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SENATE BILL NO. 124

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 26, 2022)

(Patrons Prior to Substitute—Senators Obenshain, Hackworth [SB 10], and Mason [SB 690])

A *BILL to amend and reenact §§ 64.2-1608 and 64.2-1621 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-178.2, relating to misuse of power of attorney; financial exploitation by an agent; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-1608 and 64.2-1621 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-178.2 as follows:

§ 18.2-178.2. Financial exploitation by an agent; penalty.

A. As used in this section:

"Agent" means the same as that term is defined in § 64.2-1600.

"Financial exploitation" means the illegal, unauthorized, or fraudulent use, or deprivation of use, of the property of an incapacitated adult with the intention of benefiting someone other than the incapacitated adult.

"Incapacitated adult" means the same as that term is defined in § 18.2-369.

"Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used.

"Principal" means an individual who grants authority to an agent in a power of attorney.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

B. An agent under a power of attorney who knowingly or intentionally engages in financial exploitation of an incapacitated adult who is the principal of that agent is guilty of a Class 1 misdemeanor. A violation of this section shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

§ 64.2-1608. Termination of power of attorney or agent's authority.

A. A power of attorney terminates when:

1. The principal dies;
2. The principal becomes incapacitated, if the power of attorney is not durable;
3. The principal revokes the power of attorney;
4. The power of attorney provides that it terminates;
5. The purpose of the power of attorney is accomplished; or
6. The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns,

and the power of attorney does not provide for another agent to act under the power of attorney.

B. An agent's authority terminates when:

1. The principal revokes the authority;
2. The agent dies, becomes incapacitated, or resigns;
3. Unless the power of attorney otherwise provides, an action is filed (i) for the divorce or annulment of the agent's marriage to the principal or their legal separation, (ii) by either the agent or principal for separate maintenance from the other, or (iii) by either the agent or principal for custody or visitation of a child in common with the other; or

4. *The agent is convicted of financial exploitation of the principal under § 18.2-178.2; or*

5. The power of attorney terminates.

C. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection B, notwithstanding a lapse of time since the execution of the power of attorney.

D. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

E. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

F. The execution of a power of attorney does not revoke a power of attorney previously executed by

60 the principal unless the subsequent power of attorney provides that the previous power of attorney is
61 revoked or that all other powers of attorney are revoked.

62 **§ 64.2-1621. Remedies under other law.**

63 The remedies under this chapter are not exclusive and do not abrogate any right ~~or~~, remedy, *or*
64 *penalty*, including a court-supervised accounting *or criminal prosecution*, under the laws of the
65 Commonwealth other than this chapter.