

HOUSE BILL NO. 95

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Head)

A BILL to amend and reenact §§ 63.2-1606 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-103.1, relating to adult protective services investigations; financial institutions; furnishing of records and information.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1606 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-103.1 as follows:

§ 6.2-103.1. Financial institutions to furnish certain information as part of adult protective services investigation.

Notwithstanding any other provision of law, any financial institution subject to the provisions of this title shall cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 and shall make any financial records or information relevant to such investigation available to the local department upon request to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.).

§ 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:

- 27 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503,
28 with the exception of persons licensed by the Board of Veterinary Medicine;
- 29 2. Any mental health services provider as defined in § 54.1-2400.1;
- 30 3. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-
31 111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to
32 the attending physician at the hospital to which the adult is transported, who shall make such report
33 forthwith;
- 34 4. Any guardian or conservator of an adult;
- 35 5. Any person employed by or contracted with a public or private agency or facility and working
36 with adults in an administrative, supportive or direct care capacity;
- 37 6. Any person providing full, intermittent or occasional care to an adult for compensation,
38 including, but not limited to, companion, chore, homemaker, and personal care workers; and
- 39 7. Any law-enforcement officer.
- 40 B. The report shall be made in accordance with subsection A to the local department of the county
41 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
42 occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate
43 or supersede any other obligation to report as required by law. If a person required to report under this
44 section receives information regarding abuse, neglect or exploitation while providing professional services
45 in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in
46 charge of the institution or his designee, who shall report such information, in accordance with the
47 institution's policies and procedures for reporting such matters, immediately upon his determination that
48 there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or
49 notification required by this subsection shall do so either orally or in writing and shall disclose all
50 information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any
51 person required to make the report shall make available to the adult protective services worker and the
52 local department investigating the reported case of adult abuse, neglect or exploitation any information,
53 records or reports which document the basis for the report. All persons required to report suspected adult

54 abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a
55 local department and shall make information, records and reports which are relevant to the investigation
56 available to such worker to the extent permitted by state and federal law. Criminal investigative reports
57 received from law-enforcement agencies shall not be further disseminated by the investigating agency nor
58 shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality
59 Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided
60 in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be
61 subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review
62 team.

63 C. Any financial institution staff who suspects that an adult has been exploited financially may
64 report such suspected financial exploitation and provide supporting information and records to the local
65 department of the county or city wherein the adult resides or wherein the exploitation is believed to have
66 occurred or to the adult protective services hotline.

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

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

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

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

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

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

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

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

105 L. Financial institution staff may refuse to execute a transaction, may delay a transaction, or may
106 refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or
107 disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or (ii)

108 makes, or has actual knowledge that another person has made, a report to the local department or adult
109 protective services hotline stating a good faith belief that the transaction or disbursement may involve,
110 facilitate, result in, or contribute to the financial exploitation of an adult. The financial institution staff
111 may continue to refuse to execute a transaction, delay a transaction, or refuse to disburse funds for a period
112 no longer than 30 business days after the date upon which such transaction or disbursement was initially
113 requested based on a good faith belief that the transaction or disbursement may involve, facilitate, result
114 in, or contribute to the financial exploitation of an adult, unless otherwise ordered by a court of competent
115 jurisdiction. Upon refusing to execute a transaction, delaying a transaction, or refusing to disburse funds,
116 the financial institution shall report such refusal or delay within five business days to the local department
117 or the adult protective services hotline. Upon request, and to the extent permitted by state and federal law,
118 financial institution staff ~~making a report to the local department of social services~~ may report any
119 information or records relevant to the a report or investigation to the local department of social services
120 or to a court-appointed guardian ad litem for the adult who is the subject of the investigation. Absent gross
121 negligence or willful misconduct, the financial institution and its staff shall be immune from civil or
122 criminal liability for refusing to execute a transaction, delaying a transaction, or refusing to disburse funds
123 pursuant to this subsection. The authority of a financial institution staff to refuse to execute a transaction,
124 to delay a transaction, or to refuse to disburse funds pursuant to this subsection shall not be contingent
125 upon whether financial institution staff has reported suspected financial exploitation of the adult pursuant
126 to subsection C.

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