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COMMITTEE REPORT

May 3, 2022

**S. 906**

Introduced by Senator Shealy

S. Printed 5/3/22--H.

Read the first time April 6, 2022.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 906) to amend Section 43‑35‑10(3) of the 1976 Code, relating to the definition of “exploitation” in the “Omnibus Adult Protection Act”, to, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding appropriately numbered SECTIONS to read:

/ SECTION \_. Section 7‑3‑10 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

“( ) The commission and the executive director shall have the powers and duties as enumerated in this title, including plenary authority to supervise and standardize the performance, conduct, and practices of the county board of elections and voter registration, as established pursuant to Article 1, Chapter 5 to administer elections and voter registration in the State and ensure those boards’ compliance with applicable state or federal law or State Election Commission policies, procedures, and regulations regarding the conduct of elections or the voter registration process by all persons involved in the elections process. The State Election Commission may promulgate regulations necessary to effectuate the provisions of this subsection.”

SECTION \_\_\_. A. Article 1, Chapter 13, Title 7 of the 1976 Code is amended by adding:

“Section 7‑13‑25. (A) Monday through Saturday for a two‑week period preceding a general election conducted pursuant to Section 7‑13‑10, a primary, special elections, and all municipal elections, all qualified electors of this State must be allowed to cast an early in‑person ballot. To the extent time permits, and for a period of time as may be determined by the Executive Director of the State Election Commission, all qualified electors must be allowed to cast an early in‑person ballot prior to a primary runoff.

(B) The period of early voting begins at 8:30 a.m. and ends at 6:00 p.m. on each day of the early voting period, excluding Sunday, until the conclusion of the early voting period at 6:00 p.m. on the Saturday immediately prior to the election.

(C) For a general election conducted pursuant to Section 7‑13‑10, each county board of voter registration and elections must establish early in‑person voting locations in an amount based on the following formulas, whichever is higher, but not to exceed seven locations:

(1) The number of registered voters in the county:

(a) 1 ‑ 39,999 voters: one location

(b) 40,000 ‑ 79,999 voters: two locations

(c) 80,000 ‑ 119,999 voters: three locations

(d) 120,000 ‑ 159,999 voters: four locations

(e) 160,000 ‑ 199,999 voters: five locations

(f) 200,000 ‑ 239,999 voters: six locations

(g) 240,000 voters and up: seven locations

(2) The size of the county in square miles:

(a) 0‑199 square miles: one location

(b) 200‑399 square miles: two locations

(c) 400‑599 square miles: three locations

(d) 600‑799 square miles: four locations

(e) 800‑999 square miles: five locations

(f) 1000‑1199 square miles: six locations

(g) 1200 square miles and up: seven locations

(D) If the main office of each county board of voter registration and elections is used for an early in‑person voting location, it constitutes one of the early in‑person voting locations as delineated in this section.

(E)(1) County boards of voter registration and elections must determine locations for early voting centers. In selecting locations, boards must consider geography, population, and ADA compliant accessibility. Boards must distribute the locations throughout the county to maximize accessibility for all voters in the county to the greatest extent possible. The Executive Director of the State Election Commission may, at his discretion, direct the move of early voting centers to ensure proper distribution through each county.

(2) When the early in‑person location formulas in subsection (C)(1) and (C)(2) produce results that differ by four or more locations, the Executive Director may authorize a county board to use two fewer than the higher number determined in subsection (C). The Executive Director also may authorize the loss of an early in‑person location due to an emergency such as fire or flood.

(F) The county election board must set and publish the location of each early in‑person voting center at least fourteen days before the early voting period begins. Publication of the schedule must be made, at a minimum, to a website or webpage managed by, or on behalf of, each respective county election board.

(G) Upon the daily closure of each early in‑person voting location during the period established in subsection (B), all ballots must be transported to the county board of voter registration and elections and stored in a secure location.

(H) County boards of voter registration and elections, in their discretion, may establish any number of early in‑person voting locations for use in primary, primary runoff, special elections, and all municipal elections, and the formulas provided in this section do not apply.

(I) Each early voting center must have available every ballot style in use in the particular county for that election.”

B. Section 7‑11‑10 of the 1976 Code is amended to read:

“Section 7‑11‑10. (A) Nominations for candidates for the offices to be voted on in a general or special election may be by political party primary, by political party convention, or by petition; however, a person who was defeated as a candidate for nomination to an office in a party primary or party convention ~~shall~~ may not have his name placed on the ballot for the ensuing general or special election, except that this section does not prevent a defeated candidate from later becoming his party’s nominee for that office in that election if the candidate first selected as the party’s nominee dies, resigns, is disqualified, or otherwise ceases to become the party’s nominee for that office before the election is held.

(B) A candidate may not file more than one statement of intention of candidacy for a single office for the same election.

(C) A candidate may not be nominated by more than one political party for a single office for the same election.”

C. Section 7‑13‑320(D) of the 1976 Code is amended to read:

“(D) The names of candidates offering for ~~any other~~ another office ~~shall~~ must be placed in the proper place on the appropriate ballot, stating whether it is a state, congressional, legislative, county, or other office. A candidate’s name may not appear on the ballot more than once for any single office for the same election.”

D. Section 7‑15‑220(A) of the 1976 Code is amended to read:

“(A) The oath, a copy of which is required by Section 7‑15‑200(2) to be sent each absentee ballot applicant and which is required by Section 7‑15‑230 to be returned with the absentee ballot applicant’s ballot, shall be signed by the absentee ballot applicant and witnessed. The oath shall be in the following form:

‘I hereby swear (or affirm) that I am duly qualified to vote at this election according to the Constitution of the State of South Carolina, that I have not voted during this election, that the ballot or ballots with which this oath is enclosed is my ballot and that I have received no assistance in voting my ballot that I would not have been entitled to receive had I voted in person at my voting precinct.’

