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**H. 4339**

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Summary: Vulnerable Adult Abuse and Neglect and Exploitation Registry

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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1/14/2010 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2010\01-14-10.docx)‑551

**VERSIONS OF THIS BILL**

[1/14/2010](file:///p:\pprever\2009-10\4339_20100114.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 2 TO CHAPTER 35, TITLE 43 SO AS TO ESTABLISH THE VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION REGISTRY TO BE MAINTAINED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION WITHIN ITS VULNERABLE ADULTS INVESTIGATIONS UNIT; TO PROVIDE THE REQUIREMENTS FOR AND THE MANNER IN WHICH A PERSON IS PLACED ON THE REGISTRY; TO SPECIFY INFORMATION THAT MAY BE MAINTAINED ON THE REGISTRY; TO AUTHORIZE SCREENING OF THE REGISTRY WHEN A PERSON’S HISTORY OF VULNERABLE ABUSE, NEGLECT, AND EXPLOITATION IS A CONDITION OF EMPLOYMENT OR VOLUNTEER SERVICES; TO PROVIDE FOR THE CONFIDENTIALITY OF REPORTS AND RECORDS OF VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION AND TO AUTHORIZE THE CONDITIONS UNDER WHICH SUCH INFORMATION MAY BE RELEASED; TO PROVIDE THE CONDITIONS UNDER WHICH RECORDS OF UNFOUNDED REPORTS MUST BE RETAINED; AND TO REQUIRE THE VULNERABLE ADULTS INVESTIGATIONS UNIT TO REPORT TO THE GENERAL ASSEMBLY AND THE LIEUTENANT GOVERNOR ANNUALLY; AND BY ADDING SECTION 17-25-136 SO AS TO PROVIDE THAT WHEN A PERSON IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO CERTAIN CRIMES AGAINST THE PERSON OR MORALITY THAT ARE BASED ON VULNERABLE ADULT ABUSE, NEGLECT, OR EXPLOITATION, THE COURT SHALL ORDER THAT THE PERSON BE ENTERED ON THE VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION REGISTRY.

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

SECTION 1. Chapter 35, Title 43 of the 1976 Code is amended by adding:

“Article 2

Vulnerable Adult

Abuse, Neglect, and Exploitation Registry

Section 43-35-200. The purpose of this article is to establish a system for the identification of vulnerable adult abuse, neglect, or exploitation, in order to provide a system for the coordination of reports concerning abused, neglected, or exploited vulnerable adults, and to provide data for determining the incidence and prevalence of such abuse, neglect, and exploitation in this State. To further these purposes, the State Law Enforcement Division must maintain a Vulnerable Adult Abuse, Neglect, and Exploitation Registry within the department’s Vulnerable Adults Investigations Unit in accordance with this article.

Section 43-35-205. Reports of vulnerable adult abuse, neglect, and exploitation must be made and investigated in accordance with Article 1.

Section 43-35-210. Perpetrators of vulnerable adult abuse, neglect, or exploitation must be entered in the registry:

(1) by order of a court when pursuant to Section 43‑35‑45 the court orders the Department of Social Services, Adult Protective Services Program to provide protective services because the court finds that the vulnerable adult has been abused, neglected, or exploited;

(2) if ordered by a court when petitioned pursuant to Section 43-35-215;

(3) pursuant to Section 43-35-220;

(4) when as a result of an investigation conducted by the unit or law enforcement pursuant to this article, the perpetrator pleads guilty or nolo contendere or is convicted of criminal conduct based on abuse, neglect, or exploitation perpetrated against a vulnerable adult; and

(5) pursuant to Section 17-25-136.

Section 43-35-215. (A) At any time following receipt of a report, the unit or the investigative entity may petition the family court for an order directing that the person named as the perpetrator in the report be entered in the registry. The petition must have a written case summary attached stating facts sufficient to establish by a preponderance of evidence that the person named as perpetrator abused, wilfully or recklessly neglected, or exploited the vulnerable adult and that the nature and circumstances of the abuse, neglect, or exploitation indicate that the person named as perpetrator would present a significant risk of committing abuse, wilful or reckless neglect, or exploitation if placed in a position or setting that involves care of or substantial contact with a vulnerable adult.

(B) The unit or the investigative entity must serve a copy of the petition and summary on the person named as the perpetrator. The petition must include a statement that the judge must rule based on the facts stated in the petition unless the clerk of court or the clerk’s designee receives a written request for a hearing from the person named as the perpetrator within five days after service of the petition. The name, address, and telephone number of the clerk of court or the clerk’s designee must be stated in the petition. If the person named as perpetrator requests a hearing, the court must schedule a hearing on the merits of the allegations in the petition and summary to be held no later than five working days following the request.

