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SENATE BILL NO. 1490

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 12, 2019)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact § 63.2-1606 of the Code of Virginia, relating to financial exploitation of aged or incapacitated adults; authority to refuse transactions or disbursements.*

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1606 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

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

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

4. Any guardian or conservator of an adult;

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

6. Any person providing full, intermittent or occasional care to an adult for compensation, including, but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer.

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

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected *financial* exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline.

For purposes of this section, "~~financial~~":

"Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of funds,

60 property, benefits, resources, or other assets of an adult, as defined in § 63.2-1603, for another's profit,
61 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives
62 the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets.
63 "Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his
64 detriment or an intentional failure to use the financial resources of an adult in a manner that results in
65 neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or
66 property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult
67 to pay for goods or services against his will for another's profit, benefit, or advantage if the adult did
68 not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.

69 "Financial institution staff" means any employee, agent, qualified individual, or representative of a
70 bank, trust company, savings institution or association, institution-affiliated party as defined in 12
71 U.S.C. § 1813, loan association, consumer finance company, credit union, investment company,
72 investment advisor, securities firm, accounting firm, or insurance company.

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

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

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

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

90 H. Any person who fails to make a required report or notification pursuant to subsection A shall be
91 subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more
92 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a
93 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be
94 determined by the Commissioner for Aging and Rehabilitative Services or his designee. The
95 Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing
96 and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to
97 § 2.2-4026 of the Administrative Process Act.

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

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

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

111 L. Financial institution staff may, pursuant to an internal policy, refuse to execute a transaction,
112 delay a transaction, or refuse to disburse funds if the financial institution staff (i) believes in good faith
113 that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial
114 exploitation of an adult or (ii) has actual knowledge that a report was made by any person to the local
115 department or adult protective services hotline stating a good faith belief that the transaction or
116 disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult. The
117 financial institution staff may continue to refuse execution of the transaction, delay the transaction, or
118 refuse the disbursement of funds for a period no longer than 30 business days after the date upon which
119 such transaction or disbursement was initially requested based on a good faith belief that the
120 transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation
121 of an adult, unless ordered by the court. Upon request, and to the extent permitted by state and federal

122 law, financial institution staff making a report to the local department of social services may report any
123 information or records relevant to the report or investigation. The financial institution and its staff shall
124 be immune from civil or criminal liability for refusing to execute a transaction, delaying a transaction,
125 refusing to disburse funds, or making a report to the local department or the adult protective services
126 hotline in good faith pursuant to this subsection.