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Voter

Dated on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ 20 \_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Witness Printed Name of Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Witness”

E. Section 7‑15‑380(A) of the 1976 Code is amended to read:

“(A) The oath, which is required by Section 7‑15‑370 to be imprinted on the return‑addressed envelope, furnished each absentee ballot applicant, must be signed by the absentee ballot applicant and witnessed. The address and printed name of the witness shall appear on the oath. In the event the voter cannot write because of a physical handicap or illiteracy, the voter must make his mark and have the mark witnessed by someone designated by the voter. The oath must be in the following form:

‘I hereby swear (or affirm) that I am duly qualified to vote at this election according to the Constitution of the State of South Carolina, that I have not voted during this election, that the ballot or ballots contained in this envelope is my ballot and that I have received no assistance in voting my ballot that I would not have been entitled to receive had I voted in person at my voting precinct.’

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Voter

Dated on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ 20 \_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Witness Printed Name of Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Witness”

F. Section 7‑15‑320 of the 1976 Code is amended to read:

“Section 7‑15‑320. (A) Qualified electors in any of the following categories must be permitted to vote by absentee ballot in all elections when they are absent from their county of residence on election day during the hours the polls are open, to an extent that it prevents them from voting in person:

(1) students, their spouses, and dependents residing with them;

(2) persons serving with the American Red Cross or with the United Service Organizations (USO) who are attached to and serving with the Armed Forces of the United States, their spouses, and dependents residing with them;

(3) governmental employees, their spouses, and dependents residing with them; or

(4) ~~persons on vacation (who by virtue of vacation plans will be absent from their county of residence on election day); or~~

~~(5)~~ overseas citizens.

(B) Qualified electors in any of the following categories must be permitted to vote by absentee ballot in all elections, whether or not they are absent from their county of residence on election day:

(1) physically disabled persons;

(2) persons whose employment obligations require that they be at their place of employment during the hours that the polls are open and present written certification of that obligation to the county board of voter registration and elections;

(3) certified poll watchers, poll managers, county board of voter registration and elections members and staff, county and state election commission members and staff working on election day;

(4) persons attending sick or physically disabled persons;

(5) persons admitted to hospitals as emergency patients on the day of an election or within a four‑day period before the election;

(6) persons with a death or funeral in the family within a three‑day period before the election;

(7) persons who will be serving as jurors in a state or federal court on election day;

(8) persons sixty‑five years of age or older;

(9) persons confined to a jail or pretrial facility pending disposition of arrest or trial; or

(10) members of the Armed Forces and Merchant Marines of the United States, their spouses, and dependents residing with them.

(C) Qualified electors must be permitted to vote by absentee ballot in all elections when they are going to be absent from their county of residence for the duration of the early voting period and on election day.”

G. Section 7‑15‑340 of the 1976 Code is amended to read:

“Section 7‑15‑340. (A) The application required in Section 7‑15‑330 to be submitted to these election officials must be in a form prescribed and distributed by the State Election Commission; except that persons listed in Section 7‑15‑320(2), (3), (6), and (10) may use Standard Form 76, or any subsequent form replacing it, provided by the federal government as a simultaneous request for registration and an absentee ballot or a request for an absentee ballot if already registered.

(B)(1) The application must contain the following information: name, registration certificate number, address, absentee address, election of ballot request, election date, runoff preference, party preference, reason for request, oath of voter, and voter’s signature.

(2) The application also must contain the last four digits of the voter’s social security number.

(C) The oath must be as follows: ‘I do swear or affirm that I am a qualified elector, that I am entitled to vote in this election, and that I will not vote again during this election. The information above is true in all respects, and I hereby apply for an absentee ballot for the reason indicated above.’ Any person who fraudulently applies for an absentee ballot in violation of this section, upon conviction, must be punished in accordance with Section 7‑25‑20.”

H. Section 7‑15‑385 of the 1976 Code is amended to read:

“Section 7‑15‑385. (A) Upon receipt of the ballot or ballots, the absentee ballot applicant must mark each ballot on which he wishes to vote and place each ballot in the single envelope marked ‘Ballot Herein’ which in turn must be placed in the return‑addressed envelope. The applicant must then return the return‑addressed envelope to the board of voter registration and elections by mail, by personal delivery, or by authorizing another person to return the envelope for him. The authorization must be given in writing on a form prescribed by the State Election Commission and must be turned in to the board of voter registration and elections at the time the envelope is returned. The voter must sign the form, or in the event the voter cannot write because of a physical handicap or illiteracy, the voter must make his mark and have the mark witnessed by someone designated by the voter. The authorization form prescribed by the State Election Commission must include a designated space in which the appropriate elections official or employee shall record the specific form of government‑issued photo identification presented by the authorized returnee. The authorization must be preserved as part of the record of the election, and the board of voter registration and elections must note the authorization, and the name of the authorized returnee, and the authorized returnee’s form of government‑issued photo identification in the record book required by Section 7‑15‑330. A candidate or a member of a candidate’s paid campaign staff including volunteers reimbursed for time expended on campaign activity is not permitted to serve as an authorized returnee for any person unless the person is a member of the voter’s immediate family as defined in Section 7‑15‑310. The oath set forth in Section 7‑15‑380 must be signed and witnessed on each returned envelope. The board of voter registration and elections must record in the record book required by Section 7‑15‑330 the date the return‑addressed envelope with witnessed oath and enclosed ballot or ballots is received by the board. The board must securely store the envelopes in a locked box within the office of the board of voter registration and elections.

