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COMMITTEE REPORT

May 7, 2014

**S. 764**

Introduced by Senators Alexander, Cromer and Malloy

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Read the first time March 4, 2014.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 764) to amend the Code of Laws of South Carolina, 1976, by adding Article 2, Chapter 35, Title 43 so as to create the Vulnerable Adult Guardian ad Litem Program, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 2, CHAPTER 35, TITLE 43 SO AS TO CREATE THE VULNERABLE ADULT GUARDIAN AD LITEM PROGRAM WITHIN THE OFFICE ON AGING TO RECRUIT, TRAIN, AND SUPERVISE VOLUNTEERS TO SERVE AS COURT APPOINTED GUARDIANS AD LITEM FOR VULNERABLE ADULTS IN ABUSE, NEGLECT, AND EXPLOITATION PROCEEDINGS; TO PROVIDE THE DUTIES AND RESPONSIBILITIES OF A GUARDIAN AD LITEM; TO PROVIDE THAT A GUARDIAN AD LITEM MAY BE A LAYPERSON OR AN ATTORNEY; TO PROVIDE QUALIFICATIONS TO BECOME A GUARDIAN AD LITEM; TO AUTHORIZE THE VULNERABLE ADULT GUARDIAN AD LITEM PROGRAM TO INTERVENE IN PROCEEDINGS TO PETITION FOR REMOVAL OF A GUARDIAN AD LITEM UNDER CERTAIN CONDITIONS; TO PROVIDE THAT CERTAIN INFORMATION, REPORTS, AND RECORDS MUST BE MADE AVAILABLE TO GUARDIANS AD LITEM BY CERTAIN STATE AND FEDERAL AGENCIES, MEDICAL AND DENTAL PRACTITIONERS, AND FINANCIAL INSTITUTIONS; TO PROVIDE THAT REPORTS AND INFORMATION COLLECTED AND MAINTAINED BY THE PROGRAM ARE CONFIDENTIAL AND TO PROVIDE FOR CIVIL IMMUNITY WHEN ACTING IN GOOD FAITH AND IN THE ABSENCE OF GROSS NEGLIGENCE; AND TO AMEND SECTION 43‑35‑45, RELATING, AMONG OTHER THINGS, TO THE APPOINTMENT OF AN ATTORNEY AND A GUARDIAN AD LITEM FOR A VULNERABLE ADULT IN A PROCEEDING, SO AS TO FURTHER PROVIDE THAT THE COURT SHALL APPOINT AN ATTORNEY FOR A LAY GUARDIAN AD LITEM AND THAT THE GUARDIAN AD LITEM MAY BE REMOVED IF THE VULNERABLE ADULT HAS THE CAPACITY TO ASSIST IN THE CASE.

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

Guardian ad Litem Program

Section 43‑35‑200. (A) There is created the Vulnerable Adult Guardian ad Litem Program in the Office on Aging to serve as a statewide system to recruit, train, and supervise volunteers to serve as court‑appointed guardians ad litem for vulnerable adults in abuse, neglect, and exploitation proceedings within the family court, pursuant to Section 43‑35‑45(C).

(B) The Vulnerable Adult Guardian ad Litem Program shall develop policies and procedures to administer the program.

Section 43‑35‑210. In addition to the definitions contained in Section 43‑35‑10, for purposes of this article, ‘guardian ad litem’ means an individual appointed by the family court pursuant to Section 43‑35‑45 to advocate for the best interests of a vulnerable adult.

Section 43‑35‑220. (A) The duties and responsibilities of a guardian ad litem include, but are not limited to:

(1) representing the best interests of the vulnerable adult by advocating for the welfare and rights of a vulnerable adult involved in an abuse, neglect, or exploitation proceeding;

(2) conducting an independent, balanced, and impartial assessment of the facts and the needs of the vulnerable adult relevant to his or her situation;

(3) maintaining accurate, written case records, including case notes, which are a guardian ad litem’s work product and not subject to subpoena;

(4) providing the family court, and all parties, with written reports including, but not limited to, a comprehensive final report regarding the best interests of the vulnerable adult. The final report must be consistent with the rules of evidence and the rules of the court, and must include, but is not limited to, evaluation and assessment of the issues brought before the court, the wishes of the vulnerable adult, and recommendations for the case plan and the disposition of the case; and

(5) attending all court hearings to protect and promote the best interests of the vulnerable adult until formally relieved of the responsibility by the family court. The guardian ad litem is authorized through counsel to introduce, examine, and cross‑examine witnesses in any proceeding involving the vulnerable adult, participate in the proceedings to any degree necessary to represent the vulnerable adult adequately, participate on a multidisciplinary evaluation team concerning the vulnerable adult, and make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the vulnerable adult.

(B) The assessment conducted by the guardian ad litem pursuant to subsection (A) must include, but is not limited to:

(1) obtaining and reviewing relevant documents including, but not limited to, the vulnerable adult’s medical records; records from the place of residence if the vulnerable adult is living in a facility or other institution; records related to assets and debts of the vulnerable adult in cases of alleged exploitation; and records from the Department of Social Services, Department of Mental Health, Department of Disabilities and Special Needs, or other public entities providing services to the vulnerable adult;

(2) meeting with and observing the vulnerable adult on at least one occasion;

(3) visiting the home setting if appropriate;

(4) interviewing family, caregivers, medical providers, law enforcement, and others with knowledge relevant to the case;

(5) exploring available resources within the family and community to meet the needs of the vulnerable adult;

(6) obtaining the criminal history of a party if determined necessary; and

(7) determining the wishes of the vulnerable adult and informing the court of these wishes.

