

FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2017-002386

Karen F. Wagner, as Property
Manager of Windy Hill MHP
LLC,

Respondent,

v.

Chris Holcombe,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

November 16, 2018

/s/ Chris Holcombe
Chris Holcombe
138 Brookstone Dr.
Easley, South Carolina 29642
(864) 907-0863
AppellantAttorney

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SC Court of Appeals

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none

STATEMENT OF ISSUES ON APPEAL

1. ALL THE LAWS IN REGARDS TO THE ISSUE ARE UNKNOWN TO EVERYONE THAT I SPEAK WITH.
2. THIS WHOLE PROCESS IS REALLY AFFECTING MY HEALTH BECAUSE OF ME HAVING THE DISABILITIES THAT I HAVE.

STATEMENT OF THE CASE

The property manager for Windy Hill MHP LLC has been trying to evict me, since March of 2015. The letter was dated for March 15, 2015; I was in the hospital at that time from a severe auto accident that I was involved in on March 8, 2015.

The property manager of Windy Hill MHP LLC took me to magistrate court on August 31, 2016 to have me evicted from the park; I have live at Windy Hill since June of '99. I was unable to find an attorney to represent me for the magistrate court trial. I appealed the case to Anderson County Civil court where I was able to find an attorney to assist me with the case from the SC Legal Services.

There was a mentioning of the Fair Housing Act and the rules related. There was question on what were necessary accommodations. The attorney from the SC Legal Services mentioned what was being requested to be able to stay till the end and be the last to have to move out.

There was talk about the property that own. It was discussed about the work that needed to be done to the property before I can move on it. It was discussed about the financial part of having to move and being able to afford the cost of having the septic put in and the home moved.

There was the conversation about not just simply being able to up and move anywhere because of my disability. Being able to simply move is just not possible because of my home being custom to me for me to live in. It was mentioned how important it was for me to be able to stay in my home because of it being setup specifically for me.

It was mentioned that I was a bad neighbor, but the attorney of Windy Hill MHP LLC mentioned he didn't think I was a bad neighbor. The attorney for Windy Hill MHP LLC feels like they do not

have to make accommodations because of the lease has been terminated. It was also mentioned that two years was outrageous for the length of time for an eviction.

I did not completely understand the ruling from the civil case because the judge said he was not making a ruling at that time, but he did make the comment about likely in 60 days there will be a someone with a crane moving my home if there's not something concrete accomplished towards getting out.

FACTS

Medical Documentation included

ARGUMENTS

- I. The Hud laws state that changes should be made to prevent an eviction or financial burden.
- II. I strongly feel as if I was not fully represented in the civil court case because there was not any defense from the attorney from the SC Legal Services. The attorney from SC Legal Services was not able to answer many questions about my well-being. There was not any mentioning of my full medical conditions. Along with being a spinal cord patient, I am also a traumatic brain injury patient also. With my traumatic brain injury, this has caused me to do nothing but cry over all this mess that has been going on, even with the medication my dr has prescribed to me. Having physical and mental disabilities I am considered a vulnerable adult by law. I also have issues with Hypertension, Anxiety, and Depression. Because of the stress from all this of this for the last 3 years, my Dr. has had to put me on an antidepressant. I have had to go to the ER on two different occasions because there were symptoms of a heart attacked but it was ruled out and determined that it was stress causing the issues. I was sent to a Cardiologist to be evaluated and the doctor had me to wear a heart monitor for a week to check to make sure the symptoms were false or

inaccurate. The findings or results were the same as the other results, stress from everything related to this case for the last three years.

- III. I understand that the property manager of Windy Hill MHP LLC is trying to make me move my home. With the major modifications that have been made, is not movable. The major modifications include cutting down in the floor to put a roll in handicap shower. All the door frames have been opened up to 34-36" to be able to get through the door jams. With these major modifications my home has become unmovable because it is out of its original engineered design. All the moving companies have informed me that the home is subject to collapse when they start moving it because of it being outside of its original design and if something happens; their insurance will not cover it and they do not want to be responsible
- IV. The property manager of Windy Hill MHP LLC called me on several occasions. On 2 different phone calls she referred to me as "Trailer Trash" or "Trailer Park Trash". One of those conversations she informed me that she was tired of me leaving tire marks in the yard. Being confined to my wheelchair, I can't help that my chair is leaving tire marks or a path in the yard.
- At the Magistrate Court hearing, the property manager of Windy Hill MHP LLC denied making that those comments. I am asking the court to reach out to my cell phone carrier, att, to request of the phone records from the number she used to be able to obtain that information to prove that I am not being dishonest.

On one of the conversations we had, I ask her if she could widen my driveway because my van takes up and requires the whole driveway to get in and out of my van and so my son would not have to park his truck in the grass. She informed that that would cost too much. Since this time, she has added gravel places next to some of the driveways.

One of the conversations we had, she informed me that if I had my son to leave that I could stay and not worry about moving because he was supposedly causing trouble or issues. The accusations made about the thinks my son may have done, I was not aware of. My son has moved to Florida. With my son gone, this puts me in a really bad position because my son helped me with my medical needs and other things that I needed. With my son gone I have no way to be able to do anything. I am not physically able to move things or anything that require lifting.

In one of those conversations, something was said about him parking is truck in the grass. I mentioned to her that there were other people in the neighborhood doing it also, she informed me that they were here residences.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

November 16, 2018

/s/ Chris Holcombe
Chris Holcombe
138 Brookstone Dr.
Easley, South Carolina 29642
(864) 907-0863
Attorney for Appellant

cc: Ralph Gleaton, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

2016CV0410700527
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

Windy Hill MHP L L C

PLAINTIFF(S)

Vs

Chris Holcombe
135 Brookstone Drive
Easley, SC 29642

DEFENDANT(S)

Upon the application of the plaintiff listed above, which states:

Owner is transitioning to land and home ownership park.
Defendant began receiving notices in March, 2016

You the defendant(s) or lessee(s) of the premises located at the address listed above, **and all others**, are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the:

Powdersville-Piedmont Summary Court
4 Civic Court, Easley, S. C. 29642
P O Box 51312, Piedmont, SC 29673-1312
(864) 269-5947

Judge Tucker

within ten (10) days excluding date of service, for the purpose of showing why you and all occupants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Wednesday, August 3, 2016

J. Thompson Tucker
JUDGE, Powdersville-Piedmont Summary Court

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Chris Holcombe, on:

DATE TIME INITIALS

DATE OF SERVICE

1. _____

TIME OF SERVICE

2. _____

SETTLED/DATE

3. _____

VACANT/DATE

Sworn to and subscribed before me

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

On _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

2016CV0410700527
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Windy Hill MHP LLC

PLAINTIFF(S)

Vs

Chris Holcombe
138 Brookstone Drive
Easley, SC 29642

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the 31st day of August, 2016, you are hereby Ordered to proceed to the premises located at **135 Brookstone Drive Easley, SC 29642.**

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have **twenty days (20)** to voluntarily vacate the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

August 31, 2016

[Signature]
Powdersville-Piedmont Summary Court

_____, being duly sworn state that:

☐ I personally served a copy of this Writ on _____, an occupant of the rental unit

☐ On _____ 20____, at _____ the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise.

☐ On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.

☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.

☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.

☐ Informed by Plaintiff that case is settled.

Date: _____, 20____

Sheriff/Deputy Sheriff/Constable

CHAPTER 21 Fair Housing Law

SECTION 31-21-10. Short title.

This chapter is known and may be cited as the South Carolina Fair Housing Law.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-20. State policy.

It is the policy of this State to provide, within constitutional limitations, for fair housing throughout the State.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-30. Definitions.

For purposes of this chapter:

- (1) "Commission" means the South Carolina Human Affairs Commission.
- (2) "Commissioner" means the Commissioner of the South Carolina Human Affairs Commission.
- (3) "Covered multi-family dwellings" means:
 - (a) buildings consisting of four or more units if the buildings have one or more elevators; and
 - (b) ground floor units in other buildings consisting of four or more units.
- (4) "Discriminatory housing practice" means an act that is unlawful under this chapter.
- (5) "Dwelling" means any building or structure, or portion of any building or structure, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on it of any such building or structure, or portion of it.
- (6)(a) "Familial status" means one or more individuals who have not attained the age of eighteen years and are domiciled with:
 - (i) a parent or another person having legal custody of the individual; or
 - (ii) the designee of the parent or other person having the custody, with the written permission of the parent or other person.

(b) The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.
- (7) "Handicap" means, with respect to a person:
 - (a) a physical or mental impairment which substantially limits one or more of the person's major life activities;
 - (b) a record of having such an impairment; or
 - (c) being regarded as having an impairment.

The term "handicap" excludes current, illegal use of or addiction to a controlled substance as defined by law.
- (8) "Housing for older persons" means housing:
 - (a) provided under any state or federal program that the commissioner determines is designed specifically and operated to assist elderly persons, as defined in the state or federal program; or
 - (b) intended for, and solely occupied by persons sixty-two years of age or older; or
 - (c) intended and operated for occupancy by at least one person fifty-five years of age or older for each unit. In determining whether housing qualifies as housing intended and operated for occupancy by at least one person fifty-five years of age or older, the commissioner shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least eighty percent of the dwellings are occupied by at least one person fifty-five years of age or older for each unit; and

(iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older:

(d) that does not fail to meet the requirements for housing for older persons by reason of:

(i) persons residing in this housing as of the date of enactment of this chapter who do not meet the requirements of subitem (b) or (c); or

(ii) unoccupied units, provided that these units are reserved for occupancy by persons who meet the new requirements of subitem (b) or (c).

(9) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(10) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-40. Discrimination in relation to sale or rental of property.

It is unlawful:

(1) to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin;

(2) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it, because of race, color, religion, sex, familial status, or national origin;

(3) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make the preference, limitation, or discrimination;

(4) to represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when the dwelling is available;

(5) for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin;

(6) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) that buyer or renter;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that buyer or renter;

(7) to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of:

(a) that person;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that person.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-50. Discrimination in relation to membership or participation in multiple listing service, real estate brokers' organization, or related service, organization, or facility.

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against him in the terms or conditions of the access, membership, or participation on account of race, color, religion, sex, handicap, familial status, or national origin.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-60. Discrimination in relation to residential real estate-related transactions.

(A) It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of the transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(B) As used in this section, "residential real estate-related transaction" means any of the following:

- (1) the making or purchasing of loans or providing other financial assistance:
 - (a) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (b) secured by residential real estate;
- (2) the selling, brokering, or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-70. Application and exceptions.

(A) Nothing in Section 31-21-40 or 31-21-60 applies to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(B) Nothing in Section 31-21-40 or 31-21-60 applies to any single-family house sold or rented by an owner when:

- (1) the private individual owner does not own more than three single-family houses at any one time; and
- (2) in the sale of any single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house before the sale, the exemption granted by this subsection applies only with respect to one sale within a twenty-four month period; and
- (3) a bona fide private individual owner does not own an interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or a right to all or a portion of the proceeds from the sale or rental of more than three single-family houses at any one time.

After the effective date of this chapter, the sale or rental of a single-family house is excepted from the application of this subsection only if the house is sold or rented:

- (a) without the use in any manner of the sales or rental facilities or the sales or rental services of a real estate broker, agent, or salesman, or of the facilities or services of a person in the business of selling or renting dwellings, or of an employee or agent of a broker, agent, salesman, or person; and
- (b) without publication posting or mailing, after notice, of an advertisement or written notice in violation of this chapter. Nothing in this subsection prohibits the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer this title.

(C) For the purposes of this section, a person is considered to be in the business of selling or renting dwellings if he:

(1) has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest in it;

(2) has, within the preceding twelve months, participated as agent, other than in the sale of his personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest in it; or

(3) is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(D) Nothing in this chapter prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to those persons, unless membership in the religion is restricted because of race, color, or national origin. Nothing in this chapter prohibits a private club not in fact open to the public, which as an incident to its primary purpose provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(E) It is not unlawful under Section 31-21-40(1) or (2) for any person to deny or limit the rental of housing to persons who pose a real and present threat of substantial harm to themselves, to others, or to the housing itself.

