**South Carolina General Assembly**

118th Session, 2009-2010

**A223, R268, H3358**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Harrison, Weeks, Horne, Hutto and Whipper

Document Path: l:\council\bills\nbd\11157ac09.docx

Companion/Similar bill(s): 361

Introduced in the House on January 28, 2009

Introduced in the Senate on April 28, 2009

Last Amended on May 12, 2010

Passed by the General Assembly on May 20, 2010

Governor's Action: June 7, 2010, Signed

Summary: Adult abuse

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/28/2009 House Introduced and read first time [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C01-28-09.docx)‑14

 1/28/2009 House Referred to Committee on **Judiciary** [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C01-28-09.docx)‑14

 2/19/2009 House Member(s) request name added as sponsor: Weeks

 3/25/2009 House Member(s) request name added as sponsor: Horne

 3/25/2009 House Committee report: Favorable with amendment **Judiciary** [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C03-25-09.docx)‑6

 3/31/2009 House Member(s) request name added as sponsor: Hutto

 3/31/2009 House Requests for debate‑Rep(s). Cooper, White, EH Pitts, GM Smith, Crawford, Bannister, Hosey, VIck, Williams, Ott, Forrester, Brantley, GR Smith, Bedingfield, and Jennings [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C03-31-09.docx)‑56

 4/22/2009 House Member(s) request name added as sponsor: Whipper

 4/1/2009 House Debate adjourned until Tuesday, April 7, 2009 [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-01-09.docx)‑95

 4/22/2009 House Amended [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-22-09.docx)‑76

 4/22/2009 House Read second time [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-22-09.docx)‑84

 4/22/2009 House Roll call Yeas‑97 Nays‑0 [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-22-09.docx)‑84

 4/23/2009 House Read third time and sent to Senate [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-23-09.docx)‑269

 4/28/2009 Senate Introduced and read first time [SJ](file:///h%3A%5CSJ%20Archive%5C2009%5C04-28-09.docx)‑7

 4/28/2009 Senate Referred to Committee on **Medical Affairs** [SJ](file:///h%3A%5CSJ%20Archive%5C2009%5C04-28-09.docx)‑7

 2/9/2010 Senate Committee report: Favorable with amendment **Medical Affairs** [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C02-09-10.docx)‑15

 2/10/2010 Senate Committee Amendment Adopted [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C02-10-10.docx)‑11

 2/10/2010 Senate Read second time [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C02-10-10.docx)‑11

 2/11/2010 Scrivener's error corrected

 5/12/2010 Senate Amended [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-12-10.docx)‑13

 5/12/2010 Senate Read third time and returned to House with amendments [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-12-10.docx)‑13

 5/20/2010 House Concurred in Senate amendment and enrolled [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C05-20-10.docx)‑48

 5/20/2010 House Roll call Yeas‑96 Nays‑0 [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C05-20-10.docx)‑48

 6/1/2010 Ratified R 268

 6/7/2010 Signed By Governor

 6/16/2010 Effective date 06/07/10

 6/23/2010 Act No. 223

**VERSIONS OF THIS BILL**

[1/28/2009](file:///p%3A%5Cpprever%5C2009-10%5C3358_20090128.docx)

[3/25/2009](file:///p%3A%5Cpprever%5C2009-10%5C3358_20090325.docx)

[4/22/2009](file:///p%3A%5Cpprever%5C2009-10%5C3358_20090422.docx)

[2/9/2010](file:///p%3A%5Cpprever%5C2009-10%5C3358_20100209.docx)

[2/10/2010](file:///p%3A%5Cpprever%5C2009-10%5C3358_20100210.docx)

[2/11/2010](file:///p%3A%5Cpprever%5C2009-10%5C3358_20100211.docx)

[5/12/2010](file:///p%3A%5Cpprever%5C2009-10%5C3358_20100512.docx)

(A223, R268, H3358)

