**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 35, TITLE 43 SO AS TO CREATE A CENTRAL REGISTRY OF VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION, TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ESTABLISH AND MAINTAIN A CENTRAL REGISTRY OF INDIVIDUALS WHO HAVE ABUSED, NEGLECTED, OR EXPLOITED A VULNERABLE ADULT; TO REQUIRE CERTAIN STATE AGENCIES AND AUTHORITIES TO NOTIFY THE DEPARTMENT WHEN THERE IS A DETERMINATION THAT AN INDIVIDUAL HAS ABUSED, NEGLECTED, OR EXPLOITED A VULNERABLE ADULT; TO ESTABLISH REQUIREMENTS FOR UTILIZING THE REGISTRY; AND TO PROVIDE CERTAIN IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY.

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 7

Central Registry of Vulnerable Adult Abuse,

Neglect, and Exploitation

Section 43‑35‑710. (A) The Department of Health and Environmental Control shall establish and maintain a registry containing the names of individuals who have been determined by an investigative entity or administrative or judicial court to have committed an offense against a vulnerable adult.

(B) The names and information contained in this registry are available for public inspection only as provided by this article.

(C) The department may discharge its responsibilities pursuant to this section directly, or through interagency agreement; provided, that the department must assure authorized access to the records through a single centralized agency.

(D) For purposes of this article:

(1) ‘Investigative entity’ means the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, the Medicaid Fraud Control Unit of the Office of the Attorney General, or state or local law enforcement.

(2) ‘Offense against a vulnerable adult’ means any act that constitutes abuse, neglect, or exploitation of a vulnerable adult even if the act does not constitute a criminal act, or any crime the elements of which constitute abuse, neglect, or exploitation of a vulnerable adult; provided, if the act does not constitute a criminal offense, there must be a preponderance of the evidence that the act constitutes abuse, neglect, or exploitation of a vulnerable adult.

Section 43‑35‑720. (A)(1) An investigative entity or administrative or judicial court which substantiates, verifies, finds, or otherwise determines that an individual has committed an offense against a vulnerable adult shall notify the Department of Health and Environmental Control concerning that individual. An individual must be afforded an opportunity for an administrative due process hearing to contest a determination reached by an investigative entity. Nothing in this subsection requires an investigative entity to establish new procedures or to modify existing procedures it may use to provide due process to an individual.

(2) The notification required pursuant to this subsection must consist of a copy of an emergency, initial, or final order of an investigative entity, a criminal disposition of an investigative entity, or an administrative or judicial court order, which states that the individual has committed an offense against a vulnerable adult. An investigative entity must include as part of the notification the definition of abuse, neglect, or exploitation used in making the determination and a verification that the individual was afforded an opportunity for an administrative due process hearing.

(B) Upon receipt of a notification pursuant to subsection (A), the department shall include in the registry the name of the individual, the name of the reporting entity or court, the definition of abuse, neglect, or exploitation used by the entity or court as set forth in the notification, and any other information the department determines necessary to adequately identify the individual or the reporter, to protect public safety, and to ensure due process.

(C) The individual’s name, once entered in the registry, must remain in the registry, except as provided in subsections (E) and (F), even if the individual is not determined to have committed a criminal offense, and regardless of any expungement that may be ordered by a court or that may take place by operation of law in connection with the criminal disposition. However, any expungement reported to the department must result in the removal from the registry of everything regarding the criminal disposition, except the individual’s name, and the department shall destroy any other documentation of the criminal disposition.

(D)(1) Upon entry of the information, the department shall notify the individual, at the individual’s last known mailing address, of the individual’s inclusion in the registry. Although the individual is not entitled to contest or dispute either the prior hearing conclusions, or the content or terms of any criminal disposition, or attempt to refute the factual findings on which such are based, the individual may challenge the accuracy of the report that a criminal disposition has occurred or that hearing conclusions have been made, or any fact issue related to the correct identity of the individual.