(F) Nothing in this chapter prohibits conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by law.

(G) For purposes of Section 31-21-40(6), discrimination includes:

(1) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(3) in connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is thirty months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that:

(a) the public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;

(b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(c) all premises within these dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in the bathroom walls to allow later installation of grab bars; and

(iv) usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space.

(H) Compliance with the appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of Section 31-21-70(G)(3)(c).

(1)(a) If a unit of local government has incorporated into its laws the requirements in (G)(3) of this section, compliance with these laws is considered to satisfy the requirements of that section.

(b) A unit of local government may review and approve newly constructed covered multi-family dwellings for the purpose of making determinations as to whether the design and construction requirements of (G)(3) of this section are met.

(c) The commission shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multi-family dwellings, determinations as to whether the design and construction of these dwellings are consistent with (G)(3) of this section, and shall provide technical assistance to units of local government and other persons to implement the requirements of (G)(3) of this section.

(d) Nothing in this chapter may be construed to require the commission to review or approve the plans, designs, or construction of all covered multi-family dwellings, to determine whether the design and construction of these dwellings are consistent with the requirements of (G)(3) of this section.

(I)(1) Nothing in subsection (H) may be construed to affect the authority and responsibility of the commissioner to receive and process complaints or otherwise engage in enforcement activities under this chapter.

(2) Determinations by the unit of local government under subsection (H)(1)(a) or (b) are not conclusive in enforcement proceedings under this chapter.

(J) Nothing in this chapter may be construed to invalidate or limit any law of a political subdivision of the State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

(K) Nothing in this chapter requires that a dwelling be made available to an individual whose occupancy would constitute a direct threat to the health or safety of other individuals or whose occupancy would result in substantial physical damage to the property of others.

(L) Nothing in this chapter limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Owners and managers of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit so long as the standards do not violate local, state, or federal restrictions. No provision in this chapter regarding familial status applies to housing for older persons. Nothing in this chapter prohibits the lease application or similar document from requiring information concerning the number, ages, sex, and familial relationship of the applicants and the dwelling's intended occupants. The owner or manager may consider these factors in determining payment of utilities. The application also may require disclosure by the applicant of the conviction of any intended occupant for violating any laws pertaining to the illegal manufacture or distribution of a controlled substance as defined by law.

(M) The provisions of Section 31-21-40 with respect to discrimination based on sex do not apply to the rental or leasing of dwellings in a single-sex dormitory property.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-80. Interference with the exercise of any right under this chapter.

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of his having aided or encouraged any other person in the exercise of, any right granted under this chapter.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-90. Administration of chapter.

(A) The commission shall administer the provisions of this chapter.

(B) The commission may delegate any of its functions, duties, and powers to its employees including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this chapter.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-100. Powers of commission.

The commission has the power to:

(1) promulgate regulations necessary for the enforcement of this chapter which may not exceed the requirements of the 1988 Fair Housing Amendments Act (PL 100-430) and any subsequent amendments to it;

(2) make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the State;

(3) publish and disseminate reports, recommendations, and information derived from the studies;

(4) cooperate with and render technical assistance to public or private agencies, organizations, and institutions within the State which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(5) cooperate with the United States Department of Housing and Urban Development to achieve the purposes of that department and with other federal, state, and local agencies and departments;

(6) accept reimbursement pursuant to Title 42, United States Code, Section 3616 for services rendered to the United States Department of Housing and Urban Development;

(7) accept gifts or bequests, grants, or other donations, public or private;

(8) institute proceedings in a court of competent jurisdiction, for cause shown, to seek appropriate temporary or preliminary injunctive relief pending final administrative disposition of a complaint;

(9) contract with persons and organizations to perform services as it may consider reasonably necessary to effectuate the purposes of this chapter and to accept reimbursement for services rendered pursuant to the contract. However, the commission may not delegate its decision-making authority to a nongovernmental agency. This decision-making authority includes acceptance of complaints, approval of conciliation agreements, dismissal of complaints, final disposition of complaints, or other enforcement powers granted by this chapter;

(10) make contractual agreements within the scope and authority of this chapter with any agency of the federal government. An agreement with the Department of Housing and Urban Development may include provisions under which the department shall refrain from processing a charge in this State in any class specified in the agreement;

(11) administer the programs and activities relating to housing in a manner affirmatively to further the policies of this chapter.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Section 1.

SECTION 31-21-110. Investigations by commission; subpoenas.

(A) In conducting an investigation, the commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy the materials and take and record the testimony or statements of persons as are reasonably necessary for the furtherance of the investigation, provided the commission first complies with the provisions of the State Constitution relating to unreasonable searches and seizures. The commission may issue subpoenas to compel its access to or the production of the materials or the appearance of the persons and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. The commission may administer oaths. Any examination, recording, copying of materials, and the taking and recording of testimony or statements of persons as reasonably are necessary for the

furtherance of the investigation must be solely related to the complaint for which the subpoena was issued.

(B) Upon written application to the commission, a respondent is entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission itself. A subpoena issued at the request of a respondent shall show on its face the name and address of the respondent and shall state that it was issued at his request.

(C) Within five days after service of a subpoena upon any person, the person may petition the commission to revoke or modify the subpoena. The commission shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(D) In case of refusal to obey a subpoena, the commission or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(E) Witnesses summoned by a subpoena under this chapter are entitled to the same witness and mileage fees as witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a party must be paid by that party or, where a party is unable to pay the fees, by the commission.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-120. Complaints; process and handling; conciliation; effect of local laws; civil action.

(A) A person who claims to have been injured by a discriminatory housing practice or who believes that he may be injured by a discriminatory housing practice that is about to occur may file a complaint with the commission. Complaints must be in writing and shall contain information and be in a form required by the commission. Upon receipt of a complaint, the commission shall serve notice upon the aggrieved person of the time limits and choices of forums provided under this chapter and shall furnish a copy to the person who allegedly committed the discriminatory housing practice or is about to commit the alleged discriminatory housing practice and advise him of the procedural rights and obligations under the law. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (C), the commission shall investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. If practicable, conciliation meetings must be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of the informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. An employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor punishable by a fine of not more than two hundred dollars or imprisoned for not more than thirty days.

(B) A complaint under subsection (A) must be filed within one hundred eighty days after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him, not later than ten days after receipt of notice, and may be amended reasonably and fairly by the respondent at any time. Both complaint and answer must be verified.

(C) Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which substantially are equivalent to the rights and remedies provided in this chapter, the commission shall notify the appropriate local agency of any complaint filed under this chapter which

appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to the complaint if the local law enforcement official, within thirty days from the date the alleged offense was brought to his attention, has commenced proceedings in the matter. In no event may the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require the action.

Complaints referred to the commission by the Department of Housing and Urban Development may not be referred by the commission to a local agency.

(D) Any conciliation agreement arising out of conciliation efforts by the commission must be an agreement between the respondent and the complainant and is subject to the approval of the commission. Each conciliation agreement must be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

(E) The investigation must be completed in no more than one hundred days after receipt of the complaint. If the commission is unable to complete the investigation within one hundred days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(F) The commission shall make final administrative disposition of a complaint within one year of the date of receipt of a complaint unless it is impractical to do so. If the commission is unable to do so, it shall notify the complainant and respondent, in writing, of the reasons for not doing so.

(G) In any proceeding brought pursuant to this section, the burden of proof is on the complainant.

(H) Whenever an action filed by an individual in court pursuant to this section or Section 31-21-140 comes to trial, the commission shall terminate all efforts to obtain voluntary compliance.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Section 2.

SECTION 31-21-130. Investigator's report and recommendation; dismissal of or hearing on complaint; civil action; amending of complaint; subpoenas; hearing by commission; opinion and order; review; court appeals; enforcement orders.

(A) If not sooner resolved, the investigator, upon completion of his investigation, shall submit to the commissioner a statement of the facts disclosed by his investigation and recommend either that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. The commissioner, after review of the case file and the statement and recommendation of the investigator, shall issue an order either of dismissal or for a hearing, which is not subject to judicial or other further review.

(B) If the order is for dismissal, the commissioner shall mail a copy of the order to the complainant and the respondent at their last known addresses. The complainant may bring an action against the respondent in circuit court within ninety days of the date of the dismissal or within one year from the date of the violation alleged, whichever occurs later, to enforce the rights granted or protected by this chapter and to seek relief as provided for in Section 31-21-140.

(C)(1) If the order is for a hearing, the commissioner shall attach to it a notice and a copy of the complaint and require the respondent to answer the complaint at a hearing at a time and place specified in the notice and shall serve upon the respondent a copy of the order, the complaint, and the notice.

(2) Either party may elect to have the claims asserted in the complaint decided in a civil action. The commissioner's notice must be sent to all parties and inform them of their right to take civil action. An election must be made within twenty days after receipt of the notice. A party making this election shall notify the commissioner and all other parties.

If an election is made for a civil action, the commissioner shall, within thirty days from the date of election, commence and maintain a civil action pursuant to Section 31-21-140 on behalf of the aggrieved person.

(D) At any time before a hearing, a complaint may be amended by the commissioner upon the request of the investigator or of the complainant or of the respondent. Complaints may be amended during a hearing only upon a majority vote of the panel of commission members for the hearing.

(E) Upon request by any party, the commissioner shall issue appropriate subpoenas or subpoenas duces tecum to any witnesses or other custodians of documents desired to be present at the hearing, or at prehearing depositions, unless the commissioner determines that issuance of the subpoenas or subpoenas duces tecum would be unreasonable or unduly burdensome.

(F) Upon notification by any party that any party or witness has failed to permit access, failed to comply with a subpoena or subpoena duces tecum, refused to have his deposition taken, refused to answer interrogatories, or otherwise refused to allow discovery, the commission, upon notice to the party or witness, shall apply to a court of competent jurisdiction for an order requiring discovery and other good-faith compliance unless the commission determines that the discovery would be unreasonably or unduly burdensome.

(G) Upon request by the commissioner, the chairman of the commission shall designate a panel of three members of the commission to sit as the commission to hear the complaint.

(H) At any hearing held pursuant to this section, the case in support of the complaint must be presented before the panel by one or more of the commission's employees or agents or by legal representatives of the complaining party. Endeavors at conciliation by the investigator may not be received into evidence nor otherwise made known to the members of the panel.

(I) The respondent shall submit a written answer to the complaint and appear at the hearing in person or by counsel and may submit evidence. The respondent may amend his answer reasonably and fairly.

(J) The complainant must be permitted to be present and submit evidence.

(K) Proceedings under this section are subject to the provisions of Chapter 23 of Title 1 (Administrative Procedures Act) and, in the case of conflict between the provisions of this chapter and Chapter 23 of Title 1, the provisions of Chapter 23 of Title 1 shall govern. A recording of the proceedings must be made, which may be transcribed subsequently upon request and payment of a reasonable fee by the complainant or the respondent. The fee must be set by the commission or upon motion of the panel, in which case copies of the transcription must be made available to the complainant or the respondent upon request and payment of a reasonable fee to be set by the commission.

(L) If, upon all the evidence at the hearing, the panel shall find that the respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and serve upon the complainant and the respondent in the name of the commission an opinion and order for appropriate relief which may include that the unlawful discriminatory practice be discontinued, actual damages, civil penalties which may not be greater than civil penalties established by the federal Fair Housing Act in Section 3612, and reasonable attorney's fees. The commission may retain jurisdiction of the case until it is satisfied of compliance by the respondent of its order.

(M) If, upon all the evidence at the hearing, the panel finds that the respondent has not engaged in any unlawful discriminatory practice, the panel shall state its findings of fact and serve upon the complainant and the respondent an opinion and order dismissing the complaint as to the respondent. A prevailing respondent may apply to the commission for an award of reasonable attorney's fees and costs.