(B)(1) When an authorized returnee presents himself to the board of voter registration and elections to deliver a return‑addressed envelope in person pursuant to subsection (A), he shall produce a valid and current:

(a) South Carolina driver’s license;

(b) another form of identification containing a photograph issued by the Department of Motor Vehicles;

(c) passport;

(d) military identification containing a photograph issued by the federal government; or

(e) South Carolina voter registration card containing a photograph of the voter pursuant to Section 7‑5‑675.

(2) The appropriate elections official or employee who receives a return‑addressed envelope from an authorized returnee shall:

(a) compare the photograph contained on the required identification with the person presenting himself as an authorized returnee; and

(b) verify that the photograph is that of the person personally delivering the return‑addressed envelope.”

I. Section 7‑15‑420 of the 1976 Code, as last amended by Act 133 of 2020, is further amended to read:

“Section 7‑15‑420. (A) The county board of voter registration and elections, municipal election commission, or executive committee of each municipal party in the case of municipal primary elections is responsible for the tabulation and reporting of absentee ballots. At ~~9:00 a.m.~~ 6:01 p.m. on the Saturday immediately preceding election day, the managers appointed pursuant to Section 7‑5‑10~~, and in the presence of any watchers who have been appointed pursuant to Section 7‑13‑860,~~ may begin the process of examining the return‑addressed envelopes that have been received by the county board of voter registration and elections making certain that each oath has been properly signed and witnessed and includes the printed name and address of the witness. All return‑addressed envelopes received by the county board of voter registration and elections before the time for closing the polls must be examined in this manner. A ballot may not be counted unless the oath is properly signed and witnessed nor may any ballot be counted which is received by the county board of voter registration and elections after time for closing of the polls. The printed instructions required by Section 7‑15‑370(2) to be sent each absentee ballot applicant must notify him that his vote will not be counted in either of these events. If a ballot is not challenged, the sealed return‑addressed envelope must be opened by the managers, and the enclosed envelope marked ‘Ballot Herein’ removed, ~~and~~ placed in a locked box or boxes, and kept secure. After all return‑addressed envelopes have been emptied in this manner, the managers shall remove the ballots contained in the envelopes marked ‘Ballot Herein’, placing each one in the ballot box provided for the applicable contest. Beginning at ~~9:00~~ 7:00 a.m. on the calendar day immediately preceding election day, the absentee ballots may be tabulated, including any absentee ballots received on election day before the polls are closed. If any ballot is challenged, the return‑addressed envelope must not be opened, but must be put aside and the procedure set forth in Section 7‑13‑830 must be utilized; but the absentee voter must be given reasonable notice of the challenged ballot. The processes of examining the return‑addressed envelopes, opening the sealed return‑addressed envelopes to remove the ‘Ballot Herein’ envelopes, and removing the ballots from the ‘Ballot Herein’ envelopes for tabulation must be conducted in the presence of any candidate who elects to be present, and of any watchers who have been appointed pursuant to Section 7‑13‑860. Provided, any candidates or watchers present must be located a reasonable distance in order to maintain both the right to observe and the secrecy of the ballots.

(B) Results of the absentee ballot tabulation must not be publicly reported until after the polls are closed. An election official, election worker, candidate, or watcher who intentionally violates the prohibition contained in this subsection is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years.”

J. Article 5, Chapter 15, Title 7 of the 1976 Code is amended by adding:

“Section 7‑15‑325. Any voter who goes to a polling location to vote in person on election day and who has been designated as having previously voted absentee is entitled to cast a provisional ballot. The voter’s provisional ballot must be counted only if the county board of voter registration and elections has a record that the voter’s absentee ballot was not received.”

K. Section 7‑15‑470 of the 1976 Code is repealed.

L. Section 7‑3‑20(C) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) establish rules and regulations for voter registrations performed by private entities.”

M. Section 7‑5‑170 of the 1976 Code is amended to read:

“Section 7‑5‑170. (1) Written application required.—A person may not be registered to vote except upon written application or electronic application pursuant to Section 7‑5‑185, which shall become a part of the permanent records of the board to which it is presented and which must be open to public inspection. However, the social security number contained in the application must not be open to public inspection.

(2) Form of application. — The application must be on a form prescribed and provided by the executive director and shall contain the following information: name, sex, race, social security number, date of birth, residence address, mailing address, telephone number of the applicant, and location of prior voter registration. The applicant must affirm that he is not under a court order declaring him mentally incompetent, confined in any public prison, has never been convicted of a felony or offense against the election laws, or if previously convicted that he has served his entire sentence, including probation and parole time, or has received a pardon for the conviction. Additionally, the applicant must take the following oath: ‘I, do solemnly swear (or affirm) that I am a citizen of the United States and that on the date of the next ensuing election, I will have attained the age of eighteen years and am a resident of South Carolina, this county, and of my precinct. I further swear (or affirm) that the present residence address listed herein is my sole legal place of residence, ~~and~~ that I claim no other place as my legal residence, and that, to my knowledge, I am neither registered nor intend to register to vote in another state or county.’ Any applicant convicted of fraudulently applying for registration is guilty of perjury and is subject to the penalty for that offense.

(3) Date stamp voter registration applications. — The county board of voter registration and elections shall date stamp all voter registration applications delivered in person, electronically, or by mail as of the date received.

