I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: South Carolina Omnibus Adult Protection Act (S.C. Code Ann. § 43-35-5, et seq.)

A. Civil Actions


B. Conduct

1. **Neglect**: failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death. S.C. Code Ann. § 43-35-10.

2. **Abuse**

   (a) **Definition**

   “Abuse” means physical abuse or psychological abuse.

   (i) **Physical abuse**: intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and

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1 S.C. Code Ann. § 43-35-10
unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

(ii) **Psychological abuse**: deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

3. **Exploitation**:

(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.

3. **Caregiver**:

A person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not

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2 Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.


limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

D. **Vulnerable Adult**\(^5\):

A person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

E. **Persons/Entities Excluded From Statute**

None apparent.

F. **Mandated Reporting**

(a) **Mandated Reporters**

The Act imposes a duty on certain individuals to report if they have “reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited.” *S.C. Code Ann. § 43-35-25(A)*.

Individuals designated as “mandated reporters” under the Act include: physicians, nurses, dentists, optometrists, medical examiners, coroners, and other medical, mental health or allied health professionals, Christian Science practitioners, religious healers, school teachers, counselors, psychologists, mental health or mental retardation specialists, social or public assistance workers, caregivers, staff or volunteers of an adult day care center or facilities, and law enforcement officers. The Act also requires reporting by “any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited.” *S.C. Code Ann. § 43-35-25(A)*.

(b) **Time Required to Report**

Reporting the suspected conduct within twenty-four hours or the following working day is the reporter's individual responsibility. *S.C. Code Ann. § 43-35-25(C)-(D); Williams v. Watkins*, 379 S.C. 530, 535, 665 S.E.2d 243, 246 (Ct. App. 2008).

(c) **Report Receivers and Investigative Agencies/Entities**

(i) **South Carolina Law Enforcement Division:** investigates or refers to local law enforcement abuse, neglect, or exploitation in a

residential facility contracted with or operated by the SC Department of Disabilities and Special Needs or the SC Department of Mental Health.

(ii) **SC Long Term Care Ombudsman’s Office**: investigates other residential facilities, such as private nursing homes and most community residential care facilities.

(iii) **SC Department of Social Services**: investigates abuse, neglect, or exploitation of vulnerable adults in private or foster homes. Reports should be made to county DSS offices.

(iv) **SC Attorney General’s Medicaid Fraud Control Unit**: investigates misuse of Medicaid funds, including financial exploitation of Medicaid recipients.

(v) Provided the Act's mandatory reporting requirements are met, the reporter may additionally report suspected abuse, neglect, or exploitation directly to law enforcement; “and in cases of emergency, serious injury, or suspected sexual assault, law enforcement must be contacted immediately.” *S.C. Code Ann. § 43-35-25(G).*

(d) **Immunity of Person Making Report or Participating in Investigation in Good Faith**

A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption. *S.C. Code Ann. § 43-35-75(A).*

G. **Preclusion of Arbitration**


H. **Relationship to Medical Malpractice actions**

I. Criminal Penalties:

(a) **Failure to Report:** mandated reporter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars ($25,000) or imprisoned not more than one (1) year.

(b) **Persons Guilty of Abuse:** 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 (5) years.

(c) **Persons Guilty of Neglect:** 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 (5) years.

(d) **Persons Guilty of Exploitation:** 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 (5) years, or both, and may be required by the court to make restitution.

(e) **Persons Guilty of Neglect or Abuse Resulting in Great Bodily Injury:** 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 (15) years.

(f) **Persons Guilty of Neglect or Abuse Resulting in Death:** 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 (30) years.

J. Civil Penalties:

(a) Notwithstanding any regulatory or administrative penalty that may be assessed and in addition to a private civil cause of action that may be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect, or exploitation under this chapter, the Attorney General, upon referral from the Long Term Care Ombudsman Program or the Vulnerable Adults Investigations Unit, may bring an action

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7 Defined as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. *S.C. Code Ann.* § 43-35-85(1).

against a person who fails through pattern or practice to exercise reasonable care in hiring, training, or supervising facility personnel or in staffing or operating a facility, and this failure results in the commission of abuse, neglect, exploitation, or any other crime against a vulnerable adult in a facility. A person or facility which verifies good standing of the employee with the appropriate licensure or accrediting entity is rebuttably presumed to have acted reasonably regarding the hiring.

(b) In granting relief under this section, the court may assess a civil fine of not more than thirty thousand dollars or order injunctive relief, or both, and may order other relief as the court considers appropriate.

K. **Statute of Limitations:**

Three Years – *S.C. Code Ann. §15-3-530.*

I. **Burden of Proof:**

Preponderance of the Evidence

J. **Can Regulations Establish Standard of Care:**


II. **DAMAGES**

A. **Damages Available**

1. Actual Damages
2. Special Damages
3. Punitive Damages
4. Injunctive Relief
5. Costs of Suit

B. **Does Pain and Suffering of Decedent/Resident Survive Death:**

C. **Attorney’s Fees Available:**

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993)

III. **LEGISLATION AFFECTING STATUTE**

A. **Pending:**

1. **2013 SC S.B. 764 (NS)**

   (i) A bill to create the Vulnerable Adult Guardian ad Litem Program in the Office on Aging to serve as a statewide system to recruit, train, and supervise volunteers to serve as court-appointed guardians ad litem for vulnerable adults in abuse, neglect, and exploitation proceedings within the family court.

2. **2013 SC H.B. 3142 (NS)**

   (ii) A bill to provide that a facility considering the admittance of a person as a resident shall determine whether such person is a registered sex offender by following certain procedures, and if the facility determines the person is a registered sex offender it must provide notice to residents or their legal guardians, and that failure to comply with either of these requirements constitutes a knowing and wilful neglect of the safety of vulnerable adults residing in the facility.

B. **Anticipated:** None