(C) The unit or the investigative entity must seek an order placing a person in the registry pursuant to subsection (A) in all cases in which the entity concludes that there is a preponderance of evidence that the perpetrator committed sexual battery against the vulnerable adult.

Section 43-35-220. At a hearing held pursuant to Section 44‑35‑45, at which the court finds that the vulnerable adult was abused, neglected, or exploited, the court must order that the name of the perpetrator be entered in the registry if the court finds that there is a preponderance of evidence that the person abused, wilfully or recklessly neglected, or exploited the vulnerable adult. Placement in the registry cannot be waived by any party or by the court.

Section 44-35-225. (A) When the Long Term Care Ombudsman conducts an investigation of a report of vulnerable adult abuse, neglect, or exploitation in a facility, as defined in Section 43-35-10, that results in a determination by the ombudsman that the person has abused, wilfully or recklessly neglected, or exploited the vulnerable adult, the name of the perpetrator immediately must be entered in the registry.

(B) The Long Term Care Ombudsman must notify the person in writing by certified mail that his name has been entered in the registry, of his right to request an appeal of the decision to enter his name in the registry and the procedures for requesting an appeal, and of the possible ramifications regarding future employment and licensing if he allows his name to remain in the registry.

Section 43-35-230. (A) Each entry in the registry must be accompanied by information further identifying the perpetrator including, but not limited to, the person’s date of birth, address, and any other identifying characteristics and describing the abuse, neglect, or exploitation committed by the person against the vulnerable adult.

(B) The registry only may contain information from reports of cases in which the perpetrator was placed in the registry pursuant to Section 43-35-210.

Section 43-35-235. (A) If a person is entered into the Vulnerable Adult Abuse, Neglect, and Exploitation Registry as a result of a finding made by the family court or by a circuit court pursuant to Section 43-35-210(4) or Section 17-25-136, there is no appeal of the determination.

(B) If a person is entered into the registry pursuant to Section 43-35-230, the person may appeal the determination and entry into the registry by requesting a contested case hearing pursuant to the Administrative Procedures Act, and a hearing must be granted expedited review.

Section 43-35-240. (A) When a statute or regulation makes determination of a person’s history of vulnerable adult abuse, neglect, or exploitation a condition for employment or volunteer service in a facility or other entity regulated by the State, the person must be screened against the Vulnerable Adults Abuse, Neglect, and Exploitation Registry before employment or service in the volunteer role. The person must be screened each time the license, registration, or other operating approval of the facility or other entity is renewed.

(B) When a statute or regulation makes determination of an applicant’s history of vulnerable adult abuse, neglect, or exploitation a condition for issuance of a license, registration, or other operating approval by the State, the applicant must be screened against the registry before issuance of the initial license, registration, or other approval and each time the license, registration, or other operating approval is renewed.

Section 43-35-245. (A) Information in the Vulnerable Adults Abuse, Neglect, and Exploitation Registry may be released only as authorized in this section or as otherwise specifically authorized by statute.

(B) All reports made, information collected, and records maintained pursuant to this chapter by the Vulnerable Adults Investigations Unit or an investigative entity are confidential. A person who disseminates or permits the dissemination of these records and the information contained in these records except as authorized in this section, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both.

(C) The Vulnerable Adults Investigations Unit or an investigative entity is authorized to grant access to the records of their respective cases of vulnerable adult abuse, neglect, or exploitation entered in the Vulnerable Adult Abuse, Neglect, and Exploitation Registry upon request of the following persons, agencies, or entities only:

(1) the Ombudsman of the Office of the Governor or the Governor’s designee;

(2) a person appointed as the vulnerable adult’s guardian ad litem, the attorney for the vulnerable adult’s guardian ad litem, or the vulnerable adult’s attorney;

(3) appropriate staff of the unit or of an investigative entity;

(4) a law enforcement agency investigating or prosecuting known or suspected abuse, neglect, or exploitation of a vulnerable adult or any other crime against a vulnerable adult, attempting to locate a missing vulnerable adult, investigating or prosecuting the death of a vulnerable adult, or investigating or prosecuting any other crime established in or associated with activities authorized under this chapter;

(5) a person who is named in the registry as having abused, neglected, or exploited a vulnerable adult, that person’s attorney, and that person’s guardian ad litem;

