**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “VULNERABLE ADULT MALTREATMENT REGISTRY ACT” BY ADDING ARTICLE 6 TO CHAPTER 35, TITLE 43 SO AS TO REQUIRE THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, AND THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO DETERMINE WHETHER CERTAIN REPORTS OF VULNERABLE ADULT ABUSE, NEGLECT, OR EXPLOITATION ARE INDICATED AND WHETHER THERE IS A KNOWN PERPETRATOR OF THE MALTREATMENT AND TO ESTABLISH A RIGHT OF ADMINISTRATIVE APPEAL AND JUDICIAL REVIEW; TO PROVIDE FOR THE PLACEMENT OF CERTAIN PERSONS DETERMINED TO HAVE ABUSED, NEGLECTED, OR EXPLOITED A VULNERABLE ADULT ON THE MALTREATMENT REGISTRY; TO PROVIDE FOR LIMITED ACCESS TO THE VULNERABLE ADULT MALTREATMENT REGISTRY; AND TO PROHIBIT THE RELEASE OF REPORTS OF VULNERABLE ADULT MALTREATMENT, WITH EXCEPTIONS, AND TO CREATE A CRIMINAL PENALTY FOR THE UNAUTHORIZED RELEASE OF INFORMATION; TO AMEND SECTION 43‑35‑10, RELATING TO TERMS DEFINED IN THE “OMNIBUS ADULT PROTECTION ACT”, SO AS TO ADD DEFINITIONAL TERMS AND CHANGE THE DEFINITION OF “INVESTIGATIVE ENTITY”; TO AMEND SECTIONS 43‑35‑15 AND 43‑35‑40, RELATING TO RESPONSIBILITIES OF CERTAIN INVESTIGATIVE ENTITIES TO INVESTIGATE REPORTS OF VULNERABLE ADULT MALTREATMENT, SECTION 43‑35‑45, RELATING TO VULNERABLE ADULT PROTECTION HEARINGS, AND SECTION 43‑35‑85, RELATING TO PENALTIES FOR COMMITTING VULNERABLE ADULT MALTREATMENT, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. This act may be cited and known as the “Vulnerable Adult Maltreatment Registry Act”.

SECTION 2. Chapter 35, Title 43 of the 1976 Code is amended by adding:

“Article 6

Vulnerable Adult Maltreatment Registry

Subarticle 1

General Provisions

Section 43‑35‑610. The Department of Social Services shall maintain a Vulnerable Adult Maltreatment Registry within the department’s adult protective services program in which indicated cases of knowing and wilful abuse, neglect, or exploitation of a vulnerable adult with a known perpetrator must be entered.

Section 43‑35‑620. (A) Perpetrators of vulnerable adult abuse, neglect, or exploitation may be entered in the Vulnerable Adult Maltreatment Registry only by a determination made pursuant to Section 43‑35‑15(A) or Section 43‑35‑40(B), or as part of a judicial proceeding pursuant to Section 43‑35‑45 or a judicial proceeding the result of which the person is convicted of an offense set forth in Section 43‑35‑85(B), (C), (D), (E), or (F). Each entry in the registry must be accompanied by information further identifying the person including, but not limited to, the person’s date of birth, address, and any other identifying characteristics, and describing the maltreatment committed by the person.

(B) The Vulnerable Adult Maltreatment Registry must not contain information from reports classified as unfounded or classified as indicated without a known perpetrator.

Subarticle 2

Investigative Agency Determinations of Vulnerable Adult Maltreatment

Section 43‑35‑630. (A) An indicated finding of maltreatment with a known perpetrator made pursuant to Section 43‑35‑15(A) or 43‑35‑40(B) must be based on a finding of the facts available to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, the Adult Protective Services Program of the Department of Social Services, or the Department of Health and Environmental Control that there is a preponderance of evidence that a vulnerable adult has been abused, neglected, or exploited, and there is a preponderance of evidence that the person suspected in the report committed the abuse, neglect, or exploitation. An indicated finding of maltreatment with a known perpetrator must include a description of the protective services being provided the vulnerable adult and dispositional information, including whether the name of the perpetrator must be placed on the Vulnerable Adult Maltreatment Registry.