Section 43‑35‑230. (A) A guardian ad litem may be either an attorney or a layperson. To be appointed as a guardian ad litem pursuant to Section 43‑35‑45(C) an individual:

(1) must be twenty‑one years of age or older;

(2) shall possess a high school diploma or its equivalent;

(3) shall have completed the minimum hours of continuing education for initial qualification as required by the Vulnerable Adult Guardian ad Litem Program; and

(4) shall have observed two child protective services or adult protective services custody merits hearings before serving as a guardian ad litem. A lay guardian ad litem shall retain a certificate showing that observation of these hearings has been completed. This certificate, which must be on a form approved by Court Administration, must state the names and dates of the cases and the judges involved and must be attested to by the presiding judge.

(B) An attorney guardian ad litem annually shall complete a minimum of six hours of family or elder law continuing legal education credits; however, this requirement may be waived by the court.

Section 43‑35‑240. (A) An individual may not be appointed as a guardian ad litem for a vulnerable adult in an abuse, neglect, or exploitation proceeding who:

(1) has been convicted of a crime enumerated in Chapter 3, Title 16, Offenses Against the Person; in Chapter 15, Title 16, Offenses Against Morality and Decency; in Article 3, Chapter 53, Title 44, Narcotics and Controlled Substances; in Section 43‑35‑85, Omnibus Adult Protection Act; in Chapter 25, Title 16, Criminal Domestic Violence; or Section 16‑17‑490, Contributing to the Delinquency of a Minor; or

(2) is or has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect, the Sex Offender Registry, or listed as ‘not in good standing’ on the Nurse Aide Registry.

(B) A criminal background check must be conducted for each volunteer guardian ad litem as required by the Vulnerable Adult Guardian ad Litem Program.

Section 43‑35‑250. (A) A guardian ad litem is charged in general with representing the vulnerable adult’s best interests. After appointment by the family court in a case involving an abused, neglected, or exploited vulnerable adult, the parties to the action and the court shall notify the guardian ad litem of all court hearings and proceedings. The obligation of the guardian ad litem to the court is a continuing obligation and continues until formally relieved by the court.

(B) The Vulnerable Adult Guardian ad Litem Program may intervene in a vulnerable adult abuse, neglect, or exploitation proceeding in order to petition the court to relieve the guardian ad litem from appointment for the following reasons:

(1) incapacity;

(2) conflict of interest;

(3) misconduct;

(4) persistent neglect of duties;

(5) incompetence; or

(6) knowing and wilful violation of the Vulnerable Adult Guardian ad Litem Program policies and procedures that affect the health, safety, or welfare of the vulnerable adult.

(C) The court shall determine what is in the best interest of the vulnerable adult when ruling on a petition for removal of the guardian ad litem.

Section 43‑35‑260. The Department of Social Services shall make available to the guardian ad litem all reports made and information collected relating to the vulnerable adult. Appropriate medical and dental care providers shall provide a guardian ad litem access to information upon request of the guardian ad litem and upon proof of appointment as the guardian ad litem for the vulnerable adult. Records must be made available to the guardian ad litem by any agency or any individual providing services to the vulnerable adult and financial records of the vulnerable adult including, but not limited to, state and federal tax records, banking and other financial institution records, and public benefits records.

Section 43‑35‑270. (A) All reports and information collected pursuant to this article maintained by the Vulnerable Adult Guardian ad Litem Program or by a guardian ad litem are confidential. These records must be maintained and destroyed in accordance with program policy.

(B) The director of the Vulnerable Adult Guardian ad Litem Program, or the director’s designee, may disclose to the media information contained in the vulnerable adult protective services records, if disclosure is limited to discussion of the program’s activities in handling the case. The program may incorporate into its discussion of the handling of the case any information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, and other public judicial proceedings. For the purposes of this subsection, information is considered placed in the public domain if it has been reported in the news media, is contained in public records of a law enforcement agency, is contained in public records of the court, or has been the subject of testimony in a public judicial proceeding.

Section 43‑35‑280. After participating in the Vulnerable Adult Guardian ad Litem Program training, an individual who is appointed to serve as a guardian ad litem and who serves without compensation is not liable for any civil damages for any personal injury as a result of any act or omission by the guardian ad litem in the discharge of the duties and responsibilities of a guardian ad litem if the guardian ad litem acts in good faith and is not guilty of gross negligence.

Section 43‑35‑290. The General Assembly shall provide the funds necessary for the Vulnerable Adult Guardian ad Litem Program to carry out the provisions of this article.”

SECTION 2. Section 43‑35‑45(C) of the 1976 Code, as added by Act 110 of 1993, is amended to read:

“(C) Within ten days following the filing of a petition pursuant to this section, the court ~~must~~ shall appoint a guardian ad litem and an attorney for the vulnerable adult~~;~~ and an attorney for a lay guardian ad litem. A party may move to have the guardian ad litem relieved of his or her services if the party demonstrates that the vulnerable adult has the capacity to assist counsel in the protective services case. Within forty days of the filing of a petition ~~being filed~~, the court shall hold a hearing on the merits.”

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

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