(6) a vulnerable adult who is named in a report as a victim of abuse, neglect, or exploitation except in regard to information that the unit or the investigative entity may determine to be detrimental to the well‑being of the vulnerable adult;

(7) the committee or guardian of a vulnerable adult who is named in the registry as a victim of abuse, neglect, or exploitation;

(8) a county medical examiner or coroner who is investigating the death of a vulnerable adult;

(9) a family court conducting proceedings pursuant to this article;

(10) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order;

(11) a grand jury by subpoena upon its determination that access to the record is necessary in the conduct of its official business;

(12) authorities in other states conducting vulnerable adult abuse, neglect, or exploitation investigations or providing adult protective services;

(13) courts in other states conducting vulnerable adult abuse, neglect, or exploitation proceedings or committee or guardianship proceedings;

(14) the director or chief executive officer of an adult daycare facility, community residential care facility, or other facility providing services to vulnerable adults when the records concern the investigation of an incident of vulnerable adult abuse, neglect, or exploitation that allegedly was perpetrated by an employee or volunteer of such facility against a vulnerable adult served by the facility;

(15) a person or agency with authorization to care for, diagnose, supervise, or treat the vulnerable adult and the vulnerable adult’s family;

(16) a person engaged in bona fide research with the written permission of the Director of the State Law Enforcement Division or the director’s designee, subject to limitations the director may impose;

(17) multidisciplinary teams impaneled by the Vulnerable Adults Investigations Unit or by an investigative entity or impaneled pursuant to law;

(18) circuit solicitors and their agents investigating or prosecuting known or suspected abuse, neglect, or exploitation of a vulnerable adult or any other crime against a vulnerable adult, attempting to locate a missing vulnerable adult, investigating or prosecuting the death of a vulnerable adult, or investigating or prosecuting any other crime established in or associated with activities authorized under this chapter.

(D) The Vulnerable Adults Investigations Unit or the investigative entity may limit the information disclosed to individuals and entities named in items (12), (13), (14), (15), (16), and (17) of subsection (C) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed.

(E) When a request for access to the record comes from an individual identified in items (5), (6), or (7) of subsection (C) or that person’s attorney, the unit or the investigative entity, shall review any reports from medical care providers and mental health care providers to determine whether the report contains information that does not pertain to the case decision, to the treatment needs of the vulnerable adult as a whole, or to the care of the vulnerable adult. If the unit or the investigative entity determines that these conditions exist, before releasing the document, the unit or the investigative entity shall provide a written notice identifying the report to the requesting party and to the person whose treatment or assessment was the subject of the report. The notice may be mailed to the parties involved or to their attorneys or it may be delivered in person. The notice shall state that the report will be released after ten days from the date notice was mailed to all parties and that any party objecting to release may apply to the court of competent jurisdiction for relief. When a medical or mental health provider or agency furnishes copies of reports or records to the unit or to an investigative entity and designates in writing that those reports or records are not to be further disclosed, the unit or the investigative entity must not disclose those documents to persons identified in items (5), (6), or (7) of subsection (C) or that person’s attorney. The unit or the investigative entity shall identify to the requesting party the records or reports withheld pursuant to this subsection and shall advise the requesting party that he may contact the medical or mental health provider or agency about release of the records or reports.

(F) A disclosure pursuant to this section shall protect the identity of the person who reported the suspected vulnerable adult abuse, neglect, or exploitation. The unit or the investigative entity also may protect the identity of any other person identified in the record if the unit or investigative entity finds that disclosure of the information would be likely to endanger the life or safety of the person. Nothing in this subsection prohibits the unit or the investigative entity from subpoenaing the reporter or other persons to court for the purpose of testimony if it determines the individual’s testimony is necessary to protect the vulnerable adult; the fact that the reporter made the report must not be disclosed.

(G) The unit or the investigative entity is authorized to summarize the outcome of the investigation to the person who reported the suspected vulnerable adult abuse, neglect, or exploitation if the person requests this information at the time the report is made. The unit or the investigative entity has the discretion to limit the information disclosed to the reporter based on whether the reporter has an ongoing professional or other relationship with the vulnerable adult or the family.

(H) Nothing in this section gives to the persons, agencies, or entities requesting access to a record the right to review or copy the complete case record.

(I) The Director of the Vulnerable Adults Investigations Unit or the director’s designee or the director of the investigative entity or that director’s designee may disclose to the media information contained in vulnerable adult records if the disclosure is limited to discussion of the activities in handling the case including information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, or other public judicial proceedings. For purposes of this subsection, information is considered ‘placed in the public domain’ when it has been reported in the news media, is contained in public records of a criminal justice agency, is contained in public records of a court of law, or has been the subject of testimony in a public judicial proceeding.