(N) A copy of the opinion and order of the commission must be delivered in all cases to the Attorney General and to such other public officers as the commission considers proper. Copies of the opinion and order must be available to the public for inspection upon request, and copies must be made available to any person upon payment of a reasonable fee set by the commission.

(O)(1) If an application for review is made to the commission within fourteen days from the date of the order of the commission, the commission, for good cause shown, shall review the order and evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the order.

(2) The order of the commission, as provided in subsection (L), if not reviewed in due time, or an order of the commission upon the review, as provided for in item (1), is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of notice to be sent by registered mail of the order, but not after that time, may appeal from the decision of the commission to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless

otherwise ordered by the administrative law judge, and after that the respondent is required to comply with the order involved in the appeal or certification until the questions at issue in it are determined fully in accordance with the provisions of this chapter.

(3) The commission may institute a proceeding for enforcement of its order of subsection (L), or its amended order of item (1) after thirty days from the date of the order, by filing a petition in the court of common pleas of the county in which the hearing occurred, or where a person against whom the order is entered resides or transacts business.

(4) If no appeal pursuant to item (2) is initiated, the commission may obtain a decree of the court for enforcement of its order upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission's order.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Sections 3-5; 2006 Act No. 387, Section 16, eff July 1, 2006.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

Effect of Amendment

The 2006 amendment, in subsection (O), in subparagraph (2) in the second sentence substituted "Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D)" for "court of common pleas of the county in which the hearing occurred, or in which the respondent resides or has his principal office", and in the third sentence substituted "administrative law judge" for "court"; and made nonsubstantive changes throughout.

SECTION 31-21-140. Civil action; damages.

(A) A civil action must be commenced within one year after the alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated before the issuance of any court order issued under the authority of this chapter and involving a bona fide purchaser, encumbrances, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this chapter are not affected. A civil action may be commenced by an aggrieved person whether or not a complaint has been filed with the commission.

(B) The court may grant as relief, as it considers appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award the plaintiff actual damages, and punitive damages, together with court costs and reasonable attorney's fees in the case of a prevailing party, if the prevailing party in the opinion of the court is not financially able to assume the attorney's fees.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Section 6.

SECTION 31-21-150. Coordination regarding complaint filed with multiple agencies.

Before accepting any complaint under this chapter, the commission shall determine if the complainant has filed a similar complaint with the Federal Home Loan Bank Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation of the Federal Reserve System, the United States Department of Housing and Urban Development, or any other agency with authority to investigate and resolve complaints alleging a violation of this chapter. If a complaint has been filed or is filed, subsequently the commission shall coordinate efforts to resolve the complaint with that agency in order to avoid multiple investigations of the respondent.

HISTORY: 1989 Act No. 72, Section 1.

CHAPTER 35
Adult Protection

ARTICLE 1
Duties and Procedures of Investigative Entities

SECTION 43-35-5. Short title.

This chapter may be cited as the Omnibus Adult Protection Act.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

Editor's Note

The preamble to 1993 Act No. 110, eff three month after June 11, 1993, provides as follows:

"Whereas, the General Assembly finds it necessary:

- "(1) to provide a system of adult protection in South Carolina;
 - "(2) to clarify the roles and responsibilities of agencies involved in the system;
 - "(3) to provide a mechanism for problem resolution and interagency coordination;
 - "(4) to address continuing needs of vulnerable adults;
 - "(5) to uniformly define abuse, neglect, and exploitation for vulnerable adults in all settings;
 - "(6) to clarify reporting procedures for allegations of abuse, neglect, and exploitation;
 - "(7) to provide procedures for emergency protective custody;
 - "(8) to define the role of the court in the adult protection system;
 - "(9) to provide civil and criminal penalties for abuse, neglect, and exploitation;
 - "(10) to provide services in the least restrictive setting possible.
- "Now, therefore,"

SECTION 43-35-10. Definitions.

As used in this chapter:

- (1) "Abuse" means physical abuse or psychological abuse.
- (2) "Caregiver" means 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 limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.
- (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.
- (4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.
- (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, or the Medicaid Fraud Control Unit of the Office of the Attorney General.

(6) "Neglect" means the 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.

(7) "Occupational licensing board" means a health professional licensing board which is a state agency that licenses and regulates health care providers and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.

(8) "Physical abuse" means 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 as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and 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.

(9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

(10) "Psychological abuse" means 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.

(11) "Vulnerable adult" means 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.

(12) "Operated facility" means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(13) "Contracted facility" means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2004 Act No. 301, Section 1, eff September 8, 2004; 2006 Act No. 301, Section 2, eff May 23, 2006; 2010 Act No. 223, Sections 1 to 3, eff June 7, 2010.

SECTION 43-35-13. Nonmedical remedial treatment by spiritual means is not abuse or neglect of vulnerable adult.

No vulnerable adult may be considered to be abused or neglected for the sole reason that, in lieu of medical treatment, the vulnerable adult is being furnished nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

HISTORY: 1995 Act No. 87, Section 1, eff June 12, 1995.

SECTION 43-35-15. Vulnerable Adults Investigations Unit; Long Term Care Ombudsman Program; Adult Protective Services Program; responsibilities; referral of reports.

(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall 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 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 investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. 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.

(B) Except as otherwise provided in subsection (D), the Long Term Care Ombudsman Program shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations. The Long Term Care Ombudsman Program must not delegate its responsibility to investigate noncriminal reports of alleged abuse, neglect, and exploitation to the facilities or to the 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. The Long Term Care Ombudsman Program 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.

(C) The Adult Protective Services Program in the Department of Social Services shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in all settings other than those facilities for which the Long Term Care Ombudsman Program is responsible for the investigation pursuant to this section. The Adult Protective Services Program 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. The Adult Protective Services Program 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.

(D) Notwithstanding another provision of law, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall refer reports of abuse, neglect, and exploitation involving residents committed to the Department of Mental Health pursuant to Chapter 48, Title 44 in which there is no reasonable suspicion of criminal conduct to the Department of Mental Health Client Advocacy Program for investigation.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 3, eff May 23, 2006; 2010 Act No. 223, Section 4, eff June 7, 2010; 2012 Act No. 189, Section 1, eff June 7, 2012.

SECTION 43-35-20. Additional powers of investigative entities.

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- (7) conduct studies and compile data regarding abuse, neglect, and exploitation;
- (8) issue reports and recommendations.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 4, eff May 23, 2006.

SECTION 43-35-25. Persons required to report abuse, neglect, or exploitation of adult; reporting methods.

(A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited shall report the incident in accordance with this section.

(B) Except as provided in subsection (A), any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved in writing by the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or the investigative entity to which the report is to be made.

(D) A person required to report under this section must report the incident within twenty-four hours or the next working day. A report must be made in writing or orally by telephone or otherwise to:

- (1) the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for incidents occurring in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;
- (2) the Long Term Care Ombudsman Program for incidents occurring in facilities, except those facilities provided for in item (1); and
- (3) the Adult Protective Services Program for incidents occurring in all other settings.

(E) If the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or an investigative entity receives a report that is not within its investigative jurisdiction, the unit or

investigative entity shall forward the report to the appropriate unit or investigative entity not later than the next working day.

(F) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(G) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person also from reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 5, eff May 23, 2006.

SECTION 43-35-30. Photographing of visible trauma on abused adult.

A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult who is the subject of a report. A person required to report under this chapter as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult without consent. All photographs, x-rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-35. Reporting deaths where abuse or neglect suspected.

(A) A person required to report or investigate cases under this chapter who has reasonable suspicion to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for investigation pursuant to Section 43-35-520.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 6, eff May 23, 2006; 2010 Act No. 223, Section 5, eff June 7, 2010.

SECTION 43-35-40. Responsibilities when a report is received; initiation of investigation; reports to local law enforcement or Vulnerable Adults Investigations Unit.

Upon receiving a report, the Long Term Care Ombudsman or Adult Protective Services 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 local law enforcement or to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED). A report to local law enforcement or SLED must be made within one working day of completing the review.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 6, eff May 23, 2006; 2010 Act No. 223, Section 6, eff June 7, 2010.

SECTION 43-35-45. Warrant from family court to permit investigation of report; order for protective services; appointment of guardian and attorney; evaluation; hearing; review; semiannual reevaluation; payment for services.

(A) In investigating a report if consent cannot be obtained for access to the vulnerable adult or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.

(B) At any time during or subsequent to an investigation where a vulnerable adult is at substantial risk to be or has been abused, neglected, or exploited and consent to provide services cannot be obtained, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult from the place the adult is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult. The family court may order ex parte that the vulnerable adult be taken into emergency protective custody without the consent of the vulnerable adult or the guardian or others exercising temporary or permanent control over the vulnerable adult, if the court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable adult's life or physical safety. The court also may order emergency services or other relief as necessary to protect the vulnerable adult.

(C) Within ten days following the filing of a petition pursuant to this section, the court shall appoint a guardian ad litem and an attorney for the vulnerable adult and an attorney for a lay guardian ad litem. A party may move to have the guardian ad litem relieved of his or her services if the party demonstrates that the vulnerable adult has the capacity to assist counsel in the protective services case. Within forty days of the filing of a petition, the court shall hold a hearing on the merits.

(D) Before the hearing on the merits the Adult Protective Services Program must conduct a comprehensive evaluation of the vulnerable adult. The evaluation must include, but is not limited to:

- (1) the vulnerable adult's current address and with whom the vulnerable adult is residing;
- (2) a list of all persons or agencies currently providing services to the vulnerable adult and the nature of these services;
- (3) a summary of services, if any, provided to the vulnerable adult by the Adult Protective Services Program;
- (4) if needed, a medical, psychological, social, vocational, or educational evaluation;
- (5) recommendations for protective services which would serve the best interests of the vulnerable adult; however, when these services are to be provided by another state agency, these recommendations must be developed in consultation with the other agency.

A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required by this subsection must be paid by the Adult Protective Services Program which must seek reimbursement for these evaluations, where possible.

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

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

(F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.

(G) Any interested person, on behalf of the vulnerable adult, may file a motion for review of the court order issued pursuant to this section.

(H) Following a court order from the merits hearing to provide protective services to a vulnerable adult, the Adult Protective Services Program, at least every six months, must evaluate the vulnerable adult and submit a written report to the court, and any other parties required by the court, regarding the vulnerable adult's need for continued protective services as defined in this chapter.

(I) If the court determines that the vulnerable adult is financially capable of paying for services ordered pursuant to this section, then payment by or from the financial resources of the vulnerable adult may be ordered.

(J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable adult's financial records be made available on a certain day and time for inspection by the parties.

(K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult that have not been reimbursed at the time of the vulnerable adult's death become a claim against the estate of the vulnerable adult.

(L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2014 Act No. 162 (S.764), Section 2, eff May 16, 2014.

Effect of Amendment

2014 Act No. 162, Section 2, rewrote subsection (C).

SECTION 43-35-50. Abrogation of privilege for certain communications.

The privileged quality of communication between husband and wife or between a professional person and the person's patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this chapter.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-55. Protective custody by law enforcement officer; procedure; notification of protective services program; subsequent proceedings.

(A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:

(1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;

(2) the vulnerable adult or caregiver does not consent to protective custody; and

(3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety which must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being

taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

(1) the name of the vulnerable adult, if known, or a physical description of the adult, if the name is unknown;

(2) the address of the place from which the vulnerable adult was removed by the officer;

(3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult at the time the adult was taken into protective custody;

(4) the address of the place to which the vulnerable adult was transported by the officer;

(5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1994 Act No. 393, Section 1, May 17, 1994.

SECTION 43-35-60. Sharing of report information by investigative entities; public confidentiality.

Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. Information in these investigative records must not be disclosed publicly.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-65. Notices to be displayed at facilities.

A facility as defined in Section 43-35-10 shall prominently display notices stating the duties of its personnel under this chapter and contact information, the text of which must be provided by the Long Term Care Ombudsman Program in consultation with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 7, eff May 23, 2006.

