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HOUSE BILL NO. 95

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on February 1, 2022)

(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:

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

60 reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to
61 a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team
62 or a local or regional adult fatality review team, shall be subject to applicable confidentiality
63 requirements of the Team or a local or regional adult fatality review team.

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

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

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

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

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

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

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

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

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

106 L. Financial institution staff may refuse to execute a transaction, may delay a transaction, or may
107 refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or
108 disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or
109 (ii) makes, or has actual knowledge that another person has made, a report to the local department or
110 adult protective services hotline stating a good faith belief that the transaction or disbursement may
111 involve, facilitate, result in, or contribute to the financial exploitation of an adult. The financial
112 institution staff may continue to refuse to execute a transaction, delay a transaction, or refuse to disburse
113 funds for a period no longer than 30 business days after the date upon which such transaction or
114 disbursement was initially requested based on a good faith belief that the transaction or disbursement
115 may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless otherwise
116 ordered by a court of competent jurisdiction. Upon refusing to execute a transaction, delaying a
117 transaction, or refusing to disburse funds, the financial institution shall report such refusal or delay
118 within five business days to the local department or the adult protective services hotline. Upon request,
119 and to the extent permitted by state and federal law, financial institution staff making a report to the
120 local department of social services may report any information or records relevant to the a report or
121 investigation to the local department of social services or to a court-appointed guardian ad litem for the

122 *adult who is the subject of the investigation.* Absent gross negligence or willful misconduct, the financial
123 institution and its staff shall be immune from civil or criminal liability for refusing to execute a
124 transaction, delaying a transaction, or refusing to disburse funds pursuant to this subsection. The
125 authority of a financial institution staff to refuse to execute a transaction, to delay a transaction, or to
126 refuse to disburse funds pursuant to this subsection shall not be contingent upon whether financial
127 institution staff has reported suspected financial exploitation of the adult pursuant to subsection C.