~~(3)~~(4) Administration of oaths. — Any member of the county board of voter registration and elections, deputy registrar, or any registration clerk must be qualified to administer oaths in connection with the application.

~~(4)~~(5) Decisions on applications. — Any member of the county board of voter registration and elections, deputy registrar, or registration clerk may pass on the qualifications of the prospective voter. In case of a question of an applicant being refused registration, at least one member of the board shall pass on the qualifications of the voter. A concise statement of the reasons for the refusal must be written on the application.”

N. Section 7‑15‑330 of the 1976 Code, as last amended by Act 133 of 2020, is further amended to read:

“Section 7‑15‑330. To vote by absentee ballot, a qualified elector or a member of his immediate family must request an application to vote by absentee ballot in person, by telephone, or by mail from the county board of voter registration and elections, or at an extension office of the board of voter registration and elections as established by the county governing body, for the county of the voter’s residence. A person requesting an application for a qualified elector as the qualified elector’s authorized representative must request an application to vote by absentee ballot in person or by mail only and must himself be a registered voter and must sign an oath to the effect that he fits the statutory definition of a representative. This signed oath must be kept on file with the board of voter registration and elections until the end of the calendar year or until all contests concerning a particular election have been finally determined, whichever is later. A candidate or a member of a candidate’s paid campaign staff, including campaign volunteers ~~reimbursed for time expended on campaign activity~~, is not allowed to request applications for absentee voting for any person designated in this section unless the person is a member of the immediate family. A person may not request absentee applications for more than ten qualified electors in addition to himself. A request for an application to vote by absentee ballot may be made anytime during the calendar year in which the election in which the qualified elector desires to be permitted to vote by absentee ballot is being held. However, completed applications must be returned to the county board of voter registration and elections in person or by mail before 5:00 p.m. on the fourth day before the day of the election. Applications must be accepted by the county board of voter registration and elections until 5:00 p.m. on the day immediately preceding the election for those who appear in person and are qualified to vote absentee pursuant to Section 7‑15‑320. A member of the immediate family of a person who is admitted to a hospital as an emergency patient on the day of an election or within a four‑day period before the election may obtain an application from the board on the day of an election, complete it, receive the ballot, deliver it personally to the patient who shall vote, and personally carry the ballot back to the board of voter registration and elections. The board of voter registration and elections shall serially number each absentee ballot application form and keep a record book in which must be recorded the number of the form, the name, home address, and absentee mailing address of the person for whom the absentee ballot application form is requested; the name, address, voter registration number, and relationship of the person requesting the form, if other than the applicant; the date upon which the form is requested; the date upon which the form is issued; and the date and method upon which the absentee ballot is returned. This information becomes a public record at 9:00 a.m. on the day immediately preceding the election, except that forms issued for emergency hospital patients must be made public by 9:00 a.m. on the day following an election. A person who violates the provisions of this section is subject to the penalties provided in Section 7‑25‑170.”

O. Section 7‑5‑186 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Security protocols for voter registration information maintained and developed by the State Election Commission shall be generally consistent with current industry security standards, and in promulgating this requirement, the State Election Commission shall consider those security standards issued by the National Institute of Standards and Technology, the Cybersecurity and Infrastructure Security Agency, and the federal Election Assistance Commission. The State Election Commission shall certify, at least annually, that the State of South Carolina has substantially complied with the requirements of this section.”

P. Section 7‑5‑430 of the 1976 Code is amended to read:

“Section 7‑5‑430. Immediately preceding each general election or any special election, the county board of voter registration and elections must furnish one registration book for each polling precinct in the county containing the names of all electors entitled to vote at each precinct. Security protocols for electronic poll books shall be generally consistent with current industry security standards, and in promulgating this requirement, the State Election Commission shall consider those security standards issued by the National Institute of Standards and Technology, the Cybersecurity and Infrastructure Security Agency, and the federal Election Assistance Commission. The State Election Commission shall certify, at least annually, that the State of South Carolina has substantially complied with the requirements of this section.”

Q. Section 7‑13‑320(A) of the 1976 Code is amended to read:

“(A) Other than ballots delivered electronically to qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., the ballots shall incorporate features which can be used to authenticate the ballot as an official ballot but which does not make the ballot identifiable to a particular elector. The ballot shall be printed on paper of such thickness that the printing cannot be distinguished from the back and shall be of such size and color as directed by the State Election Commission. If more than one ballot is to be used in any election, each such ballot shall be printed upon different colored paper;”

R. Section 7‑13‑610(C) of the 1976 Code is amended to read:

“(C) Other than ballots delivered electronically to qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., the ballots shall incorporate features which can be used to authenticate the ballot as an official ballot but which do not make the ballot identifiable to a particular elector. The ballot must be printed on paper of a thickness so that the printing cannot be distinguished from the back and must be of a size and color as directed by the State Election Commission. If more than one ballot is to be used in a primary, each ballot must be printed on different colored paper. The ballot must contain a voting square opposite the name of each candidate, and the voter shall vote by putting a mark in the voting square opposite the name of the candidate of his choice. The State Election Commission may establish, under Chapter 23 of Title 1, such rules and regulations as are necessary for the proper administration of this section.”

S. Section 7‑13‑1330 of the 1976 Code is amended to read:

“Section 7‑13‑1330. (A) Before any decision is made to procure or use any kind of voting system, input shall be sought from a wide variety of sources including the public, the academic community, public interest organizations, local election officials, and policy makers. Both written and oral testimony shall be accepted from all who wish to participate. This input shall be considered in procurement of a new voting system.