SECTION 43-35-70. Reports to occupational licensing boards.

The investigative entity shall report an alleged incident of abuse, neglect, or exploitation against a health care professional to the occupational licensing board by whom that person is licensed.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-75. Immunity of person making report or participating in investigation in good faith.

(A) 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.

(B) It is against the public policy of South Carolina to change an employee's status solely because the employee reports or cooperates with an investigation or action taken under this chapter.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-80. Action by Attorney General against person or facility for failure to exercise reasonable care; fine.

(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 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.

(C) Nothing in this section may be construed to create a private cause of action against one who fails through pattern or practice to exercise reasonable care as provided for in subsection (A).

(D) For the purposes of this section 'person' means any natural person, corporation, joint venture, partnership, unincorporated association, or other business entity.

(E) To the extent fines collected pursuant to this section exceed the cost of litigation, these fines must be credited to the Adult Protective Services Emergency Fund and may be carried forward from one fiscal year to the next.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 8, eff May 23, 2006.

SECTION 43-35-85. Penalties.

(A) A person required to report under this chapter 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 or imprisoned not more than one year.

(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.

(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.

(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.

(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.

(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.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, "great bodily injury" means 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1999 Act No. 56, Section 1, eff June 1, 1999; 2010 Act No. 223, Section 7, eff June 7, 2010.

SECTION 43-35-90. Article not to affect authority of agencies.

This article is not intended to affect in any way the authority of any agency to act under state or federal law.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

ARTICLE 2

Vulnerable Adult Guardian ad Litem Program

SECTION 43-35-200. Vulnerable Adult Guardian ad Litem Program.

(A) There is created 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, pursuant to Section 43-35-45(C).

(B) The Vulnerable Adult Guardian ad Litem Program shall develop policies and procedures to administer the program.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-210. Definitions.

In addition to the definitions contained in Section 43-35-10, for purposes of this article, "guardian ad litem" means an individual appointed by the family court pursuant to Section 43-35-45 to advocate for the best interests of a vulnerable adult.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-220. Duties and responsibilities of guardian ad litem; assessments.

(A) The duties and responsibilities of a guardian ad litem include, but are not limited to:

(1) representing the best interests of the vulnerable adult by advocating for the welfare and rights of a vulnerable adult involved in an abuse, neglect, or exploitation proceeding;

(2) conducting an independent, balanced, and impartial assessment of the facts and the needs of the vulnerable adult relevant to his or her situation;

(3) maintaining accurate, written case records, including case notes, which are a guardian ad litem's work product and not subject to subpoena;

(4) providing the family court, and all parties, with written reports including, but not limited to, a comprehensive final report regarding the best interests of the vulnerable adult. The final report must be consistent with the rules of evidence and the rules of the court, and must include, but is not limited to, evaluation and assessment of the issues brought before the court, the wishes of the vulnerable adult, and recommendations for the case plan and the disposition of the case; and

(5) attending all court hearings to protect and promote the best interests of the vulnerable adult until formally relieved of the responsibility by the family court. The guardian ad litem is authorized through

counsel to introduce, examine, and cross-examine witnesses in any proceeding involving the vulnerable adult, participate in the proceedings to any degree necessary to represent the vulnerable adult adequately, participate on a multidisciplinary evaluation team concerning the vulnerable adult, and make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the vulnerable adult.

(B) The assessment conducted by the guardian ad litem pursuant to subsection (A) must include, but is not limited to:

(1) obtaining and reviewing relevant documents including, but not limited to, the vulnerable adult's medical records; records from the place of residence if the vulnerable adult is living in a facility or other institution; records related to assets and debts of the vulnerable adult in cases of alleged exploitation; and records from the Department of Social Services, Department of Mental Health, Department of Disabilities and Special Needs, or other public entities providing services to the vulnerable adult;

(2) meeting with and observing the vulnerable adult on at least one occasion;

(3) visiting the home setting if appropriate;

(4) interviewing family, caregivers, medical providers, law enforcement, and others with knowledge relevant to the case;

(5) exploring available resources within the family and community to meet the needs of the vulnerable adult;

(6) obtaining the criminal history of a party if determined necessary; and

(7) determining the wishes of the vulnerable adult and informing the court of these wishes.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-230. Appointment of guardian ad litem; continuing legal education.

(A) A guardian ad litem may be either an attorney or a layperson. To be appointed as a guardian ad litem pursuant to Section 43-35-45(C) an individual:

(1) must be twenty-one years of age or older;

(2) shall possess a high school diploma or its equivalent;

(3) shall have completed the minimum hours of continuing education for initial qualification as required by the Vulnerable Adult Guardian ad Litem Program; and

(4) shall have observed two child protective services or adult protective services custody merit hearings before serving as a guardian ad litem. A lay guardian ad litem shall retain a certificate showing that observation of these hearings has been completed. This certificate, which must be on a form approved by court administration, must state the names and dates of the cases and the judges involved and must be attested to by the presiding judge.

(B) An attorney guardian ad litem annually shall complete a minimum of six hours of family or elder law continuing legal education credits; however, this requirement may be waived by the court.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-240. Appointment of guardian ad litem for abuse, neglect, or exploitation proceedings; criminal background checks.

(A) An individual may not be appointed as a guardian ad litem for a vulnerable adult in an abuse, neglect, or exploitation proceeding who:

(1) has been convicted of a crime enumerated in Chapter 3, Title 16, Offenses Against the Person; in Chapter 15, Title 16, Offenses Against Morality and Decency; in Article 3, Chapter 53, Title 44, Narcotics and Controlled Substances; in Section 43-35-85, Omnibus Adult Protection Act; in Chapter 25, Title 16, Criminal Domestic Violence; or Section 16-17-490, Contributing to the Delinquency of a Minor; or

(2) is or has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect, the Sex Offender Registry, or listed as "not in good standing" on the Nurse Aide Registry.

(B) A criminal background check must be conducted for each volunteer guardian ad litem as required by the Vulnerable Adult Guardian ad Litem Program.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-250. Charge of guardian ad litem; petition for removal.

(A) A guardian ad litem is charged in general with representing the vulnerable adult's best interests. After appointment by the family court in a case involving an abused, neglected, or exploited vulnerable adult, the parties to the action and the court shall notify the guardian ad litem of all court hearings and proceedings. The obligation of the guardian ad litem to the court is a continuing obligation and continues until formally relieved by the court.

(B) The Vulnerable Adult Guardian ad Litem Program may intervene in a vulnerable adult abuse, neglect, or exploitation proceeding in order to petition the court to relieve the guardian ad litem from appointment for the following reasons:

- (1) incapacity;
- (2) conflict of interest;
- (3) misconduct;
- (4) persistent neglect of duties;
- (5) incompetence; or
- (6) knowing and wilful violation of the Vulnerable Adult Guardian ad Litem Program policies and procedures that affect the health, safety, or welfare of the vulnerable adult.

(C) The court shall determine what is in the best interest of the vulnerable adult when ruling on a petition for removal of the guardian ad litem.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-260. Access to information.

The Department of Social Services shall make available to the guardian ad litem all reports made and information collected relating to the vulnerable adult. Appropriate medical and dental care providers shall provide a guardian ad litem access to information upon request of the guardian ad litem and upon proof of appointment as the guardian ad litem for the vulnerable adult. Records must be made available to the guardian ad litem by any agency or any individual providing services to the vulnerable adult and financial records of the vulnerable adult including, but not limited to, state and federal tax records, banking and other financial institution records, and public benefits records.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-270. Confidentiality of reports and information.

(A) All reports and information collected pursuant to this article maintained by the Vulnerable Adult Guardian ad Litem Program or by a guardian ad litem are confidential. These records must be maintained and destroyed in accordance with program policy.

(B) The Director of the Vulnerable Adult Guardian ad Litem Program, or the director's designee, may disclose to the media information contained in the vulnerable adult protective services records, if disclosure is limited to discussion of the program's activities in handling the case. The program may incorporate into its discussion of the handling of the case any information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, and other public judicial proceedings. For the purposes of this subsection, information is considered placed in the public domain if it has been reported in the news media, is contained in public records of a law enforcement agency, is contained in public records of the court, or has been the subject of testimony in a public judicial proceeding.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-280. Civil liability.

After participating in the Vulnerable Adult Guardian ad Litem Program training, an individual who is appointed to serve as a guardian ad litem and who serves without compensation is not liable for any civil damages for any personal injury as a result of any act or omission by the guardian ad litem in the discharge of the duties and responsibilities of a guardian ad litem if the guardian ad litem acts in good faith and is not guilty of gross negligence.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-290. Funding.

The General Assembly shall provide the funds necessary for the Vulnerable Adult Guardian ad Litem Program to carry out the provisions of this article.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

ARTICLE 3

Adult Protection Coordinating Council

SECTION 43-35-310. Council created; membership; filling vacancies.

(A) There is created the Adult Protection Coordinating Council under the auspices of the South Carolina Department of Health and Human Services and is comprised of:

(1) one member from the institutional care service provision system who is a consumer or a family member of a consumer of that system and one member from the home and community-based service provision system who is a consumer or a family member of a consumer of that system, both of whom must be appointed by the council for terms of two years; and

(2) these members who shall serve ex officio:

- (a) Attorney General or a designee;
- (b) Office on Aging, Executive Director, or a designee;
- (c) Criminal Justice Academy, Executive Director, or a designee;
- (d) South Carolina Department of Health and Environmental Control, Commissioner, or a designee;
- (e) State Department of Mental Health, Director, or a designee;
- (f) South Carolina Department of Disabilities and Special Needs, Director, or a designee;
- (g) Adult Protective Services Program, Director, or a designee;
- (h) South Carolina Department of Health and Human Services, Executive Director, or a designee;
- (i) Police Chiefs' Association, President, or a designee;
- (j) South Carolina Commission on Prosecution Coordination, Executive Director, or a designee;
- (k) Protection and Advocacy for People with Disabilities, Inc., Executive Director, or a designee;
- (l) South Carolina Sheriff's Association, Executive Director, or a designee;
- (m) South Carolina Law Enforcement Division, Chief, or a designee;
- (n) Long Term Care Ombudsman or a designee;
- (o) South Carolina Medical Association, Executive Director, or a designee;
- (p) South Carolina Health Care Association, Executive Director, or a designee;
- (q) South Carolina Home Care Association, Executive Director, or a designee;
- (r) South Carolina Department of Labor, Licensing and Regulation, Director, or a designee;
- (s) executive director or president of a provider association for home and community-based services selected by the members of the council for terms of two years, or a designee;
- (t) South Carolina Court Administration, Executive Director, or a designee;

(u) executive director or president of a residential care facility organization selected by the members of council for terms of two years, or a designee.

(B) Vacancies on the council must be filled in the same manner as the initial appointment.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2012 Act No. 239, Section 1, eff June 18, 2012.

SECTION 43-35-320. Responsibilities of council.

The Adult Protection Coordinating Council shall coordinate the planning and implementation efforts of the entities involved in the adult protection system. Members shall facilitate problem resolution and develop action plans to overcome problems identified within the system. The council shall develop methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse, neglect, and exploitation. The council shall remain abreast of new trends in adult protection from national clearinghouses and other appropriate entities. The Adult Protection Coordinating Council has no authority to direct or require implementing action from any member or entity.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-330. Duties of council.

(A) Duties of the council are subject to the appropriation of funding and allocation of personnel sufficient to carry out the functions of the council. Staffing for the council must be provided by the South Carolina Department of Health and Human Services.

