all interest in the vulnerable adult's estate by testate or intestate succession, elective share, exempt property, family allowance, and homestead allowance. Such individual shall be deemed to have predeceased the vulnerable adult as to property that would have passed from the estate of the vulnerable adult or that the individual would have acquired by statutory right. Any heir or distributee who establishes his kinship to the vulnerable adult by way of his kinship to such individual shall be deemed to be claiming from the vulnerable adult and not through such individual; or

2. Revoke, in whole or in part, any revocable (i) disposition or appointment of property made to or general or special power of appointment conferred upon such individual in a will, trust, or other instrument executed by the vulnerable adult or (ii) nomination by the vulnerable adult of such individual to serve in any fiduciary capacity for the vulnerable adult. Any revocation under this section shall be treated as if the individual who is in a position of trust to a vulnerable adult disclaimed the revoked interest or, in the case of a nomination to serve in a fiduciary capacity, predeceased the vulnerable adult.

E. Nothing in this section shall affect any person's interest in property acquired from an individual who is in a position of trust to a vulnerable adult who violated subsection A where such person acquired the property for consideration and in good faith.

INTRODUCED

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