(B) Before any kind of optical scan voting system is used at any election, it must be approved by the State Election Commission, which shall examine the optical scan voting system and make and file in the commission’s office a report, attested by the signature of the commission’s executive director, stating whether, in the commission’s opinion, the kind of optical scan voting system examined may be accurately and efficiently used by electors at elections, as provided by law. An optical scan voting system may not be approved for use in the State unless certified by a testing laboratory accredited by the Federal Election Assistance Commission as meeting or exceeding the minimum requirements of the latest federal voting system standards and guidelines. Notwithstanding any other provision of law to the contrary, if these voting system standards have been amended less than thirty‑six months prior to an election, the State Election Commission may approve and certify a voting system that meets the prior standards after determining:

(1) the effect that such approval would have on the integrity and security of elections; and

(2) the procedure and cost involved to bring the voting system into compliance with the amended standards.

~~(B)~~(C) No kind of vote recorder not approved pursuant to this section shall be used at any election and if, upon the reexamination of any type vote recorder previously approved, it appears that the vote recorder so reexamined can no longer be accurately and efficiently used by electors at elections as provided by law, the approval of the vote recorder must immediately be revoked by the State Election Commission, and no such type vote recorder shall thereafter be purchased for use or used in this State.

~~(C)~~(D) If a vote recorder, including an optical scan voting system, which was approved for use before July 1, 1999, is improved or otherwise changed in a way since its approval that does not impair its accuracy, efficiency, or capacity, the vote recorder may be used in elections. However, if the software, hardware, or firmware of the system is improved or otherwise changed, the system must comply with the requirements of subsection ~~(A)~~ (B).

~~(D)~~(E) Any person or company who requests an examination of any type of vote recorder or optical scan voting system shall pay a nonrefundable examination fee of one thousand dollars for a new voting system and a nonrefundable examination fee of five hundred dollars for an upgrade to any existing system to the State Election Commission. The State Election Commission may at any time, in its discretion, reexamine any vote recorder or optical scan voting system when evidence is presented to the commission that the accuracy or the ability of the system to be used satisfactorily in the conduct of elections is in question.

~~(E)~~(F) Any person or company who seeks approval for any vote recorder or optical scan voting system in this State must file with the State Election Commission a list of all states or jurisdictions in which the system has been approved for use. This list must state how long the system has been used in the state; contain the name, address, and telephone number of that state or jurisdiction’s chief election official; and must disclose any reports compiled by state or local government concerning the performance of the system. The vendor is responsible for filing this information on an ongoing basis.

~~(F)~~(G) Any person or company who seeks approval for any vote recorder or optical scan voting system must file with the State Election Commission copies of all contracts and maintenance agreements used in connection with the sale of the voting system. All changes to standard contracts and maintenance agreements must be filed with the State Election Commission.

~~(G)~~(H) Any person or company who seeks approval for any vote recorder or optical scan voting system must conduct, under the supervision of the State Election Commission and any county board of voter registration and elections, a field test for any new voting system, as part of the certification process. The field test shall involve South Carolina voters and election officials and must be conducted as part of a scheduled primary, general, or special election. This test must be held in two or more precincts, and all costs relating to the voting system must be borne by the vendor. The test must be designed to gauge voter reaction to the system, problems that voters have with the system, and the number of voting units required for the efficient operation of an election. The test must also demonstrate the accuracy of votes cast and reported on the system.

~~(H)~~(I) Before an optical scan voting system may be used in elections in the State, all source codes for the system must be placed in escrow by the manufacturer, at the manufacturer’s expense, with the authority approved by the Federal Election Assistance Commission. These source codes must be available to the State Election Commission in case the company goes out of business, pursuant to court order, or if the State Election Commission determines that an examination of these source codes is necessary. The manufacturer shall place all updates of these source codes in escrow, and notify the State Election Commission that this requirement has been met.

~~(I)~~(J) After a vote recorder or optical scan voting system is approved, an improvement or change in the system must be submitted to the State Election Commission for approval pursuant to this section; however, this requirement does not apply to the technical capability of a general purpose computer ~~or reader to electronically count and record votes~~ or ~~to a~~ printer to accurately reproduce vote totals.

~~(J)~~(K) If the State Election Commission determines that a vote recorder or optical scan voting system that was approved no longer meets the requirements set forth in subsections ~~(A)~~ (B) and ~~(C)~~ (D) or Section 7‑13‑1340, the commission may decertify that system. A decertified system shall not be used in elections unless the system is reapproved by the commission under subsections ~~(A)~~ (B) and ~~(C)~~ (D).

~~(K)~~(L) Neither a member of the State Election Commission, any county board of voter registration and elections or custodian, nor a member of a county governing body shall have any pecuniary interest in any vote recorder, or in the manufacture or sale of the vote recorder.

(M) To attain a measure of integrity over the process, the optical scan voting system also must maintain an image of each ballot that is cast, such that records of individual ballots are maintained by a subsystem independent and distinct from the main vote detection, interpretation, processing, and reporting path. The electronic images of each ballot must protect the integrity of the data and the anonymity of each voter, for example, by means of storage location scrambling. The ballot image records may be either machine‑readable or manually transcribed, or both, at the discretion of the vendor.

(N) All electronic records of configurations, software logs, security devices, ballot images, hardware, and voting system firmware must be preserved for the same amount of time that the state or federal law requires for all election‑related materials.”