(B) An indicated finding of maltreatment without a known perpetrator made pursuant to Section 43‑35‑15(A) or 43‑35‑40(B) must be based upon a finding of the facts available to the Vulnerable Adults Investigations Unit, the Adult Protective Services Program of the Department of Social Services, or the Department of Health and Environmental Control that there is a preponderance of evidence that a vulnerable adult has been abused, neglected, or exploited but there is not a preponderance of evidence as to the identity of the person who committed the maltreatment or there is a preponderance of evidence that the maltreatment is the result of self‑neglect. An indicated finding of maltreatment without a known perpetrator must include a description of the protective services being provided the vulnerable adult and dispositional information.

(C) All reports that are not indicated with or without a known perpetrator at the conclusion of an investigation conducted in accordance with the requirements of this section must be classified as unfounded.

Section 43‑35‑640. (A)(1) Except as provided in item (2), when the determination of vulnerable adult maltreatment is made pursuant to Section 43‑35‑15(A) and results in a determination of abuse, neglect, or exploitation with a known perpetrator, the Vulnerable Adults Investigations Unit shall notify the individual in writing by certified mail of the determination and that the individual has the right to appeal the determination pursuant to the provisions of Subarticle 3. The individual must notify the unit in writing within thirty days of receipt of the written decision of the intent to appeal the determination.

(2) When the determination of vulnerable adult maltreatment is made pursuant to Section 43‑35‑15(A) and results in a determination of knowing and wilful abuse, neglect, or exploitation, the Vulnerable Adults Investigations Unit shall:

(a) notify the Department of Social Services that the name of that individual must be entered immediately in the Vulnerable Adult Maltreatment Registry; and

(b) notify the individual in writing by certified mail of the determination and that his name has been entered in the Vulnerable Adult Maltreatment Registry, of the right to request an appeal of the determination and the decision to enter his name in the Maltreatment Registry pursuant to the provisions of Subarticle 3, and of the possible ramifications regarding future employment and licensing if the individual allows his name to remain in the Maltreatment Registry. The individual must notify the unit in writing within thirty days of receipt of the written decision of the intent to appeal the determination and placement of his name in the registry.

(3) If the individual does not notify the Vulnerable Adults Investigations Unit of the intent to appeal in writing within thirty days of receipt of the notice, the right to appeal is waived by the individual and the case decision becomes final.

(B)(1) Except as provided in item (2), when the determination of vulnerable adult maltreatment is made pursuant to Section 43‑35‑40(B) and results in a determination of abuse, neglect, or exploitation with a known perpetrator, the Adult Protective Services Program or the Department of Health and Environmental Control shall notify the individual in writing by certified mail of the determination and that the individual has the right to appeal the determination pursuant to the provisions of Subarticle 3. The individual must notify the responsible investigative entity in writing within thirty days of receipt of the written decision of the intent to appeal the determination.

(2) When the determination of vulnerable adult maltreatment is made pursuant to Section 43‑35‑40(B) and results in a determination of knowing and wilful abuse, neglect, or exploitation, the responsible investigative entity shall:

(a) notify the Department of Social Services that the name of that individual must be entered immediately in the Vulnerable Adult Maltreatment Registry; and

(b) notify the individual in writing by certified mail of the determination and that his name has been entered in the Vulnerable Adult Maltreatment Registry, of the right to request an appeal of the determination and the decision to enter his name in the Maltreatment Registry pursuant to the provisions of Subarticle 3, and of the possible ramifications regarding future employment and licensing if the individual allows his name to remain in the Maltreatment Registry. The individual must notify the responsible investigative entity in writing within thirty days of receipt of the written decision of the intent to appeal the determination and the placement of his name in the registry.

