**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 43‑35‑87 SO AS TO PROVIDE FOR THE RIGHT OF A VULNERABLE ADULT, OR AN AUTHORIZED REPRESENTATIVE OF A VULNERABLE ADULT, TO FILE A CIVIL ACTION FOR FINANCIAL EXPLOITATION OF THE VULNERABLE ADULT, WITH EXCEPTIONS; TO AMEND SECTION 43‑35‑10, RELATING TO TERMS USED IN THE OMNIBUS ADULT PROTECTION ACT, SO AS TO ADD DEFINITIONS FOR “DECEPTION” AND “INTIMIDATION” AND TO CHANGE THE DEFINITION OF “EXPLOITATION”.

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

SECTION 1. Article 1, Chapter 35, Title 43 is amended by adding:

“Section 43‑35‑87. (A) A vulnerable adult, a person legally authorized to bring a legal action on behalf of the vulnerable adult, or the estate of a vulnerable adult, may file a civil action against a person who financially exploits the vulnerable adult. A person against whom a civil judgment has been entered for financial exploitation of a vulnerable adult is liable to the vulnerable adult or to the estate of the vulnerable adult in damages of treble the amount of the value of the property obtained, plus reasonable attorney fees and court costs. The burden of proof in a civil action for financial exploitation of a vulnerable adult is a preponderance of the evidence.

(B) This section is effective whether or not the defendant has been charged or convicted of exploitation of a vulnerable adult pursuant to Section 43‑35‑85(D) and does not limit or affect the right of a person to bring a cause of action or seek any other remedy available under law arising out of the financial exploitation of the vulnerable adult including, but not limited to, Chapter 25, Title 16.

(C) It is not a defense to financial exploitation of a vulnerable adult that the defendant reasonably believed that the victim was not a vulnerable adult.

(D) If the amount in controversy of a civil action filed pursuant to this section involves the taking or loss of property valued at more than five thousand dollars, the attorney representing the vulnerable adult’s interests may file a petition with the court to freeze the assets of the defendant in an amount equal to but not greater than the alleged value of lost or stolen property for purposes of restitution to the victim. The burden of proof required to freeze the defendant’s assets is a preponderance of the evidence.

(E) Nothing in this section may be construed to impose criminal liability for financial exploitation of a vulnerable adult on a person who has made a good faith effort to assist the vulnerable adult in the management of the vulnerable adult’s property, but who through no fault of the person’s own has been unable to provide assistance.

(F) For purposes of this section, ‘financial exploitation’ has the same meaning as ‘exploitation’ in Section 43‑35‑10(3)(b) and (c).”

SECTION 2. Section 43‑35‑10 of the 1976 Code is amended by adding appropriately number items at the end to read:

“( ) ‘Deception’ means, a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with a vulnerable adult or to the existing or preexisting condition of any of the property involved in a contract or agreement, or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage or solicit a vulnerable adult to enter into a contract or agreement.

( ) ‘Intimidation’ means a direct or indirect communication by a person to a vulnerable adult to cause the vulnerable adult to perform or omit the performance of an act by stating that the vulnerable adult will be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.”

SECTION 3. Section 43‑35‑10(3)(c) of the 1976 Code is amended to read:

“(c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, ~~or~~ (vi) deception, (vii) intimidation, or (viii) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.”

SECTION 4. This act takes effect upon approval by the Governor.

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