T. Section 7‑13‑1340(k) of the 1976 Code is amended to read:

“(k) ~~if approved after July 1, 1999, or if an upgrade in software, hardware, or firmware is submitted for approval as required by Section 7‑13‑1330 (C), is able to electronically transmit vote totals for all elections to the State Election Commission in a format and timeframe specified by the commission~~ prohibits, at all times while utilized in a current election, the following:

(1) a connection to the Internet or an external network;

(2) capability to establish a wireless connection to an external network;

(3) establishment of a connection to an external network through a cable, a wireless modem or any other mechanism or process; or

(4) automatic adjudication functions.”

U. Section 7‑13‑1370 of the 1976 Code is amended to read:

“Section 7‑13‑1370. Ballot cards for all precincts shall be sourced solely ~~of suitable design, size and stock, as prescribed~~ by the State Election Commission~~, to permit processing by a tabulating machine. A serially numbered stub and strip shall be attached to each ballot card in a manner and form similar to that prescribed by law for paper ballots~~.”

V. Section 7‑13‑1620(A) and (G) of the 1976 Code is amended to read:

“(A) Before any kind of voting system, including an electronic voting system, is used at an election, it must be approved by the State Election Commission, which shall examine the voting system and make and file in the commission’s office a report, attested to by the signature of the commission’s executive director, stating whether, in the commission’s opinion, the kind of voting system examined may be accurately and efficiently used by electors at elections, as provided by law. A voting system may not be approved for use in the State unless certified by a testing laboratory accredited by the Federal Election Assistance Commission as meeting or exceeding the minimum requirements of the latest federal voting system standards and guidelines. Notwithstanding any other provision of law to the contrary, if these voting system standards have been amended less than thirty‑six months prior to an election, the State Election Commission may approve and certify a voting system that meets the prior standards after determining:

(1) the effect that such approval would have on the integrity and security of elections; and

(2) the procedure and cost involved to bring the voting system into compliance with the amended standards.

(G) After a voting system is approved, an improvement or change in the system must be submitted to the State Election Commission for approval pursuant to this section. This requirement does not apply to the technical capability of a general purpose computer, reader, or printer used for election preparation or ballot ~~tallying~~ tally reporting.”

W. Section 7‑13‑1640(C) of the 1976 Code is amended to read:

“(C) If approved after July 1, 1999, or if an upgrade in software, hardware, or firmware is submitted for approval as required by Section 7‑13‑1620(B), the voting system must be able to electronically transmit vote totals for all elections from county board of voter registration and elections to the State Election Commission in a format and time frame specified by the commission.

(D) During anytime a voter is eligible to cast a ballot, the voting machine and any counting device shall not:

(1) be connected to the Internet or an external network;

(2) be capable of establishing a wireless connection;

(3) establish a connection to an external network through a cable, a wireless modem, or any other mechanism or process; or

(4) allow automatic adjudication functions.

(E) All electronic records of configurations, software, logs, security devices, ballot images, hardware, and voting system firmware must be preserved for the same amount of time that state or federal law requires for all election related materials.”

X. Section 7‑13‑1710 of the 1976 Code is amended to read:

“Section 7‑13‑1710. In every county, city or town providing voting machines, the board of voter registration and elections shall furnish to the managers of election a sufficient number of ballots ~~printed on clear white paper, of such form and size as will fit the ballot frames of the machines, the arrangement of the names of the candidates on such ballots to be~~ prescribed by the board of voter registration and elections. Ballot cards for all precincts shall be sourced solely by the State Election Commission. Party nominations shall be arranged on each voting machine either in columns or horizontal rows, as shall nominations by petition, and the captions of the various ballots on such machines shall be so placed as to indicate to the voter what push knob, key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice.”

Y. Section 7‑13‑440 of the 1976 Code is repealed.

Z. Section 7‑3‑40 of the 1976 Code is amended to read:

“Section 7‑3‑40. The Bureau of Vital Statistics must furnish the executive director a monthly report of all persons eighteen years of age or older who have died in the State and all qualified electors eighteen years of age or older who have died out‑of‑state since making the previous report. All reports must contain the name of the deceased, county of residence, his social security or other identification number, and his date and place of birth. The bureau must provide this information at no charge.”

AA. Section 7‑5‑186 of the 1976 Code is amended to read:

“Section 7‑5‑186. (A)~~(1)~~ The State Election Commission shall establish and maintain a statewide voter registration database that must be administered by the commission and made continuously available to each county board of voter registration and elections and to other agencies as authorized by law. The executive director must conduct a general registration list maintenance program every year to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records in the statewide voter registration system. The program must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.

~~(2)(a)~~(B) State agencies, including, but not limited to, the Department of Health and Environmental Control, Office of Vital Statistics, Department of Motor Vehicles, Department of Employment and Workforce, and the Department of Corrections, shall provide information and data to the State Election Commission that the commission considers necessary in order to maintain the statewide voter registration database established pursuant to this section, except where prohibited by federal law or regulation. The State Election Commission shall ensure that any information or data provided to the State Election Commission, which is confidential in the possession of the entity providing the data, remains confidential while in the possession of the State Election Commission.

~~(b)~~(C) ~~Information provided under this division for maintenance of the statewide voter registration database must not be used to update the name or address of a registered elector. The name or address of a registered elector only must be updated as a result of the elector’s actions in filing a notice of change of name, change of address, or both~~ The State Election Commission may enter into agreements to share information or data with other states or groups of states, as the commission considers necessary, in order to maintain the statewide voter registration database established pursuant to this section. The executive director is authorized to cause at his discretion the official list of electors to be compared to the National Change of Address information supplied by the United States Postal Service through its licensees periodically for the purpose of identifying those electors whose addresses have changed. Except as otherwise provided in this subsection, the commission shall ensure that any information or data provided to the commission that is confidential in the possession of the State providing the data remains confidential while in the possession of the commission. The commission may provide such otherwise confidential information or data to persons or organizations that are engaging in legitimate governmental purposes related to the maintenance of the statewide voter registration database.