(3) If the individual does not notify the responsible investigative entity of the intent to appeal in writing within thirty days of receipt of the notice, the right to appeal is waived by the individual and the case decision becomes final.

Subarticle 3

Administrative Appeals and Judicial Review of Determinations of Vulnerable Adult Maltreatment

Section 43‑35‑650. (A)(1) Upon receipt of a notice of intent to appeal an indicated finding of vulnerable adult maltreatment with a known perpetrator, an appropriate official of the Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control designated by the chief or director shall conduct an interim review of case documentation and the case determination. The interim review may not delay the scheduling of the contested case hearing. If the official conducting the interim review decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the case record and database. If the person’s name was placed in the Vulnerable Adult Maltreatment Registry as a result of the initial determination and the interim review results in a reversal of the decision that supports that placement, the person’s name must be removed immediately from the Maltreatment Registry.

(2) Upon receipt of a notice of intent to appeal an indicated finding of vulnerable adult maltreatment with a known perpetrator, the chief or director shall appoint a hearing officer to conduct a contested case hearing. The hearing officer shall prepare recommended findings of fact and conclusions of law for review by the chief or director, or the chief’s or director’s designee, who shall render the final decision. The designee under this item must not be a person who was involved in making the original case decision or who conducted the interim review of the original case decision.

(3) After conclusion of the contested case hearing, the responsible investigative entity shall notify the individual in writing by certified mail of the decision, including whether the determination of maltreatment is affirmed or reversed and, if applicable, whether the person’s name must remain on the Maltreatment Registry. If the chief or director, or the chief’s or director’s designee, decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the case record and database. If the person’s name was placed on the Maltreatment Registry as a result of an initial determination, and the contested case hearing process results in a reversal of the decision that was the basis for entry of the name in the Maltreatment Registry, the person’s name must be removed immediately from the Maltreatment Registry. If the original decision of the responsible investigative entity is affirmed as a result of the contested case hearing process, the appellant has the right to seek judicial review in the South Carolina Administrative Law Court pursuant to Section 43‑35‑660.

Section 43‑35‑660. (A) An appellant seeking judicial review shall file a petition in the South Carolina Administrative Law Court or the South Carolina Family Court within thirty days after receipt of a copy of the final contested case hearing decision from the Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control. If seeking judicial review in the family court, venue is proper in either the county of the appellant’s residence or the county in which the alleged vulnerable adult maltreatment occurred. The appellant shall serve a copy of the petition on the responsible investigative entity. The court shall conduct a judicial review in accordance with the standards of review provided for in Section 1‑23‑380.

(B) The court may enter judgment upon the pleadings and a certified transcript of the record which must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the responsible investigative entity that a preponderance of evidence shows that the appellant abused, neglected, or exploited the vulnerable adult should be affirmed or reversed and, if applicable, whether the decision to place the appellant’s name on the Vulnerable Adult Maltreatment Registry was appropriate or whether the name should be removed. The appellant is not entitled to a trial de novo in the reviewing court.

(C) If the court affirms the decision of the responsible investigative entity, the appellant may appeal the decision as allowed by the South Carolina Appellate Court Rules.

Section 43‑35‑670. If a person provides notice of intent to appeal a determination in accordance with the requirements of Section 43‑35‑640, and a court of competent jurisdiction subsequently determines that there is a preponderance of evidence that the person abused, neglected, or exploited the vulnerable adult or if the person has been convicted of an offense listed in Section 43‑35‑85(B), (C), (D), (E), or (F), an appeal pursuant to this article is not available. If a court of competent jurisdiction reaches such a determination after the initiation of the appeal provided for in this article, the Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control shall terminate the appeal upon receipt of an order or judgment that disposes of the issue.

Subarticle 4

Right of Access to Information in Vulnerable Adult Maltreatment Registry

Section 43‑35‑680. Information in the Vulnerable Adult Maltreatment Registry may be released only as authorized in this article or as otherwise specifically authorized by statute.