(B) Duties of the council are to:

(1) provide and promote coordination and communication among groups and associations which may be affected by the council's actions and recommended changes in the system;

(2) identify and promote training on critical issues in adult protection, facilitate arrangements for continuing education seminars and credits, when appropriate, and determine and target problem areas for training based on analysis of the data;

(3) coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation;

(4) assist with problem resolution and facilitate interagency coordination of efforts to address unmet needs and gaps in the system;

(5) promote and enhance public awareness;

(6) promote prevention and intervention activities to ensure quality of care for vulnerable adults and their families; and

(7) annually prepare a report of the council's activities and accomplishments for the calendar year and distribute the report to council members, the Chairman of the Medical Affairs Committee of the Senate, the Chairman of the Medical, Military and Municipal Affairs Committee of the House of Representatives, directors or chairs of member agencies or entities who have a designee serving on the council, and other interested parties as well as publishing the report on the department's website.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2012 Act No. 239, Section 2, eff June 18, 2012.

SECTION 43-35-340. Officers; terms of office; quorum.

The chair of the council must be elected by a majority of the council membership for one two-year term. Other officers may be elected as needed in the same manner as the chair. A majority of the membership of the council constitutes a quorum for official business to be conducted.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-350. Meetings.

Meetings of the council must be held at least quarterly at the call of the chair or may be called by a petition of two-thirds of the council membership.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

ARTICLE 5 Vulnerable Adult Fatalities

SECTION 43-35-500. Definitions.

In addition to the definitions contained in Section 43-35-10, for purposes of this article:

- (1) "Committee" means the Vulnerable Adult Fatalities Review Committee.
- (2) "Meeting" means both in-person meetings and meetings through telephone conferencing.
- (3) "Preventable death" means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.
- (4) "Provider of medical care" means a licensed health care practitioner who provides, or a licensed health care facility through which is provided, medical evaluation or treatment, including dental and mental health evaluation or treatment.
- (5) "SLED" means the South Carolina Law Enforcement Division.
- (6) "Unit" means the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.
- (7) "Working day" means Monday through Friday, excluding official state holidays.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-510. Policy of State regarding health and safety of vulnerable adults.

It is the policy of this State that:

- (1) Every vulnerable adult is entitled to live in safety and in health.
- (2) Responding to deaths of vulnerable adults is a state and a community responsibility.
- (3) When a vulnerable adult dies, the response by the State and the community to the death must include an accurate and complete determination of the cause of death, the provision of services to surviving family members, and the development and implementation of measures to prevent future deaths from similar causes and may include court action, including prosecution of persons who may be responsible for the death and family court proceedings to protect other vulnerable adults in the care of the responsible person.
- (4) Professionals from disparate disciplines and agencies that have responsibilities for vulnerable adults and expertise that can promote safety and well-being of vulnerable adults should share their expertise and knowledge toward the goals of determining the causes of deaths of vulnerable adults, planning and providing services to nonoffending family members, and preventing future vulnerable adult deaths.
- (5) A greater understanding of the incidence and causes of deaths of vulnerable adults is necessary if the State is to prevent future vulnerable adult deaths.
- (6) Multidisciplinary and multiagency reviews of vulnerable adult deaths can assist the State in the investigation of vulnerable adult deaths, in the development of a greater understanding of the incidence and causes of vulnerable adult deaths and the methods for preventing such deaths, and in identifying gaps in services to vulnerable adults and families.
- (7) Access to information regarding vulnerable adults and their families is necessary to achieve the mandates and purposes of this article.
- (8) Competent investigative services must be sensitive to the needs of South Carolina's vulnerable adults and their families and not be unnecessarily intrusive and should be achieved through training, awareness, and technical assistance.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-520. Investigations of deaths in facilities operated by the Department of Mental Health or the Department of Disabilities and Special Needs; death by natural causes in a veterans' nursing home.

The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, created pursuant to Section 23-3-810, shall, in addition to its investigation responsibilities under that section or Article 1, investigate cases of vulnerable adult fatalities in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. Provided, that in a nursing home, as defined in Section 44-7-130, contracted for operation by the Department of Mental Health, the Vulnerable Adults Investigations Unit shall investigate those fatalities for which there is suspicion that the vulnerable adult died as a result of abuse or neglect, the death is suspicious in nature, or the death is referred by a coroner or medical examiner as provided in Section 43-35-35(A). In the event that a coroner rules that the death of an individual in a veterans' nursing home under the authority of the Department of Mental Health results from natural causes, the State Law Enforcement Division is not required to conduct an investigation regarding the individual's death.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006; 2010 Act No. 223, Section 8, eff June 7, 2010; 2012 Act No. 128, Section 2, eff March 13, 2012.

SECTION 43-35-530. Conduct of investigations.

Upon receipt of a report of a vulnerable adult death, as required by Section 17-5-555 or Section 43-35-35, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall:

(1) investigate and gather all information on the vulnerable adult fatality pursuant to Section 43-35-520. The coroner or medical examiner immediately must request an autopsy if the unit determines that an autopsy is necessary. The autopsy must be performed by a pathologist with forensic training as soon as possible. The forensic pathologist must inform the unit of the findings within forty-eight hours of completion of the autopsy. If the autopsy reveals the cause of death to be pathological or an unavoidable accident, the case must be closed by the unit. If the autopsy reveals physical or sexual trauma, suspicious markings, or other findings that are questionable or yields no conclusion to the cause of death, the unit immediately must begin an investigation;

(2) request assistance of any other local, county, or state agency to aid in the investigation;

(3) upon receipt of additional investigative information, reopen a case for another coroner's inquest;

(4) upon receipt of the notification required by item (1), review agency records for information regarding the deceased vulnerable adult or family. Information available to the department pursuant to Section 43-35-570 and information that is public under Chapter 4, Title 30, the Freedom of Information Act, must be available as needed to the county coroner or medical examiner, the Long Term Care Ombudsman Program, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, and the Adult Protective Services Program of the Department of Social Services;

(5) report the activities and findings related to vulnerable adult deaths to the Vulnerable Adults Fatalities Review Committee; and

(6) develop a protocol for vulnerable adult death investigations.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-540. Access to medical information.

Upon request of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and as necessary to carry out the unit's duties, the unit immediately must be provided:

(1) by a provider of medical care, access to information and records regarding a vulnerable adult whose death is being investigated by the unit or reviewed by the committee;

(2) access to all information and records maintained by any state, county, or local government agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the vulnerable adult or family.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-550. Subpoena of medical information.

When necessary in the discharge of the duties of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and upon application of the unit, the clerks of court shall issue a subpoena or subpoena duces tecum to any state, county, or local agency, board, or commission or to any representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the unit's duties. Failure to obey a subpoena or subpoena duces tecum issued pursuant to this section may be punished as contempt.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-560. Vulnerable Adults Fatalities Review Committee; members; terms; meetings; administrative support.

(A) There is created a multidisciplinary Vulnerable Adults Fatalities Review Committee composed of:

- (1) the Director of the South Carolina Department of Social Services;
- (2) the Commissioner of the South Carolina Department of Health and Environmental Control;
- (3) the Executive Director of the South Carolina Criminal Justice Academy;
- (4) the Chief of the South Carolina Law Enforcement Division;
- (5) the Director of the South Carolina Department of Alcohol and Other Drug Abuse Services;
- (6) the Director of the South Carolina Department of Mental Health;
- (7) the Director of the South Carolina Department of Disabilities and Special Needs;
- (8) the Director of the Office on Aging;
- (9) the Executive Director of Protection and Advocacy for People with Disabilities, Inc.;
- (10) two representatives from two county boards of disabilities and special needs established pursuant to Section 44-20-375;
- (11) a county coroner or medical examiner;
- (12) an attorney with experience in prosecuting crimes against vulnerable adults;
- (13) a physician with experience in treating vulnerable adults, appointed from recommendations submitted by the South Carolina Medical Association;
- (14) a solicitor;
- (15) a forensic pathologist; and
- (16) two members of the public at large, one of whom must represent a private nonprofit community residential care facility and one of whom must represent a public for profit community residential care facility, both of which must provide services to vulnerable adults.

(B) Those members enumerated in items (1) through (10) shall serve ex officio and may appoint a designee, who has administrative or program responsibilities for vulnerable adults, to serve in their place from their particular departments or agencies. The remaining members, including the coroner or medical examiner and solicitor, who shall serve ex officio, must be appointed by the Governor for terms of four years and until their successors are appointed and qualify.

(C) A chairman and vice chairman of the committee must be elected from among the members by a majority vote of the membership for a term of two years.

(D) Meetings of the committee must be held at least quarterly. A majority of the committee constitutes a quorum.

(E) Each ex officio member shall provide sufficient staff and administrative support to carry out the responsibilities of this article.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-570. Purpose of Vulnerable Adult Fatalities Review Committee.

(A) The purpose of the Vulnerable Adult Fatalities Review Committee is to decrease the incidence of preventable vulnerable adult deaths by:

- (1) developing an understanding of the causes and incidences of vulnerable adult deaths;
- (2) developing plans for and implementing changes within the agencies represented on the committee which will prevent vulnerable adult deaths; and
- (3) advising the Governor and the General Assembly on statutory, policy, and practice changes that will prevent vulnerable adult deaths.

(B) To achieve its purpose, the committee shall:

(1) meet with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division no later than one month after the unit receives notification by the county coroner or medical examiner pursuant to Section 17-5-555 or Section 43-35-35 to review the investigation of the death;

(2) undertake annual statistical studies of the incidence and causes of vulnerable adult fatalities in this State. The studies shall include an analysis of community and public and private agency involvement with the decedents and their families before and subsequent to the deaths;

(3) consider training, including cross-agency training, consultation, technical assistance needs, and service gaps;

(4) educate the public regarding the incidences and causes of vulnerable adult deaths, the public role in preventing these deaths, and specific steps the public can undertake to prevent vulnerable adult deaths. The committee shall enlist the support of civic, philanthropic, and public service organizations in performing the committee's educational duties;

(5) develop and implement policies and procedures for its own governance and operation;

(6) submit to the Governor and the General Assembly an annual written report and any other reports prepared by the committee including, but not limited to, the committee's findings and recommendations for changes to any statute, regulation, policy, or procedure that the committee determines is needed to decrease the incidence of preventable vulnerable adult deaths. Annual reports must be made available to the public.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-580. Meetings discussing individual cases closed; disclosure of information identifying vulnerable adult or family member.

(A) Meetings of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and of the Vulnerable Adult Fatalities Review Committee are closed to the public and are not subject to Chapter 4, Title 30, the Freedom of Information Act, when the unit and committee are discussing individual cases of vulnerable adult deaths.

(B) Except as provided in subsection (C), meetings of the committee are open to the public and subject to the Freedom of Information Act when the committee is not discussing individual cases of vulnerable adult deaths.

(C) Information identifying a deceased vulnerable adult or a family member, guardian, or caretaker of a deceased vulnerable adult, or an alleged or suspected perpetrator of abuse or neglect upon a vulnerable adult may not be disclosed during a public meeting and information regarding the involvement of any agency with the deceased vulnerable adult or family may not be disclosed during a public meeting.

(D) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-590. Confidential and public information.

(A) All information and records acquired by the unit and the committee in the exercise of their duties and responsibilities pursuant to this article are confidential, exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, and only may be disclosed as necessary to carry out the unit's and committee's purposes and responsibilities.

(B) Statistical compilations of data that do not contain information that would permit the identification of a person to be ascertained are public records.

(C) Reports of the unit and the committee that do not contain information that would permit the identification of a person to be ascertained are public information.

(D) Except as necessary to carry out the unit's and committee's duties and responsibilities, unit personnel and members of the committee and persons attending meetings may not disclose what transpired at a meeting that is not public under Section 43-35-580 and may not disclose information, the disclosure of which is prohibited by this section.

(E) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of the meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or unit or because it is maintained by the committee or unit. Nothing in this subsection may be construed to prevent a person from testifying to information obtained independently of the committee or which is public information.

(F) Information, documents, and records of the unit and of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the unit or committee or because they are maintained by the unit or the committee.

(G) A person who knowingly violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-595. Promulgation of regulations.

The South Carolina Law Enforcement Division may promulgate regulations if necessary to carry out its responsibilities under this article.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

CHAPTER 57
Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers

ARTICLE 1
General Provisions

SECTION 40-57-5. Applicability of chapter; conflicts of laws.