**AN ACT TO AMEND SECTION 43‑35‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE OMNIBUS ADULT PROTECTION ACT, SO AS TO REVISE THE DEFINITION OF “INVESTIGATIVE ENTITY” BY INCLUDING THE VULNERABLE ADULTS INVESTIGATIONS UNIT AND THE MEDICAID FRAUD CONTROL UNIT, TO REVISE THE DEFINITION OF “NEGLECT”, AND TO DEFINE “OPERATED FACILITY” AND “CONTRACTED FACILITY”; TO AMEND SECTION 43-35-15, AS AMENDED, RELATING TO RESPONSIBILITIES OF INVESTIGATIVE ENTITIES UPON RECEIPT OF A REPORT, SO AS TO CLARIFY THAT REFERRAL OF A CASE TO A PROSECUTOR MUST BE MADE WHEN FURTHER ACTION IS NECESSARY; TO AMEND SECTION 43-35-35, AS AMENDED, RELATING TO REPORTING DEATHS WHEN ABUSE OR NEGLECT IS SUSPECTED, SO AS TO PROVIDE THAT DEATHS IN A FACILITY REFERRED TO THE VULNERABLE ADULTS INVESTIGATIONS UNIT MUST BE INVESTIGATED PURSUANT TO SECTION 43-35-520; TO AMEND SECTION 43‑35‑40, AS AMENDED, RELATING TO REQUIREMENTS OF AN INVESTIGATIVE ENTITY UPON RECEIVING A REPORT OF ADULT ABUSE, SO AS TO FURTHER SPECIFY AND CLARIFY PROCEDURES FOR REPORTING CASES IN WHICH THERE IS A REASONABLE SUSPICION OF CRIMINAL CONDUCT; TO AMEND SECTION 43‑35‑85, AS AMENDED, RELATING TO CRIMINAL PENALTIES FOR FAILING TO REPORT ADULT ABUSE WHEN REQUIRED TO REPORT AND PENALTIES FOR COMMITTING ABUSE, SO AS TO DELETE PROVISIONS REQUIRING ACTUAL KNOWLEDGE OF ABUSE, NEGLECT, OR EXPLOITATION AND TO DELETE PROVISIONS AUTHORIZING DISCIPLINARY ACTION TO BE TAKEN BY A PERSON’S LICENSING BOARD WHEN THE PERSON IS REQUIRED TO REPORT AND FAILS TO MAKE A REPORT WHEN THE PERSON HAS REASON TO BELIEVE THAT ABUSE OCCURRED; TO AMEND SECTION 43-35-520, RELATING TO THE RESPONSIBILITY OF THE VULNERABLE ADULTS INVESTIGATIONS UNIT TO INVESTIGATE FATALITIES OCCURRING IN FACILITIES OPERATED BY, OR CONTRACTED FOR OPERATIONS BY, THE DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO REQUIRE THE UNIT TO ALSO INVESTIGATE FATALITIES OCCURRING IN A NURSING HOME CONTRACTED FOR OPERATION BY THE DEPARTMENT OF MENTAL HEALTH WHEN ABUSE OR NEGLECT OR CERTAIN OTHER CIRCUMSTANCES OF THE DEATH ARE PRESENT; BY ADDING SECTION 44-7-295 SO AS TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ENTER FACILITIES AT ALL TIMES TO INSPECT CONDITIONS RELATING TO THE STATE CERTIFICATION OF NEED AND HEALTH LICENSURE ACT, TO COPY RECORDS, AND TO OBTAIN A WARRANT FOR THESE PURPOSES WHEN ENTRY IS DENIED OR NO EMERGENCY EXISTS; TO AMEND SECTION 44-7-315, AS AMENDED, RELATING TO INFORMATION RECEIVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL WHEN CONDUCTING INSPECTIONS, SO AS TO PROVIDE THAT THE DEPARTMENT’S AUTHORITY INCLUDES INSPECTIONS OF ACTIVITIES LICENSED BY THE DEPARTMENT AND TO DELETE REFERENCES TO GROUP HOMES; TO AMEND SECTION 44-7-320, RELATING TO SANCTIONS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY IMPOSE ON A PERSON OR FACILITY FOR VIOLATIONS OF THE STATE CERTIFICATION OF NEED AND HEALTH LICENSURE ACT, SO AS TO PROVIDE THAT THE DEPARTMENT MAY IMPOSE BOTH A MONETARY PENALTY AND SUSPENSION OR REVOCATION OF A LICENSE; AND TO AMEND SECTION 23-3-810, RELATING TO RESPONSIBILITIES OF THE VULNERABLE ADULTS INVESTIGATIONS UNIT, SO AS TO CLARIFY THAT REFERRAL OF A CASE TO A PROSECUTOR MUST BE MADE WHEN FURTHER ACTION IS NECESSARY.**

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

**Definition revised**

SECTION 1. Section 43‑35‑10(5) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

 “(5) ‘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, or the Medicaid Fraud Control Unit of the Office of the Attorney General.”

**Definition revised**

SECTION 2. Section 43‑35‑10(6) of the 1976 Code, as added by Act 110 of 1993, 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. 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.”

**Definitions added**

SECTION 3. Section 43‑35‑10 of the 1976 Code, as last amended by Act 301 of 2006, is further amended by adding:

 “(12) ‘Operated facility’ means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

 (13) ‘Contracted facility’ means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.”

**Referral procedures for reports of abuse, neglect, or exploitation of a vulnerable adult**

SECTION 4. Section 43‑35‑15(A) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

 “(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll free number, which must be operated twenty‑four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.”

**Referral of deaths to the Vulnerable Adults Investigations Unit**

SECTION 5. Section 43‑35‑35(B) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

 “(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for investigation pursuant to Section 43‑35‑520.”