Section 43‑35‑690. (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 Department of Mental Health, the Department of Disabilities and Special Needs, the Department of Health and Environmental Control, or the Department of Social Services, the person must be screened against the Vulnerable Adult Maltreatment 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 Department of Mental Health, the Department of Disabilities and Special Needs, the Department of Health and Environmental Control, or the Department of Social Services, the applicant must be screened against the Vulnerable Adult Maltreatment Registry before issuance of the initial license, registration, or other approval and each time the license, registration, or other operating approval is renewed.

(C) When a family member, guardian, or other person responsible for the welfare of a vulnerable adult is interviewing an applicant to be a paid or an unpaid caregiver for the vulnerable adult, whether in a private residence or in a facility, and determination of the applicant’s history of vulnerable adult abuse, neglect, or exploitation is a condition of being hired or selected as the paid or unpaid caregiver, the applicant seeking the position may submit a written request to the Department of Social Services to be screened against the Vulnerable Adult Maltreatment Registry and provide the results to the family member, guardian, or other person.

Subarticle 5

Confidentiality of Vulnerable Adult Maltreatment Reports and Penalties for Unauthorized Release of Information

Section 43‑35‑700. (A) All reports made and information collected pursuant to this article and Article 1 maintained by the Vulnerable Adults Investigations Unit, the Adult Protective Services Program, the Department of Health and Environmental Control, the Department of Mental Health, the Department of Disabilities and Special Needs, the Long Term Care Ombudsman Program, or any facility in which alleged abuse, neglect, or exploitation occurred, and the Vulnerable Adult Maltreatment Registry, 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.

(B) The Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control is authorized to grant access to the records of indicated cases with or without known perpetrators to the following persons, agencies, or entities:

(1) the Ombudsman of the Long Term Care Ombudsman Program;

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

(3) appropriate staff of the Department of Social Services for purposes of operating and updating the Vulnerable Adult Maltreatment Registry;

(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, or investigating or prosecuting the death of a vulnerable adult;

(5) a person who is named in a report or investigation pursuant to this article as having abused, neglected, or exploited a vulnerable adult, that person’s attorney, and that person’s guardian ad litem;

(6) the parents, guardian, or primary correspondent of a vulnerable adult who is named in a report as a victim of vulnerable adult maltreatment;

(7) county medical examiners or coroners who are investigating the death of a vulnerable adult;

(8) the Vulnerable Adults Fatalities Review Committee and Vulnerable Adults Investigations Unit of SLED in accordance with the exercise of their purposes or duties pursuant to Article 5;

(9) an administrative tribunal or a court of appropriate jurisdiction conducting a proceeding pursuant to this article or Section 43‑35‑45, or conducting a proceeding relating to an offense identified in Section 43‑35‑85;

(10) the director or chief executive officer of a facility when the records concern the investigation of an incident of abuse, neglect, or exploitation of a vulnerable adult that allegedly was perpetrated by an employee or volunteer of the facility against a vulnerable adult served by the facility;

(11) multidisciplinary teams impaneled by the responsible investigative entity, or impaneled pursuant to statute;

(12) 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, or investigating or prosecuting the death of a vulnerable adult; and

(13) the Vulnerable Adult Guardian ad Litem Program, the Cass Elias McCarter Guardian ad Litem Program, and the Richland County Court‑Appointed Special Advocates Program, for purposes of certifying that no potential employee or volunteer is the subject of an indicated report or an affirmative determination.

(C) The Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control may limit the information disclosed to individuals and entities named in subsection (B)(10) and (11) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed.

(D) A disclosure pursuant to this section must protect the identity of the person who reported the suspected vulnerable adult maltreatment. The Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control also may protect the identity of any other person identified in the record if that investigative entity finds that disclosure of the information would be likely to endanger the life or safety of the person.