~~(c)~~(D) A county board of voter registration and elections shall ~~contact~~ send a notice to a registered elector by mail at the address on file with the board to verify the accuracy of the information in the statewide voter registration database regarding that elector if information provided under subsection ~~(A)(2)(a)~~ (B) and (C) of this section identifies a discrepancy between the information regarding that elector that is maintained in the statewide voter registration database and maintained by a state agency. The notice as described in Section 7‑5‑330(F)(2) must be sent within seven days after identification of a discrepancy.

~~(3)~~ ~~The State Election Commission may enter into agreements to share information or data with other states or groups of states, as the commission considers necessary, in order to maintain the statewide voter registration database established pursuant to this section. Except as otherwise provided in this subsection, the commission shall ensure that any information or data provided to the commission that is confidential in the possession of the state providing the data remains confidential while in the possession of the commission. The commission may provide such otherwise confidential information or data to persons or organizations that are engaging in legitimate governmental purposes related to the maintenance of the statewide voter registration database.~~”

BB. Sections 7‑5‑330 and 7‑5‑340 of the 1976 Code are amended to read:

“Section 7‑5‑330. (A) In the case of registration with a motor vehicle application under Section 7‑5‑320, the valid voter registration form of the applicant must be completed at the Department of Motor Vehicles no later than thirty days before the date of the election.

(B) In the case of registration by mail under Section 7‑5‑155, the valid voter registration form of the applicant must be postmarked no later than thirty days before the date of the election.

(C) In the case of registration at a voter registration agency, the valid voter registration form of the applicant must be completed at the voter registration agency no later than thirty days before the date of the election.

(D) In any other case, the valid voter registration form of the applicant must be received by the county board of voter registration and elections no later than thirty days before the date of the election.

(E)(1) The county board of voter registration and elections shall:

(a) send notice to each applicant of the disposition of the application; and

(b) ensure that the identity of the voter registration agency through which a particular voter is registered is not disclosed to the public.

(2) If the notice sent pursuant to the provisions of subitem (a) of this item is returned to the county board of voter registration and elections as undeliverable, the elector to whom it was sent must be reported by the board to the State Election Commission. The State Election Commission must place the elector in an inactive status on the master file within seven days after receipt of the report from the county board of voter registration and elections and ~~may~~ shall remove this elector upon compliance with the provisions of Section 7‑5‑330(F).

(F)(1) The State Election Commission may not remove the name of a qualified elector from the official list of eligible voters on the ground that the qualified elector has changed residence unless the qualified elector:

(a) confirms in writing that the qualified elector has changed residence to a place outside the county in which the qualified elector is registered; or

(b)(i) has failed to respond to a notice described in item (2); and

(ii) has not voted or appeared to vote and, if necessary, correct the county board of voter registration and elections record of the qualified elector’s address, in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election that occurs after the date of the notice.

(2) ‘Notice’, as used in this item, means a postage prepaid and preaddressed return card, sent by forwardable mail, on which the qualified elector may state his current address, together with a statement to the following effect:

(a) if the qualified elector did not change his residence, or changed residence but remained in the same county, the qualified elector shall return the card no later than thirty days before the date of the election. If the card is not returned, affirmation or confirmation of the qualified elector’s address may be required before the qualified elector is permitted to vote during the period beginning on the date of the notice and ending on the day after the date of the second general election that occurs after the date of the notice, and if the qualified elector does not vote in an election during that period, the qualified elector’s name must be removed from the list of eligible voters;

(b) if the qualified elector has changed residence to a place outside the county in which the qualified elector is registered, information as to how the qualified elector can re‑register to vote.

(3) The county board of voter registration and elections shall correct an official list of eligible voters in accordance with change of residence information obtained pursuant to the provisions of this subsection.

(4) The program required pursuant to the provisions of subsection (F) of this section must be completed no later than ninety days before the date of a statewide primary or general election.

Section 7‑5‑340. The State Election Commission shall:

(1) ensure that the name of a qualified elector ~~may not be~~ is removed from the official list of eligible voters ~~except~~ within seven days of receipt of information confirming:

(a) ~~at~~ the request of the qualified elector to be removed;

(b) ~~if~~ the elector is adjudicated mentally incompetent by a court of competent jurisdiction; ~~or~~

(c) ~~as provided under item (2);~~

~~(2)~~ ~~conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of:~~

~~(a)~~ the death of the qualified elector; or

~~(b)~~(d) a change in the residence ~~of the qualified elector~~ to a place outside the county in which the qualified elector is registered when such confirmation is received from the qualified elector in writing;

~~(3)~~(2) inform applicants under Sections 7‑5‑155, 7‑5‑310, and 7‑5‑320 of:

(a) voter eligibility requirements; and

(b) penalties provided by law for submission of a false voter registration application;

~~(4)~~(3) complete, no later than ninety days before the date of a statewide primary or general election, a program to systematically remove the names of ineligible voters from the official lists of eligible voters in compliance with the provisions of Section 7‑5‑330(F); this ~~subitem~~ item may not be construed to preclude:

(a) the removal of names from official lists of voters on a basis described in ~~items~~ item (1) ~~and (2)~~; or

(b) correction of registration records pursuant to this article.”

CC. Chapter 25, Title 7 of the 1976 Code is amended by adding:

“Section 7‑25‑30. The State Law Enforcement Division shall establish a public reporting hotline telephone number and email address for receiving reports of possible election fraud or other violations of the election laws of this State and promptly shall investigate all reported violations.”

