~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

March 31, 2022

**S. 906**

Introduced by Senator Shealy

S. Printed 3/31/22--S.

Read the first time December 6, 2021.

**A** **BILL**

TO AMEND SECTION 43‑35‑10(3) OF THE 1976 CODE, RELATING TO THE DEFINITION OF “EXPLOITATION” IN THE “OMNIBUS ADULT PROTECTION ACT”, TO AMEND THE DEFINITION OF “EXPLOITATION” TO INCLUDE THE EXERCISE OF EXTREME UNDUE INFLUENCE OVER, COERCIVE PERSUASION OF, OR PSYCHOLOGICALLY DAMAGING MANIPULATION OF A VULNERABLE ADULT; AND TO FURTHER AMEND SECTION 43‑35‑10 BY ADDING A DEFINITION FOR “UNDUE INFLUENCE”.

Amend Title To Conform

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

SECTION 1. Section 43‑35‑10(3) of the 1976 Code is amended to read:

“(3) ‘Exploitation’ means:

(a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;

(b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or

(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) 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; or

(d) exercising extreme undue influence over, coercive persuasion of, or psychologically damaging manipulation of a vulnerable adult that results in physical or emotional harm or the loss of financial assets, disrupts a parent‑child relationship, leads to a deceptive or exploitive relationship, or isolates the vulnerable adult from family or friends; or

(e) any unauthorized video or photographic recordation of a vulnerable adult, regardless of whether the vulnerable adult is aware of the recordation.

(4) ‘Unauthorized video or photographic recordation’ means the recording of any vulnerable adult without their consent, or in the event the vulnerable adult cannot give consent, without the consent of the agent in charge of the vulnerable adult. Those employed in the care of a vulnerable adult are never authorized to record a vulnerable adult unless required to do so in the duty of their employment, to assist with the medical care of the vulnerable adult, or to comply with law enforcement.”

SECTION 2. Section 43‑35‑10 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) ‘Undue influence’ means excessive persuasion that causes a vulnerable adult to act or refrain from acting by overcoming the vulnerable adult’s free will and that results in inequity, taking into consideration all of the following:

(a) whether the influencer knew of, or should have known of, the alleged victim’s vulnerability;

(b) the influencer’s apparent authority over the vulnerable adult including, but not limited to, status as a fiduciary, family member, caregiver, health care professional, legal professional, spiritual adviser, expert, or other qualification;

(c) the actions or tactics used by the influencer including, but not limited to, controlling the vulnerable adult’s necessities of life, medication, interactions with others, access to information, or sleep; the use of affection, intimidation, or coercion; or the initiation of changes in person or property rights, using haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, or claiming expertise in effecting changes; and

(d) the equity of the result of the influence including, but not limited to, economic consequence to the vulnerable adult, any divergence from the vulnerable adult’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship between the influencer and the vulnerable adult. Evidence of an inequitable result, without additional evidence of undue influence, is not sufficient to prove undue influence.”

SECTION 3. Section 43‑35‑85 of the 1976 Code is amended by adding:

“(J) Notwithstanding section (D), any person who, without authorization, knowingly and willfully records by video or photographic means a vulnerable adult in violation of 43‑35‑10(3)(d), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. This is a lesser included offense to subsection (K).

(K) Any person who, without authorization, knowingly and willfully distributes, publishes, or disseminates by any means any photographic or video recordation of a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years; or both.”

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

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