Unless otherwise provided in this chapter, the provisions of Article 1, Chapter 1 apply to real estate brokers, salespersons, and property managers. The provisions of this chapter control when they conflict with the provisions of Article 1, Chapter 1.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-10. South Carolina Real Estate Commission created; purpose.

There is created the South Carolina Real Estate Commission under the administration of the Department of Labor, Licensing and Regulation. The purpose of this commission is to regulate the real estate industry so as to protect the public's interest when involved in real estate transactions.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, reenacted the section with no change.

SECTION 40-57-20. Valid Licensure Requirement for Real Estate Brokers, Salespersons, and Property Managers.

It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1957 (50) 56, 220; 1958 (50) 1870; 1962 Code Section 56-1545; 1967 (55) 652; 1986 Act No. 353, Section 2; 1991 Act No. 12, Section 4; 1994 Act No. 385, Section 2.

Effect of Amendment

2016 Act No. 170, Section 1, substituted "salesperson" for "salesman", inserted "or provide services" and "an active," and substituted "commission" for "department".

SECTION 40-57-30. Definitions.

For purposes of this chapter:

(1) "Agent" means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's "associated licensees" are its subagents.

(2) "Associated licensee" means a licensee affiliated with and under the supervision of a broker-in-charge or property manager-in-charge.

(3) "Broker" means an associated licensee who has met the experience and education requirements and has passed the examination for a broker license and who, for a fee, salary, commission, referral fee, or other valuable consideration, or who, with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements to the real estate;

(b) auctions or offers to auction real estate in accordance with Section 40-6-250;

(c) for a fee or valuable consideration solicits a referral;
(d) offers services as a real estate consultant, counselor, or transaction manager;
(e) offers to act as a subagent of a real estate brokerage firm representing a client in a real estate transaction; or

(f) advertises or otherwise represents to the public as being engaged in any of the foregoing activities.

(4) "Broker-in-charge" means a broker designated to have responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for a real estate trust account.

(5) "Buyer agency" means a form of agency in which a real estate brokerage firm represents the buyer in an agency capacity as defined in this chapter.

(6) "Client" means a person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.

(7) "Commission" means the South Carolina Real Estate Commission and its members, who are charged by law with the responsibility of licensing or otherwise regulating the practice of real estate in the State of South Carolina.

(8) "Conversion" means to use trust funds for a purpose other than the purpose for which they are held. Conversion is a breach of trust and is a crime as provided by law.

(9) "Customer" means a buyer, seller, landlord, or tenant who uses the services of a real estate licensee but does not established an agency relationship through a written agency agreement with the licensee's real estate brokerage firm.

(10) "Department" means the Department of Labor, Licensing and Regulation.

(11) "Designated agency" means a form of agency in which two clients represented by a real estate brokerage firm in the same transaction may be given almost equivalent treatment as a single agency.

(12) "Dual agency" means a form of agency in which a real estate brokerage firm with two clients in the same transaction gives limited agency services.

(13) "Email" means a system for sending and receiving a message electronically over a computer network and a message sent or received by the system.

(14) "Licensee" means an individual currently licensed under this chapter.

(15) "Limited function referral office" means a brokerage where the office policy allows only the placement of referrals through the broker-in-charge.

(16) "Material adverse fact" means:

(a) a condition or occurrence that is generally recognized as:

- (i) significantly and adversely affecting the value of the real estate;
- (ii) significantly reducing the structural integrity of improvements to real estate; or
- (iii) presenting a significant health risk to occupants of the real estate; or

(b) information that indicates that a party to a transaction is not able to or does not intend to meet an obligation under a contract or agreement made concerning the transaction.

(17) "Ministerial act" means an act performed by a licensee not involving an exercise of discretion or judgment of a licensee on behalf of a person who is not a client and that assists the nonclient to consummate a real estate transaction.

(18) "Office" means the office location where a broker-in-charge or a property manager-in-charge is licensed to conduct real estate business.

(19) "Personal trust account" means an escrow account or demand deposit bank account properly designated and titled to include the words "trust" or "escrow" that is established and maintained by a licensee to safeguard funds belonging to parties to a real estate transaction when the transaction involves the licensee's personal real estate and the real estate is not managed or listed through a real estate brokerage firm.

(20) "Property manager" means an associated licensee who meets educational requirements and passes the examination for a property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate;

(b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or

(c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).

(21) "Property manager-in-charge" means a property manager who is designated as having the responsibility over the actions of associated licensees and also the responsibility and control over and liability for real estate trust accounts.

(22) "Real estate" means land, buildings, and other appurtenances, including all interests in land, whether corporeal, incorporeal, freehold, or nonfreehold, whether the real estate is within or outside of the boundaries of this State.

(23) "Real estate brokerage" means the aspect of the real estate business that involves activities relative to property management or a real estate sale, exchange, purchase, lease.

(24) "Real estate brokerage firm" means a real estate company engaged in the business of real estate brokerage.

(25) "Real estate transaction" means an activity involving the sale, purchase, exchange, or lease of real estate.

(26) "Salesperson" means an associated licensee who:

(a) meets experience and education requirements;

(b) passes an examination for a salesperson license; and

(c) engages in or participates in an activity enumerated in item (3) for a fee, salary, commission, or other valuable consideration, or with the intent or expectation of receiving compensation.

(27) "Seller agency" means a form of agency in which a real estate brokerage firm represents the seller in an agency capacity as defined in this chapter.

(28) "Subagent" means an agent of an agent. An "associated licensee" is a subagent of the real estate brokerage firm if the firm is an agent of a buyer, seller, landlord, or tenant.

(29) "Substantive contact" means contact in which a discussion or dialogue between the consumer and the associated licensee moves from casual introductory talk to a meaningful conversation regarding the selling or buying motives or objectives of the seller or buyer, financial qualifications, and other confidential information that if disclosed could harm the consumer's bargaining position.

(30) "Team" means two or more associated licensees working together as a single unit within an office established with the commission and supervised by a broker-in-charge.

(31) "Trust account" means an escrow account or properly designated demand deposit bank account that is:

(a) properly designated and titled to include the word "trust" or "escrow"; and

(b) established and maintained by a broker-in-charge or a property manager-in-charge to safeguard funds belonging to parties to a real estate transaction.

(32) "Trust funds" means funds received on behalf of another person by a licensee in the course of performing a real estate activity.

(33) "Transaction broker" means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.
Editor's Note

Prior Laws: 1962 Code Section 56-1545.1:1; 1967 (55) 652; 1986 Act No. 353, Section 1; 1991 Act No. 12, Section 3; 1976 Code Section 40-57-10.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-40. Membership; terms of appointment.

(A) The South Carolina Real Estate Commission consists of ten members elected or appointed as follows:

(1) seven members who are professionally engaged in the active practice of real estate, one elected from each congressional district by a majority of house members and senators representing the house and senate districts located within each congressional district;

(2) two members representing the public who are not professionally engaged in the practice of real estate, each appointed by the Governor with the advice and consent of the Senate;

(3) the elected and appointed members shall elect from the State at large one additional member who must be in the active practice of real estate.

(B) A commission member serves a term of four years and until his successor is elected or appointed and qualifies. A vacancy on the commission must be filled in the manner of the original election or appointment for the remainder of the unexpired term.

(C) Before discharging of the duties of his office, a member's election or appointment must be certified by the Secretary of State, and the member shall, in writing, take an oath to perform the duties of the office as a member of the commission and to uphold the constitutions of this State and the United States.

(D) The term of a member commences on the date on which his election or appointment is certified by the Secretary of State.

(E) A member may be removed from office in accordance with Section 1-3-240.

HISTORY: 1997 Act No. 24, Section 1; 2012 Act No. 279, Section 10, eff June 26, 2012; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1960 (51) 1727; 1962 Code Section 56-1545.4; 1972 (57) 2649; 1978 Act No. 534, Section 2; 1994 Act No. 38; 1976 Code Section 40-57-50.

2012 Act No. 279, Section 33, provides as follows:

"Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy."

Effect of Amendment

The 2012 amendment substituted "seven" for "Six" throughout subsection (A)(1); substituted "the nine" for "The eight" in subsection (A)(3); and, made other, nonsubstantive, changes.

2016 Act No. 170, Section 1, reenacted the section with nonsubstantive changes.

SECTION 40-57-50. Election of officers; seal; rules and procedures.

The commission annually shall elect from its total membership a chair, vice chair, and other officers the commission determines necessary at the first meeting in the fiscal year of the State. The commission may adopt an official seal and shall adopt rules and procedures reasonably necessary for the performance of its duties and the governance of its operations and proceedings.

South Carolina General Assembly
121st Session, 2015-2016

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~~Indicates Matter Stricken~~

Indicates New Matter

S. 290

STATUS INFORMATION

General Bill

Sponsors: Senator Alexander

Document Path: I:\s-res\tca\019vuln.ls.tca.docx

Introduced in the Senate on January 13, 2015

Currently residing in the Senate Committee on General

Summary: Vulnerable Adult and Senior Citizen Protection Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/13/2015	Senate	Introduced and read first time (<u>Senate Journal-page 171</u>)
1/13/2015	Senate	Referred to Committee on Judiciary (<u>Senate Journal-page 171</u>)
3/24/2015	Senate	Recalled from Committee on Judiciary (<u>Senate Journal-page 5</u>)
3/24/2015	Senate	Committed to Committee on General (<u>Senate Journal-page 5</u>)

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VERSIONS OF THIS BILL

1/13/2015

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND ARTICLE 1, CHAPTER 35, TITLE 43 OF THE 1976 CODE, RELATING TO THE PROTECTION OF VULNERABLE ADULTS FROM ABUSE, NEGLECT, OR EXPLOITATION, SO AS TO DEFINE A SENIOR CITIZEN AS A PERSON SIXTY YEARS OR OLDER AND TO EXTEND APPLICATION OF THE PROTECTIONS OF THE ARTICLE TO SENIOR CITIZENS; TO ADD HUMAN TRAFFICKING AS A CRIME SUBJECT TO FINES AND IMPRISONMENT; TO CHANGE EXISTING CRIMINAL PENALTIES; TO CREATE DUTIES RELATED TO DISCHARGING VULNERABLE ADULTS AND SENIOR CITIZENS FROM CERTAIN SETTINGS; TO CREATE AN AFFIRMATIVE DEFENSE TO COMMITTING OFFENSES PROVIDED FOR IN THE ARTICLE; AND FOR OTHER PURPOSES.

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

Whereas, South Carolina's senior citizens are valued members of our community who deserve to live with respect and dignity; and

Whereas, the population of the State's citizens age sixty and older has increased from nearly 915,000 in 2010 to a projected 1,200,000 in 2020, an increase of approximately thirty percent; and

Whereas, it is widely recognized that, in general, senior citizens are at a greater risk of harm from abuse, neglect, and exploitation, than are younger adults; and

Whereas, while the Omnibus Adult Protection Act of 2006 protects senior citizens who live in long-term care facilities or who are disabled from abuse, neglect, and exploitation, the statute does not protect the many seniors who are able to live independently; and

Whereas, in addition to abuse, neglect, and exploitation, human trafficking of senior citizens is a growing problem, whether through deprivation of food and medication by a caregiver or placement in or transfer to a facility with unsafe and unsanitary conditions; and

Whereas, the abuse, neglect, exploitation, and human trafficking of senior citizens can occur in long-term care facilities, in the privacy of a senior's home, and elsewhere in the community. Now, therefore,

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

SECTION 1. Article 1, Chapter 35, Title 43 of the 1976 Code is amended to read:

"Article 1

Duties and Procedures of Investigative Entities

Section 43-35-5. This chapter may be cited as the ~~Omnibus~~ Vulnerable Adult and Senior Citizen Protection Act.

Section 43-35-10. As used in this chapter:

(1) 'Abuse' means physical abuse or psychological abuse.