(J) The Vulnerable Adults Investigations Unit or the director’s designee is authorized, in accordance with Article 5, to prepare and release reports of the results of the investigations into the deaths of vulnerable adults in the custody of the state or receiving protective services at the time of death.

(K) The Vulnerable Adults Investigations Unit is authorized to disclose information concerning an individual named in the registry as a perpetrator when screening of an individual’s background is required by statute or regulation for employment, licensing, or any other purposes or a request is made in writing by the person being screened. Nothing in this section prevents the unit from using other information in records of the unit or of an investigative entity when making decisions concerning licensing, employment, or placement, or performing other duties required by this article.

(L) Records of all reports made available to persons pursuant to this section must indicate whether or not an appeal is pending on the report.

(M) The unit or the investigative entity may disclose to participants in a family group conference relevant information concerning the vulnerable adult or family or other relevant information to the extent that the unit or the investigative entity determines that the disclosure is necessary to accomplish the purpose of the family group conference. Participants in the family group conference must be instructed to maintain the confidentiality of information disclosed by the agency.

(N) Nothing in this section may be construed to waive the confidential nature of the case record, to waive any statutory or common law privileges attaching to internal reports of the unit or of an investigative entity or to information in case records, to create a right to access under the Freedom of Information Act, or to require the unit or an investigative entity to search records or generate reports for purposes of the Freedom of Information Act.

Section 43-35-255. (A) Notwithstanding other provisions of law affecting confidentiality of vulnerable adult abuse, neglect, or exploitation records and use and disclosure of records of unfounded cases, records concerning unfounded reports must be retained and disclosed as provided in this section.

(B) The alleged perpetrator in an unfounded report who has reason to believe that the report was made maliciously or in bad faith has the right to request in writing that records of the report be retained by the unit or investigative entity, as applicable, for up to two years from the date of the case decision. The written request must be received by the unit or investigative entity within thirty days of the person’s receiving notice of the case decision. A person exercising this right may request a copy of the record of the unfounded case and the unit or investigative entity shall provide a copy of the record, subject to subsection (C).

(C) The unit or investigative entity shall disclose to persons exercising the rights afforded them under this section whether or not the report was made anonymously. However, the identity of a reporter must not be made available to the person except by order of the family court.

(D) An alleged perpetrator in an unfounded case who believes the report was made maliciously or in bad faith may petition the family court to determine whether there is probable cause to believe that the reporter acted maliciously or in bad faith. The court shall determine probable cause based on an in camera review of the case record and oral or written argument, or both. If the court finds probable cause, the identity of the reporter must be disclosed to the moving party.

(E) Notwithstanding other provisions of law affecting confidentiality of vulnerable adult abuse, neglect, or exploitation records and use and disclosure of records of unfounded cases, a court conducting civil or criminal proceedings resulting from disclosures authorized by this section may order the unit or investigative entity to release the record to any party to the case or to law enforcement.

Section 43-35-260. The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division must furnish to the Lieutenant Governor and the General Assembly a report on the incidence and prevalence of vulnerable adult abuse, neglect, and exploitation in South Carolina, the effectiveness of services provided throughout the State to protect vulnerable adults from this harm, and any other data considered instructive.”

SECTION 2. Chapter 25, Title 17 of the 1976 Code is amended by adding:

“Section 17-25-136. When a person is convicted of or pleads guilty or nolo contendere to an ‘Offense Against the Person’ as provided for in Chapter 3, Title 16, an ‘Offense Against Morality or Decency’ as provided for in Chapter 15, Title 16, criminal domestic violence, as defined in Section 16-25-20, criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65, or the common law offense of assault and battery of a high and aggravated nature, and the act on which the conviction or the plea of guilty or nolo contendere is based upon conduct commensurate with abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 43-35-10, the court shall order that the person’s name, and other identifying information, including, but not limited to, the person’s date of birth, address, and any other identifying characteristics, and the nature of the act which led to the conviction or plea be placed in the Vulnerable Adult Abuse, Neglect, and Exploitation Registry established by Article 2, Chapter 35, Title 43. The clerk shall forward the information to the Vulnerable Adults Investigations Unit within the State Law Enforcement Division for this purpose in accordance with guidelines adopted by the division.”

SECTION 3. This act takes effect upon approval by the Governor.

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