(E) The Department of Social Services is authorized to disclose information concerning an individual named in the Vulnerable Adult Maltreatment Registry as a perpetrator when the 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 Department of Disabilities and Special Needs, the Department of Mental Health, or the Department of Health and Environmental Control from using other information in the records when making decisions concerning licensing, employment, or placement, or performing other duties required by law.

(F) The Department of Disabilities and Special Needs, the Department of Mental Health, and the Department of Health and Environmental Control are authorized to maintain in its facility records information about investigations of suspected vulnerable adult maltreatment occurring in a facility.

(G) All reports made available to persons pursuant to this section must indicate whether or not an appeal is pending on the report pursuant to Subarticle 3.

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

Section 43‑35‑710. (A) Information concerning reports classified as indicated without a known perpetrator following an administrative or judicial determination pursuant to Section 43‑35‑15(A), 43‑35‑40(B), or 43‑35‑45, must be maintained as an indicated case by the Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control, and access to records of the case may be granted as provided in Section 43‑35‑700(B). The responsible investigative entity must not delete from its data system or records information indicating that the person was the subject of the report. The data system and records must clearly record the results of any court or administrative proceeding. If the case record and data system included a designation with the name of the subject of the report indicating that the person committed the abuse, neglect, or exploitation, that designation must be removed following the determination that there is not a preponderance of evidence that the subject of the report committed an act of vulnerable adult maltreatment.

(B) Information concerning reports classified as unfounded following an administrative or judicial determination pursuant to Section 43‑35‑15(A), 43‑35‑40(B), or 43‑35‑45 must be maintained for not less than five years after the finding. Information contained in unfounded cases is not subject to disclosure under the Freedom of Information Act as provided for in Chapter 4, Title 30. Access to and use of information contained in unfounded cases must be strictly limited to the following purposes and entities:

(1) an investigative entity, as defined in Section 43‑35‑10, for the purpose investigating allegations of abuse, neglect, or exploitation of a vulnerable adult;

(2) the Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control when information is received that enables the responsible investigative entity to determine the identity of a perpetrator in a case of previously indicated vulnerable adult maltreatment without a known perpetrator;

(3) as evidence in a court proceeding, if admissible under the rules of evidence, as determined by a judge of competent jurisdiction;

(4) a person who is the subject of a report in an action brought by a prosecutor or by the program, if otherwise subject to discovery under the applicable rules of procedure; and

(5) the responsible investigative entity for program improvement, auditing, and statistical purposes.

(C) Except as authorized in this section, no person may disseminate or permit dissemination of information maintained pursuant to subsection (A) or (B). A person who disseminates or permits dissemination in violation of this subsection 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. A person aggrieved by an unlawful dissemination in violation of this subsection may bring a civil action to recover damages incurred as a result of the unlawful act and to enjoin its dissemination or use.

Section 43‑35‑720. (A) 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 Vulnerable Adults Investigations Unit, the Adult Protective Services Program, or the Department of Health and Environmental Control for up to two years from the date of the case decision. The written request must be received by the responsible 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 responsible investigative entity shall provide a copy of the record, subject to subsection (B).

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

(C) An alleged perpetrator in an unfounded case who believes the report was made maliciously or in bad faith may petition the family court or other court of competent jurisdiction 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.

(D) Notwithstanding other provisions of the law affecting confidentiality of vulnerable adult protective services 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 responsible investigative entity to release the record to any party to the case or law enforcement.

Section 43‑35‑730. The Department of Social Services, in collaboration with the Vulnerable Adults Investigations Unit, the Long Term Care Ombudsman Program, and the Department of Health and Environmental Control, shall furnish annually to the 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 maltreatment, and any other nonidentifying data considered instructive.”

SECTION 3.A. Section 43‑35‑10 of the 1976 Code is amended by adding appropriately numbered items at the end to read:

“( ) ‘Maltreatment’ means abuse, neglect, or exploitation, as those terms are defined in Section 43‑35‑10.