(2) The notice provided to the individual must include an explanation of the limited right of the individual to challenge inclusion in the registry, which must be printed in boldface or in all upper case letters and set off in a box. The individual must notify the department of the intent to challenge inclusion in the registry within sixty days of the date on which the department mailed the notification to the individual or sixty days after the individual’s name appears in the registry, whichever occurs later. Upon receipt of a timely request from an individual, the commissioner, or the commissioner’s designee, shall afford the individual an opportunity for a hearing pursuant to Chapter 23, Title 1.

(E) An individual’s name must be removed immediately from the registry if:

(1) upon a hearing, the commissioner, or the commissioner’s designee, determines that the initial report of a criminal disposition, or the administrative or judicial hearing conclusions never occurred; or

(2) at the final step taken in an appellate process, a reported conviction, an emergency order, or an administrative or judicial hearing result is reversed.

(F)(1) A state agency that notifies the department pursuant to this section of a prospective or current employee, contractor, or volunteer committed an offense against a vulnerable adult may recommend to the department the removal of the individual’s name, upon receipt of a waiver request by the individual, if:

(a) the state agency finds that the placement of the individual’s name in the registry was in error; or

(b) an advisory group convened by the state agency composed of persons with experience in the subject matter areas of the agency’s work, or who by experience or education the agency determines are qualified to provide recommendations to the agency about the likelihood of an individual committing further offenses against a vulnerable adult, determines, based on evidence presented to the group, that removal of the individual from the registry is clearly warranted, and provides a written recommendation to the agency to remove the individual from the registry.

(2) The final decision regarding the recommendation for removal from the registry must be made by the state agency as part of a written decision, giving the agency’s reasons for the decision, which is sent to the individual seeking the waiver.

(3) If the decision is to remove the individual from the registry, the recommendation must be sent to the department and the individual’s name must be removed by the department.

(4) If the individual seeking a waiver is dissatisfied with the determination made by the state agency, the individual must be permitted to appeal. The appeal must be conducted as a contested case hearing pursuant to Chapter 23, Title 1.

(5) The decision and the written recommendations of the advisory group and the state agency must be open for public inspection.

Section 43‑35‑730. (A)(1) The following facilities must determine whether a prospective employee, contractor, or volunteer is listed in the registry before the individual is permitted to be employed by or otherwise provide services at the facility:

(a) facilities directly operated by the Department of Disabilities and Special Needs;

(b) public or private facilities with which the Department of Disabilities and Special Needs contracts for operation;

(c) facilities directly operated by the Department of Mental Health;

(d) public or private facilities with which the Department of Mental Health contracts for operation; and

(e) facilities providing services to vulnerable adults that are subject to regulation and licensure by the Department of Health and Environmental Control.

(2) If a facility listed in this subsection determines that a prospective employee, contractor, or volunteer is listed in the registry, the facility may not hire or allow the individual to provide services at the facility, except as allowed pursuant to Section 43‑35‑720(F).

(B) Any other agency or business providing services or programs to vulnerable adults may check the registry before employing, contracting with, or allowing a person to volunteer at the agency or business.

(C) A parent, spouse, adult child, or legal guardian of a vulnerable adult may check the registry before employing or otherwise retaining an individual to be a caregiver for the vulnerable adult.

(D) The department shall develop written guidelines and forms to facilitate authorized use of the registry, including the process for a family member or legal guardian to follow to verify whether a prospective caregiver is listed in the registry.

Section 43‑35‑740. (A)Any person who submits an allegation that an individual has committed an offense against a vulnerable adult to the department or an investigative entity, or who testifies in any administrative or judicial proceeding arising from the allegation, is immune from civil or criminal liability for making the report or for testifying, except for liability for perjury, unless the person acted in bad faith or with malicious purpose.

(B) A licensing board that refuses to license an individual listed in the registry, or that refuses to license an entity that employs or allows such an individual to be a caregiver for a vulnerable adult, or a person or entity that declines to employ or otherwise utilize such an individual, or that terminates such an individual based on the individual’s inclusion in the registry, is immune from suit by or on behalf of that individual and from any liability for actions taken based on the individual’s listing in the registry.

Section 43‑35‑750. The Department of Health and Environmental Control shall promulgate regulations necessary to implement the provisions of this article.”

SECTION 2. This act takes effect upon approval by the Governor.

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