DD. Article 6, Chapter 5, Title 7 of the 1976 Code is amended by adding:

“Section 7‑5‑350. The State Election Commission shall report to the General Assembly annually regarding the commission’s actions taken to maintain the accuracy of the statewide voter registration database/list maintenance including, but not limited to, number of voters removed and the reason for such removal from the official list of eligible voters, voters placed on inactive status, new voter registrations, and voter registration updates or address changes. This annual report must be delivered to the President of the Senate and the Speaker of the House of Representatives by January fifteenth of each year.”

EE. Chapter 1, Title 7 of the 1976 Code is amended by adding:

“Section 7‑1‑110. (A) The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, have an unconditional right to intervene on behalf of their respective bodies in a state court action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted.

(B) In a federal court action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted, the President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, have standing to intervene as a party on behalf of their respective bodies, to file an amicus brief, or to provide evidence or argument, written or oral, in accordance with the federal rules of procedure, irrespective of whether any other officer of the State has appeared in the action.

(C) A federal court presiding over an action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted is requested to allow the President, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, to intervene in any such action as a party.

(D) The State Election Commission and the Attorney General must notify the President of the Senate and the Speaker of the House of Representatives within twenty‑four hours of the receipt of service of a complaint that challenges the validity of an election law, an election policy, or the manner in which an election is conducted.

(E) In any action in which the Senate or the House of Representatives intervenes or participates pursuant to this section, the Senate and the House of Representatives must function independently from each other in the representation of their respective bodies, unless otherwise agreed to by the President of the Senate and the Speaker of the House of Representatives.”

FF. Section 7‑3‑20(C) of the 1976 Code is amended by adding appropriately numbered items to read:

“( ) conduct, in conjunction with the county boards of voter registration and elections, as necessary, postelection hand-count audits after each statewide general election. Five percent of all ballots cast in each county must be audited pursuant to this item unless the commission determines a higher percentage is warranted;

( ) establish other methods of auditing election results which may include risk-limiting audits, hand‑count audits, results verification through independent third‑party vendors that specialize in election auditing, ballot reconciliation, or any other method deemed appropriate by the executive director. Election result audits must be conducted in all statewide elections after the election concludes, but prior to certification by the State Board of Canvassers, and may be performed following any other election held in the State at the discretion of the executive director. Once completed, audit reports must be published on the commission’s website;”

GG. Section 7‑25‑20 of the 1976 Code is amended to read:

“Section 7‑25‑20. It is unlawful for a person to fraudulently:

(1) procure the registration of a name on the books of registration;

(2) offer or attempt to vote that name;

(3) offer or attempt to vote in violation of this title or under any false pretense as to circumstances affecting his qualifications to vote; or

(4) aid, counsel, or abet another in fraudulent registration or fraudulent offer or attempt to vote.

A person who violates the provisions of this section is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined not less than one ~~hundred~~ thousand dollars nor more than five ~~hundred~~ thousand dollars ~~or~~ and imprisoned not more than ~~one year, or both~~ five years.”

HH. Section 7‑25‑110 of the 1976 Code is amended to read:

“Section 7‑25‑110. It is unlawful for a person qualified to vote at any general, special, or primary election for an office whether local, state, or federal to vote more than once at such election, for the same office. A person who violates the provisions of this section is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined ~~in the discretion of the court or~~ not less than one thousand dollars nor more than five thousand dollars and imprisoned not more than ~~three~~ five years.”

II. Section 7‑25‑120 of the 1976 Code is amended to read:

“Section 7‑25‑120. It is unlawful for a person to impersonate or attempt to impersonate another person for the purpose of voting in a general, special, or primary election, whether municipal or State. A person who violates the provisions of this section is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be imprisoned not more than ~~three~~ five years ~~or~~ and fined not less than ~~three hundred~~ one thousand dollars nor more than ~~twelve hundred~~ five thousand dollars~~, or both~~. When a person who violates the provisions of this section is placed under bond, the bond may not be less than six hundred dollars nor more than twelve hundred dollars.”

JJ. Section 7‑25‑160 of the 1976 Code is amended to read:

“Section 7‑25‑160. A manager at any general, special, or primary election in this State who wilfully violates any of the duties devolved by law upon such position is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined not ~~more~~ less than ~~five hundred~~ one thousand dollars ~~or~~ nor more than five thousand dollars and imprisoned not more than ~~three~~ five years. A manager who commits fraud or corruption in the management of such election is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined not more than ~~five hundred~~ one thousand dollars ~~or~~ nor more than five thousand dollars and imprisoned not more than ~~three~~ five years~~, or both~~.”

KK. Section 7‑25‑170 of the 1976 Code is amended to read:

“Section 7‑25‑170. An officer, other than a manager at any election, on whom a duty is imposed by this title, except under Section 7‑13‑1170, Articles 1 and 3 of Chapter 17 and Chapters 19 and 23 of this title, who wilfully neglects such duty or engages in corrupt conduct in executing it is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined not ~~more~~ less than ~~five hundred~~ one thousand dollars ~~or~~ nor more than five thousand dollars and imprisoned not more than ~~three~~ five years.”

LL. The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of election reform as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

MM. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

NN. If any section, subsection, 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, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective. /

Renumber sections to conform.

Amend title to conform.

CHRIS MURPHY for Committee.

**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”.

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 subsection (D), any person who, without authorization, knowingly and willfully records by video or photographic means a vulnerable adult in violation of Section 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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