

SENATE BILL NO. 1490

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Labor

on _____)

(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;

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

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

30 7. Any law-enforcement officer.

31 B. The report shall be made in accordance with subsection A to the local department of the county
32 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
33 occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate
34 or supersede any other obligation to report as required by law. If a person required to report under this
35 section receives information regarding abuse, neglect or exploitation while providing professional services
36 in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in
37 charge of the institution or his designee, who shall report such information, in accordance with the
38 institution's policies and procedures for reporting such matters, immediately upon his determination that
39 there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or
40 notification required by this subsection shall do so either orally or in writing and shall disclose all
41 information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any
42 person required to make the report shall make available to the adult protective services worker and the
43 local department investigating the reported case of adult abuse, neglect or exploitation any information,
44 records or reports which document the basis for the report. All persons required to report suspected adult
45 abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a
46 local department and shall make information, records and reports which are relevant to the investigation
47 available to such worker to the extent permitted by state and federal law. Criminal investigative reports
48 received from law-enforcement agencies shall not be further disseminated by the investigating agency nor
49 shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality
50 Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided
51 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, property, benefits, resources, or other assets of an adult, as defined in § 63.2-1603, 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.

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

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

E. Any person who makes a report or provides records or information pursuant to subsection A, C, or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent

79 photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall
80 be immune from any civil or criminal liability on account of such report, records, information,
81 photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad
82 faith or with a malicious purpose.

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

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

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

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

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

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

L. Financial institution staff may, pursuant to an internal policy, refuse to execute a transaction, delay a transaction, or refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or (ii) has actual knowledge that a report was made by any person to the local department or adult protective services hotline stating a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult. The financial institution staff may continue to refuse execution of the transaction, delay the transaction, or refuse the disbursement of funds for a period no longer than 30 business days after the date upon which such transaction or disbursement was initially requested based on a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless ordered by the court. Upon request, and to the extent permitted by state and federal law, financial institution staff making a report to the local department of social services may report any information or records relevant to the report or investigation. The financial institution and its staff shall be immune from civil or criminal liability for refusing to execute a transaction, delaying a transaction, refusing to disburse funds, or making a report to the local department or the adult protective services hotline in good faith pursuant to this subsection.

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