- (2) 'Adult Protective Services Program' means the Adult Protective Services Program of the Department of Social Services.
- (3) 'Caregiver' means a person who provides care to a vulnerable adult or senior citizen, with or without compensation, on a temporary, or permanent, or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.
- (4) 'Contracted facility' means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.
- (5) 'Deception' means taking or failing to take an action pursuant to which a person knowingly:
- (a) creates or confirms a false impression;
 - (b) fails to correct a false impression created or confirmed pursuant to subitem (a);
 - (c) fails to correct a false impression created by another person when under a duty to correct the false impression;
 - (d) prevents another person from acquiring information pertinent to the disposition of property;
 - (e) sells or otherwise transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property interest sold or transferred, whether or not the impediment is valid or is a matter of official record; or
 - (f) promises performance when the person does not intend to perform the promise or knows that the promise will not be performed.
- (3)(6) 'Exploitation' means:
- (a) causing or requiring to cause or require a vulnerable adult or senior citizen to engage in activity or labor which that is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult or senior citizen. Exploitation does not include requiring a vulnerable adult to participate in which does not include an activity or labor which that is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;
 - (b) the use of deception, intimidation, undue influence, force, or threat of force to obtain or exert an improper, unlawful, or unauthorized control over or use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult or senior citizen by a person, including a person who stands in a position of trust or confidence to the vulnerable adult or senior citizen, for the profit or advantage of that person or another person; or with the intent to deprive the vulnerable adult or senior citizen of those funds, assets, or property;
 - (c) the breach of a fiduciary duty owed to a vulnerable adult or senior citizen by a guardian, conservator, or agent pursuant to a power of attorney for the profit or advantage of the person or another person or which results in an unauthorized appropriation, sale, or transfer of the vulnerable adult's or senior citizen's property;
- (e)(d) causing to cause a vulnerable adult or senior citizen 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 or senior citizen through cunning arts or devices that delude the vulnerable adult or senior citizen and cause him to lose money or other property.
- (7) 'Extortion' means to obtain unlawfully money, property, or any other thing of value, either tangible or intangible, through the use or threat of force, misuse of authority, threat of criminal prosecution, threat of destruction of reputation or social standing, or through other coercive means.
- (4)(8) 'Facility' means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.
- (9) 'Great bodily injury' means bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.
- (10) 'Human trafficking' means knowingly transporting, soliciting, extorting, recruiting, harboring, providing, enticing, maintaining, housing, or obtaining a vulnerable adult or senior citizen for the purpose of exploitation of that person.
- (11) 'Intimidation' means a threat to a vulnerable adult or senior citizen of physical or psychological harm or of deprivation of food, nutrition, prescribed medication, shelter, property, or medical care or treatment.
- (5)(12) '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, or the Medicaid Fraud Control Unit of the Office of the Attorney General.
- (13) 'Long Term Care Ombudsman Program' means the Long Term Care Ombudsman Program of the Office on Aging.
- (6)(14) 'Neglect' means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult or senior citizen 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 or senior citizen. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult or senior citizen, in the absence of a caretaker, to provide for his or her own health or safety which that produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

(7)(15) 'Occupational licensing board' means a health professional licensing board ~~which that~~ is a state agency that licenses and regulates health care providers, and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.

(16) 'Operated facility' means a facility directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(17) 'Person' means a human being, except as otherwise defined pursuant to this chapter.

~~(8)(18)~~ 'Physical abuse' means intentionally inflicting or allowing to be inflicted

(a) ~~means acting or failing to act in an intentional and wilful manner in order to cause physical injury on to a vulnerable adult or senior citizen by an act or failure to act. Physical abuse includes, but is not limited to, or acting in a reckless manner that results in physical injury to a vulnerable adult or senior citizen, including by:~~

(i) slapping, hitting, kicking, biting, choking, pinching, burnings;

(ii) actual or attempted sexual battery as defined in pursuant to Section 16-3-651;

(iii) use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior; and;

(iv) unreasonable confinement. ~~Physical abuse also includes the, or~~

(v) use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment, ~~except that a therapeutic unless the procedure is 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, and~~

(b) does not include mean altercations or acts of assault between vulnerable adults.

(12) 'Position of trust and confidence' means, with respect to a vulnerable adult or senior citizen, a person who:

(a) is a parent, spouse, adult child, or other relative by blood or marriage of the vulnerable adult or senior citizen;

(b) is a joint tenant or tenant in common with respect to property of the vulnerable adult or senior citizen;

(c) owes a legal or fiduciary duty to the vulnerable adult or senior citizen including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

(d) is a caregiver of the vulnerable adult or senior citizen; or

(e) is another person who has been entrusted with or has assumed responsibility for the use or management of a vulnerable adult's or senior citizen's funds, assets, or property.

~~(9)(20)~~ 'Protective services' means those services whose objective is to protect a vulnerable adult or senior citizen from harm caused by the vulnerable adult or senior citizen or by another person. ~~These services include including, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.~~

~~(10)(21)~~ 'Psychological abuse' means deliberately subjecting a vulnerable adult or senior citizen to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

(22) 'Senior citizen' means a person sixty years of age or older who is not a vulnerable adult as defined pursuant to this article.

(23) 'Undue influence' means domination, coercion, manipulation, or another act of a person that prevents a vulnerable adult or senior citizen from exercising free judgment and choice.

~~(11)(24)~~ 'Vulnerable adult' means:

(a) a person eighteen years of age or older who has a physical or mental condition ~~which that~~ substantially impairs the person from adequately providing for his or her own care or protection. ~~This includes which includes~~ a person who is impaired in the ability to adequately provide for the person's his 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; or

(b) A resident of a facility is a vulnerable adult.

(25) 'Vulnerable Adults Investigations Unit' means the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

~~(12)~~ 'Operated facility' means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

~~(13)~~ 'Contracted facility' means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

Section 43-35-13. No vulnerable adult or senior citizen may be considered to be abused or neglected for the sole reason that, in lieu of medical treatment, the vulnerable adult or senior citizen is being furnished nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

Section 43-35-15. (A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation or human trafficking 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 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 investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in pursuant to Article 5, Chapter 35, Title 43. The unit shall refer those

reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, ~~or exploitation, or human trafficking~~ 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 memoranda~~ of agreement with other agencies to be used in fulfilling the requirements of this article. ~~However, the South Carolina Law Enforcement Division must but may not~~ delegate its responsibility to investigate criminal reports of alleged abuse, neglect, ~~and exploitation, and human trafficking~~ 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.

(B) Except as otherwise provided in subsection (D), the Long Term Care Ombudsman Program ~~of the Office on Aging~~ shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, ~~and exploitation, and human trafficking~~ of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations. The Long Term Care Ombudsman Program must not delegate its responsibility to investigate noncriminal reports of alleged abuse, neglect, ~~and exploitation, and human trafficking~~ to the facilities or to the 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. The Long Term Care Ombudsman Program shall refer reports of abuse, neglect, ~~and exploitation, and human trafficking~~ to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ if there is reasonable suspicion of criminal conduct.

(C) The Adult Protective Services Program in the Department of Social Services shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, ~~and exploitation, and human trafficking~~ of senior citizens and of vulnerable adults occurring in all settings other than those facilities for which the Long Term Care Ombudsman Program is responsible for the investigation investigating pursuant to this section. The Adult Protective Services Program 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. The Adult Protective Services Program shall refer reports of abuse, neglect, ~~and exploitation, and human trafficking~~ to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ if there is reasonable suspicion of criminal conduct.

(D) Notwithstanding another provision of law, the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ shall refer reports of abuse, neglect, ~~and exploitation, and human trafficking~~ involving residents committed to the Department of Mental Health pursuant to Chapter 48, Title 44 in which there is no reasonable suspicion of criminal conduct to the Department of Mental Health Client Advocacy Program for investigation.

Section 43-35-20. In addition to all other powers and duties ~~that provided to~~ an investigative entity ~~is given in pursuant to~~ this article, the investigative entity may:

- (1) have access to facilities ~~or other locations at which the vulnerable adult or senior citizen resides or at which the alleged abuse, neglect, exploitation, or human trafficking occurred~~, for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult ~~which or senior citizen that~~ the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members ~~or other caregivers~~ of a vulnerable adult ~~or senior citizen~~ and facility staff members, to cooperate with the investigative entity in carrying out its duties ~~under pursuant to~~ this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- (7) conduct studies and compile data regarding abuse, neglect, ~~and exploitation, and human trafficking; and~~
- (8) issue reports and recommendations.

Section 43-35-25. (A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer ~~having who, in good faith, has~~ reason to believe that a vulnerable adult ~~or senior citizen~~ has been or is likely to be abused, neglected, ~~or exploited, or a victim of human trafficking~~ shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult ~~or senior citizen~~ has been abused, neglected, ~~or exploited, or a victim of human trafficking~~ shall report the incident ~~in accordance with~~ pursuant to this section.

(B) Except as provided in subsection (A), any other person who, in good faith, has reason to believe that a vulnerable adult ~~or senior citizen~~ has been or may be abused, neglected, ~~or exploited, or a victim of human trafficking~~ may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved in writing by the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ or the investigative entity to which the report is to be made.

(D) A person required to report ~~under pursuant to~~ this section ~~must shall~~ report the incident within twenty-four hours or the next working day. A report must be made in writing or orally by telephone or otherwise to:

- (1) the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ for incidents occurring in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;
- (2) the Long Term Care Ombudsman Program for incidents occurring in facilities, except those facilities provided for in item (1); and
- (3) the Adult Protective Services Program for incidents occurring in all other settings.

(E) If the Vulnerable Adults Investigations Unit of the ~~South Carolina Law Enforcement Division~~ or an investigative entity receives a report that is not within its investigative jurisdiction, the unit or investigative entity shall forward the report to the appropriate unit or investigative entity not later than the next working day.

(F) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(G) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person also from reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

Section 43-35-30. A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult or senior citizen who is the subject of a report. A person required to report ~~under pursuant to this chapter article~~ as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult or senior citizen without consent. All photographs, x-rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

Section 43-35-35. (A) A person required to report or investigate cases ~~under pursuant to this chapter article~~ who has reasonable suspicion to believe that a vulnerable adult or senior citizen died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner ~~must shall~~ report the investigative findings to the Vulnerable Adults Investigations Unit of the ~~South Carolina Law Enforcement Division~~.

(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit of the ~~South Carolina Law Enforcement Division~~ for investigation pursuant to Section 43-35-520.

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

Section 43-35-45. (A) In investigating a report, if ~~the investigative entity is unable to obtain~~ consent ~~cannot be obtained~~ for access to the vulnerable adult or senior citizen or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult or senior citizen. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult or senior citizen has been abused, neglected, ~~or exploited, or is a victim of human trafficking~~ or is at risk of abuse, neglect, ~~or exploitation, or human trafficking~~.

(B) At any time during or subsequent to an investigation ~~where when~~ a vulnerable adult or senior citizen is at substantial risk to be or has been abused, neglected, ~~or exploited, or a victim of human trafficking~~ and ~~the investigative entity is unable to obtain~~ consent to provide services ~~cannot be obtained~~, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult or senior citizen from the place the vulnerable adult or senior citizen is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult or senior citizen. The family court may order ex parte that the vulnerable adult or senior citizen be taken into emergency protective custody without the consent of the vulnerable adult or senior citizen or of the guardian or others exercising temporary or permanent control over the vulnerable adult or senior citizen, if the court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable adult ~~adult's~~ or senior citizen's life or physical safety. The court also may order emergency services or other relief as necessary to protect the vulnerable adult or senior citizen.

(C) Within ten days ~~following the after~~ filing of a petition pursuant to this section, the court ~~must shall~~ appoint a guardian ad litem and an attorney for the vulnerable adult ~~and or senior citizen~~. Within forty days ~~of after~~ filing the petition ~~being filed~~, the court shall hold a hearing on the merits.