( ) ‘Maltreatment Registry’ means the Vulnerable Adult Maltreatment Registry.”

B. Section 43‑35‑10 (5) of the 1976 Code is 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, the Department of Health and Environmental Control, or the Medicaid Fraud Control Unit of the Office of the Attorney General.”

SECTION 4.A. Section 43‑35‑15 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) The Department of Health and Environmental Control shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in in nursing homes, community residential care facilities, or psychiatric hospitals licensed by the Department of Health and Environmental Control. The Department of Health and Environmental Control may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services, and shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.”

B. Section 43‑35‑15(A) of the 1976 Code is amended to read:

“(A)(1) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall:

(a) 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~~;

(b) 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~~;

(c) investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct~~. The unit also shall~~;

(d) investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43~~. The unit shall~~; and

(e) refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation.

(2) As part of the investigation, the unit shall determine for purposes of the Vulnerable Adult Maltreatment Registry whether the report is indicated with a known perpetrator, indicated without a known perpetrator, or unfounded, as provided in Article 6.

(3) 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.”

SECTION 5. Section 43‑35‑40 of the 1976 Code is amended to read:

“Section 43‑35‑40. (A) Upon receiving a report, the Long Term Care Ombudsman ~~or~~, Adult Protective Services Program, or the Department of Health and Environmental Control 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 the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED). A report to SLED must be made within one working day of completing the review.

(B) As part of the investigation or after reporting a case to local law enforcement, the Adult Protective Services Program or the Department of Health and Environmental Control shall determine for purposes of the Vulnerable Adult Maltreatment Registry whether the report of suspected abuse, neglect, or exploitation is indicated with a known perpetrator, indicated without a known perpetrator, or unfounded, as provided in Article 6.”

SECTION 6. Section 43‑35‑45(E) of the 1976 Code is amended to read:

“(E)(1) At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if it finds that:

~~(1)~~(a) the vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and the vulnerable adult is unable to protect herself or himself; and

~~(2)~~(b) protective services are necessary to protect the vulnerable adult from the substantial risk of or from abuse, neglect, or exploitation.

(2) At the hearing on the merits at which the court finds that the vulnerable adult was abused, neglected, or exploited, and that the abuse, neglect, or exploitation was committed by a known person, the court must order that person’s name be entered in the Vulnerable Adult Maltreatment Registry if there is a preponderance of evidence that the person knowingly and wilfully abused, knowingly and wilfully neglected, or knowingly and wilfully exploited the vulnerable adult. Placement on the Vulnerable Adult Maltreatment Registry may not be waived by any party or by the court.

(3) At a hearing on the merits, if the court finds that there is not a preponderance of evidence of vulnerable adult abuse, neglect, or exploitation, or there is not a preponderance of evidence that the person suspected in the report committed the maltreatment, and the person has been determined pursuant to Section 43‑35‑15(A) or 43‑35‑40(B) to have committed the maltreatment, the case classification must be converted to unfounded or indicated without a known perpetrator, as appropriate, in accordance with Section 43‑35‑630, and, if following the administrative determination the person’s name was placed on the Maltreatment Registry, the court shall order the Department of Social Services to remove the name from the Vulnerable Adult Maltreatment Registry.”

SECTION 7. Section 43‑35‑85(B), (C), (D), (E), and (F) of the 1976 Code is amended to read:

“(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, and the person’s name and identifying information must be placed on the Vulnerable Adult Maltreatment Registry.

(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, and the person’s name and identifying information must be placed on the Vulnerable Adult Maltreatment Registry.

(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, and the person’s name and identifying information must be placed on the Vulnerable Adult Maltreatment Registry.

(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, and the person’s name and identifying information must be placed on the Vulnerable Adult Maltreatment Registry.

(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, and the person’s name and identifying information must be placed on the Vulnerable Adult Maltreatment Registry.”

SECTION 8. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