**Responsibilities when a report is received**

SECTION 6. Section 43‑35‑40 of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

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

 (1) initiate an investigation; or

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

**Penalties for failing to report and for committing abuse, neglect, or exploitation of a vulnerable adult**

SECTION 7. Section 43‑35‑85 of the 1976 Code, as last amended by Act 56 of 1999, is further amended to read:

 “Section 43‑35‑85. (A) A person required to report under this chapter who knowingly and wilfully fails to report 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.

 (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) 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.”

**Nursing homes subject to investigation under certain circumstances**

SECTION 8. Section 43‑35‑520 of the 1976 Code, as added by Act 301 of 2006, is amended to read:

 “Section 43‑35‑520. The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, created pursuant to Section 23‑3‑810, shall, in addition to its investigation responsibilities under that section or Article 1, investigate cases of vulnerable adult fatalities in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. Provided, that in a nursing home, as defined in Section 44‑7‑130, contracted for operation by the Department of Mental Health, the Vulnerable Adults Investigations Unit shall investigate those fatalities for which there is suspicion that the vulnerable adult died as a result of abuse or neglect, the death is suspicious in nature, or the death is referred by a coroner or medical examiner as provided in Section 43‑35‑35(A).”

**Authority to enter facilities to investigate violations**

SECTION 9. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

 “Section 44‑7‑295. The department is authorized to enter at all times in or on the property of any facility or service, whether public or private, licensed by the department or unlicensed, for the purpose of inspecting and investigating conditions relating to a violation of this article or regulations of the department. The department’s authorized agents may examine and copy any records or memoranda pertaining to the operation of a licensed or unlicensed facility or service to determine compliance with this article. However, if entry or inspection is denied or not consented to and no emergency exists, the department is empowered to obtain a warrant to enter and inspect the property and its records from the magistrate from the jurisdiction in which the property is located. The magistrate may issue these warrants upon a showing of probable cause for the need for entry and inspection. The department shall furnish a written copy of the results of the inspection or investigation to the owner or operator of the property.”

**Procedures for disclosure of information by the Division of Health Licensing**

SECTION 10. Section 44‑7‑315(A), of the 1976 Code, as last amended by Act 372 of 2006, is further amended to read:

 “(A) Information received by the Division of Health Licensing of the department, through inspection or otherwise, in regard to a facility or activity licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded, must be disclosed publicly upon written request to the department. The request must be specific as to the facility or activity, dates, documents, and particular information requested. The department may not disclose the identity of individuals present in a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded. When a report of deficiencies or violations regarding a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded, is present in the department’s files when a request for information is received, the department shall inform the applicant that it has stipulated corrective action and the time it determines for completion of the action. The department also shall inform the applicant that information on the resolution of the corrective action order is expected to be available upon written request within fifteen days or less of the termination of time it determines for completion of the action. However, if information on the resolution is present in the files, it must be furnished to the applicant.”

**Sanctions for violations**

SECTION 11. Section 44‑7‑320(A) of the 1976 Code is amended to read:

 “(A)(1) The department may deny, suspend, or revoke licenses or assess a monetary penalty, or both, against a person or facility for:

 (a) violating a provision of this article or departmental regulations;

 (b) permitting, aiding, or abetting the commission of an unlawful act relating to the securing of a Certificate of Need or the establishment, maintenance, or operation of a facility requiring certification of need or licensure under this article;

 (c) conduct or practices detrimental to the health or safety of patients, residents, clients, or employees of a facility or service. This provision does not refer to health practices authorized by law;

 (d) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or the mentally retarded, whose admission or treatment has been prescribed by a physician who is a member of the facility’s medical staff; or discriminating against alcoholics, the mentally ill, or the mentally retarded solely because of the alcoholism, mental illness, or mental retardation;

 (e) failing to allow a team advocacy inspection of a community residential care facility by the South Carolina Protection and Advocacy System for the Handicapped, Inc., as allowed by law.

 (2) Consideration to deny, suspend, or revoke licenses or assess monetary penalties, or both, is not limited to information relating to the current licensing period but includes consideration of all pertinent information regarding the facility and the applicant.

 (3) If in the department’s judgment conditions or practices exist in a facility that pose an immediate threat to the health, safety, and welfare of the residents, the department immediately may suspend the facility’s license and shall contact the appropriate agencies for placement of the residents. Within five days of the suspension a preliminary hearing must be held to determine if the immediate threatening conditions or practices continue to exist. If they do not, the license must be immediately reinstated. Whether the license is reinstated or suspension remains due to the immediate threatening conditions or practices, the department may proceed with the process for permanent revocation pursuant to this section.”

**Referral of cases to a prosecutor**

SECTION 12. Section 23‑3‑810(E) of the 1976 Code, as added by Act 301 of 2006, is amended to read:

 “(E) Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary.”

**Severability clause**

SECTION 13. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the general assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 14. This act takes effect upon approval by the Governor.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

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