**South Carolina General Assembly**

118th Session, 2009-2010

**S. 361**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Lourie, Campbell, Fair, Elliott, McGill, Nicholson, Jackson, Ford, Williams, Reese and Pinckney

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Companion/Similar bill(s): 3358

Introduced in the Senate on February 3, 2009

Currently residing in the Senate Committee on **General**

Summary: Adult abuse

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/3/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑3

2/3/2009 Senate Referred to Committee on **General** [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑3

**VERSIONS OF THIS BILL**

[2/3/2009](file:///p:\pprever\2009-10\361_20090203.docx)

**A** **BILL**

TO AMEND SECTION 43‑35‑10 OF THE 1976 CODE, RELATING TO THE DEFINITION OF TERMS USED IN THE OMNIBUS ADULT PROTECTION ACT, TO REVISE THE DEFINITIONS OF “INVESTIGATIVE ENTITY” AND “NEGLECT”; TO AMEND SECTION 43‑35‑40, RELATING TO REQUIREMENTS OF AN INVESTIGATIVE ENTITY UPON RECEIVING A REPORT OF ADULT ABUSE, TO FURTHER SPECIFY AND CLARIFY PROCEDURES FOR REPORTING CASES IN WHICH THERE IS A REASONABLE SUSPICION OF CRIMINAL CONDUCT; AND TO AMEND SECTION 43‑35‑85, RELATING TO CRIMINAL PENALTIES FOR FAILING TO REPORT ADULT ABUSE WHEN REQUIRED TO REPORT, TO DELETE PROVISIONS AUTHORIZING DISCIPLINARY ACTION WHEN A PERSON WHO HAS REASON TO BELIEVE THAT ABUSE OCCURRED FAILS TO REPORT AND TO ESTABLISH CRIMINAL PENALTIES IF A CAREGIVER, DUE TO RECKLESS DISREGARD FOR THE HEALTH OR SAFETY OF A VULNERABLE ADULT, NEGLECTS OR CAUSES GREAT BODILY INJURY OR DEATH TO A VULNERABLE ADULT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 43‑35‑10(5) of the 1976 Code is amended to read:

“(5) ‘Investigative entity’ means the Long Term Care Ombudsman Program ~~or~~, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adult Investigative Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.”

SECTION 2. Section 43‑35‑10(6) of the 1976 Code is amended to read:

“(6) ‘Neglect’ means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. ~~Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death.~~ Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.”

SECTION 3. Section 43‑35‑40 of the 1976 Code is amended to read:

“Section 43‑35‑40. Upon receiving a report, the ~~investigative entity promptly~~ Long Term Care Ombudsman or Adult Protective Services shall:

(1) promptly initiate an investigation; and

(2) review the report within two working days ~~of receiving the report must review the report~~ for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable ~~Adults Investigations~~ Adult Investigative Unit of the South Carolina Law Enforcement Division ~~those cases which indicate reasonable suspicion of criminal conduct~~ (SLED). A report to ~~the unit~~ local law enforcement or SLED must be made within one working day of completing the review.”

SECTION 4. Section 43‑35‑85 of the 1976 Code is amended to read:

“Section 43‑35‑85. (A) A person required to report under this chapter who ~~has actual knowledge that abuse, neglect, or exploitation has occurred and who~~ knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five hundred dollars or imprisoned not more than one year. ~~A person required to report under this chapter who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.~~

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) A caregiver who neglects a vulnerable adult as a result of having acted or failed to act due to a reckless disregard for the health or safety of the vulnerable adult is guilty of a misdemeanor and, upon conviction, must be:

(1) imprisoned not more than one year or fined not more than one thousand dollars, or both;

(2) if the vulnerable adult suffered great bodily injury, imprisoned not more than three years or fined not more than five thousand dollars, or both.

(J) A caregiver who neglects a vulnerable adult as a result of having acted or failed to act due to a reckless disregard for the health or safety of a vulnerable adult and the neglect results in the death of the vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

(K) As used in this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

SECTION 5. This act takes effect upon approval by the Governor.

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