(D)(1) Before the hearing on the merits the Adult Protective Services Program ~~must shall~~ conduct a comprehensive evaluation of the vulnerable adult or senior citizen. The evaluation must include, but is not limited to:

(1)(a) the vulnerable adult ~~adult's~~ or senior citizen's current address and with whom the vulnerable adult or senior citizen is residing;

(2)(b) a list of all persons or agencies currently providing services to the vulnerable adult or senior citizen and the nature of these services;

(3)(c) a summary of services, if any, provided to the vulnerable adult or senior citizen by the Adult Protective Services Program;

(4)(d) if needed, a medical, psychological, social, vocational, or educational evaluation; and

(5)(e) recommendations for protective services ~~which that~~ would serve the best interests of the vulnerable adult or senior citizen; however, when these services are to be provided by another state agency, ~~these the Adult Protective Services Program shall develop the related~~ recommendations ~~must be developed~~ in consultation with the other agency.

(2) A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required by ~~pursuant to~~ this subsection must be paid by the Adult Protective Services Program, which ~~must shall~~ seek reimbursement for these evaluations, where possible.

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

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

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

(F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult or senior citizen and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.

(G) ~~Any~~ An interested person, on behalf of the vulnerable adult or senior citizen, may file a motion for review of the court order issued pursuant to this section.

(H) Following a court order from the merits hearing to provide protective services to a vulnerable adult or senior citizen, the Adult Protective Services Program, at least every six months, ~~must~~ shall evaluate the vulnerable adult or senior citizen and submit a written report to the court, and ~~to any other parties as required by the court, regarding the vulnerable adult's or senior citizen's need for continued protective services as defined in pursuant to this chapter.~~

(I) If the court determines that the vulnerable adult or senior citizen is financially capable of paying for services ordered pursuant to this section, ~~then the court may order payment by or from the financial resources of the vulnerable adult or senior citizen may be ordered.~~

(J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable ~~adult's or senior citizen's~~ financial records be made available on a certain day and time for inspection by the parties.

(K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult or senior citizen that have not been reimbursed ~~at the time of before~~ the vulnerable adult's or senior citizen's death become a claim against the estate of the vulnerable adult or senior citizen.

(L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.

Section 43-35-50. The privileged quality of communication between husband and wife or between a professional person and the person's patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this chapter.

Section 43-45-55. (A) A law enforcement officer may take a vulnerable adult or senior citizen in a life-threatening situation into protective custody if:

(1) there is probable cause to believe that by reason of abuse, neglect, ~~or exploitation, or human trafficking~~ there exists an imminent danger to the vulnerable ~~adult's or senior citizen's~~ life or physical safety;

(2) the vulnerable adult or senior citizen, or ~~the vulnerable adult's or senior citizen's~~ caregiver, does not consent to protective custody; and

(3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult or senior citizen, the officer ~~must~~ shall transport the vulnerable adult or senior citizen to a place of safety ~~which that~~ must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult or senior citizen pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult or senior citizen who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult or senior citizen ~~under pursuant to~~ this section, the law enforcement officer ~~must~~ immediately shall notify the Adult Protective Services Program and the Department of Social Services office in the county ~~where in which~~ the vulnerable adult or senior citizen was situated at the time of being taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

(1) the name of the vulnerable adult or senior citizen, if known, or a physical description of the vulnerable adult or senior citizen, if the name is unknown;

(2) the address of the place from which the vulnerable adult or senior citizen was removed by the officer;

(3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult or senior citizen at the time the vulnerable adult or senior citizen was taken into protective custody;

(4) the address of the place to which the vulnerable adult or senior citizen was transported by the officer; and

(5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult or senior citizen into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by pursuant to subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult or senior citizen has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by pursuant to subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

Section 43-35-60. Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under pursuant to this chapter. Information in these investigative records must not be disclosed publicly.

Section 43-35-65. A facility, as defined in Section 43-35-10, shall prominently display notices stating the duties of its personnel under pursuant to this chapter and contact information, the text of which must be provided by the Long Term Care Ombudsman Program in consultation with the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~.

Section 43-35-70. The investigative entity shall report an alleged incident of abuse, neglect, ~~or exploitation, or human trafficking~~ against a health care professional to the occupational licensing board by whom that person is licensed.

Section 43-35-75. (A) 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 that~~ may otherwise result by reason of ~~this action the report or participation in the investigation or judicial proceeding, unless the person acts recklessly, with a malicious purpose or otherwise in bad faith.~~ In a civil or criminal proceeding good faith is a rebuttable presumption.

(B) It is against the public policy of ~~South Carolina~~ the State to change an employee's status solely because the employee reports or cooperates with an investigation or action taken under pursuant to this chapter.

Section 43-35-80. (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, or human trafficking~~ under pursuant to this chapter, the Attorney General, upon referral from the Long Term Care Ombudsman Program or the Vulnerable Adults Investigations Unit, may bring an action against a person ~~who or facility that~~ 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, human trafficking, or any other crime against a vulnerable adult in a facility. ~~There is a rebuttable presumption that a person or facility which verifies has acted reasonably in hiring an employee upon verifying that the person or facility is in good standing of the employee with the appropriate licensure or and accrediting entity is rebuttably presumed to have acted reasonably regarding the hiring entities, as applicable.~~

(B) In granting relief under pursuant to 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.

(C) Nothing in this section may be construed to create a private cause of action against ~~one who~~ a person or facility that fails through pattern or practice to exercise reasonable care ~~as provided for in pursuant to~~ subsection (A).

(D) For the purposes of this section 'person' means any natural person, corporation, joint venture, partnership, unincorporated association, or other business entity.

(E) To the extent fines collected pursuant to this section exceed the cost of litigation, these fines must be credited to the Adult Protective Services Emergency Fund and may be carried forward from one fiscal year to the next.

Section 43-35-85. (A) A person required to report under pursuant to this chapter who knowingly and wilfully fails to report abuse, neglect, ~~or exploitation, or human trafficking~~ is guilty of a misdemeanor and, upon conviction, must be fined not more than ~~twenty-five~~ two thousand five hundred dollars or imprisoned not more than ~~one year~~ three years.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult or senior citizen is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult or senior citizen is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D)(1) A person who knowingly and wilfully exploits property of a vulnerable adult or senior citizen in an amount exceeding five hundred dollars is guilty of a felony and, upon conviction, must be fined;

(a) not more than five thousand dollars or imprisoned not more than ~~five~~ twenty-five years, or both, if the value of the property exploited exceeds two thousand five hundred dollars, and may be required by the court to make restitution; or

(b) not more than five thousand dollars or imprisoned not more than twenty years, or both, if the value of the property exploited exceeds five hundred dollars but is not more than two thousand five hundred dollars, and may be required by the court to make restitution.

(2) A person who knowingly and wilfully exploits property of a vulnerable adult or senior citizen in an amount not more than five hundred dollars is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both, and may be required by the court to make restitution.

(E)(1) A person who knowingly and wilfully abuses or neglects a vulnerable adult or senior citizen resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

~~(F)(2)~~ A person who knowingly and wilfully abuses or neglects a vulnerable adult or senior citizen resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(3) A person who abuses or neglects a vulnerable adult or senior citizen by acting recklessly and the abuse or neglect results in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(4) A person who abuses or neglects a vulnerable adult or senior citizen by acting recklessly and the abuse or neglect results in death is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

(E) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult or senior citizen who is the subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

~~(F)(G)~~ A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, ~~upon conviction~~, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who knowingly and wilfully subjects a vulnerable adult or senior citizen to human trafficking is guilty of a felony and, upon conviction, must be imprisoned not more than twenty-five years.

(I) As used in this section, 'great bodily injury' means 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. State prosecutors and law enforcement officers shall receive training regarding human trafficking of vulnerable adults and senior citizens as part of curricula approved by the South Carolina Supreme Court and the South Carolina Law Enforcement Division.

Section 43-35-87. (A) A person responsible for the final discharge of a vulnerable adult or senior citizen from a hospital, emergency room, or outpatient hospital clinic including, but not limited to, a discharge worker or social worker, shall ask for and document the address to which the vulnerable adult or senior citizen is going along with the name and relationship of any person transporting or accompanying the vulnerable adult or senior citizen to that address.

(B) If a person transporting or accompanying the vulnerable adult or senior citizen refuses to disclose his name, address, and relationship status pursuant to subsection (A), the person who discharges the vulnerable adult or senior citizen shall notify law enforcement and request a welfare check to the address on record

for the vulnerable adult or senior citizen.

(C) If the person who discharges the vulnerable adult or senior citizen determines that the individual who has transported or accompanied the vulnerable adult or senior citizen at the time of discharge pursuant to this section is not the vulnerable adult's or senior citizen's spouse or relative, the person shall notify law enforcement and request a welfare check to the address on record for the vulnerable adult or senior citizen.

(D) If law enforcement determines after conducting the home visit pursuant to subsection (B) or (C) that the address is incorrect, law enforcement shall issue an endangered vulnerable adult advisory pursuant to criteria developed by the South Carolina Law Enforcement Division.

Section 43-35-90. This article is not intended to affect ~~in any way~~ the authority of any agency to act ~~under~~ pursuant to state or federal law.

Section 43-35-95. (A) A person prosecuted for committing an offense pursuant to this article has an affirmative defense if, at the time of committing the offense, the person acted in good faith and lacked the ability to act pursuant to the requirements of this article due to physical, psychological, or resource limitations.

(B) A person prosecuted pursuant to subsection (A) has the burden of proving the affirmative defense by a preponderance of the evidence.

Section 43-25-100. Nothing in this chapter limits the remedies available to a vulnerable adult or senior citizen pursuant to other statutes including, but not limited to, domestic violence statutes."

SECTION 2. This act takes effect upon approval by the Governor.

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Disability Rights in Housing

Definition of Disability: Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Disability Rights in Private and Public Housing: Regardless of whether you live in private or public housing, Federal laws provide the following rights to persons with disabilities:

- **Prohibits discrimination against persons with disabilities.** It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions than those required of or provided to persons who are not disabled.

Example: A housing provider may not refuse to rent to an otherwise qualified individual with a mental disability because s/he is uncomfortable with the individual's disability. Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.

- **Requires housing providers to make reasonable accommodations for persons with disabilities.** A reasonable accommodation is a change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything s/he can to assist, but s/he is not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction.

Example: A housing provider would make a reasonable accommodation for a tenant with mobility impairment by fulfilling the tenant's request for a reserved parking space in front of the entrance to their unit, even though all parking is unreserved.

- **Requires housing providers to allow persons with disabilities to make reasonable modifications.** A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities.

Examples of a reasonable modification would include allowing a person with a disability to: *install a ramp into a building, lower the entry threshold of a unit, or install grab bars in a bathroom.* [Learn More About Reasonable Accommodations](#)

Reasonable modifications are usually made at the resident's expense. However, there are resources available for helping fund building modifications. Additionally, if you live in Federally assisted housing the housing provider may be required to pay for the modification if it does not amount to an undue financial and administrative burden. For more information, see the Reasonable Accommodations section of the Section 504 Frequently Asked Questions page.

- **Requires that new covered multifamily housing be designed and constructed to be accessible.** In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:
 - Accessible Entrance on an Accessible Route
 - Accessible Public and Common-Use Areas
 - Usable Doors
 - Accessible Route Into and Through the Dwelling Unit

- Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
- Reinforced Walls in Bathrooms
- Usable Kitchens and Bathrooms

In covered multifamily housing without an elevator that consists of 4 or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act seven design and construction requirements.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST Web site.

These requirements apply to most public and private housing. However, there are limited exemptions for owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

If you live in Federally assisted multifamily housing consisting of 5 or more units, 5 percent of these units (or at least one unit whichever is greater) must meet more stringent physical accessibility requirements. Additionally, 2 percent of units (or at least one unit whichever is greater) must be accessible for persons with visual or hearing disabilities. For more information, visit Section 504 Questions and Answers.

People with Disabilities in Federally Assisted Housing: Federal law makes it illegal for an otherwise qualified individual with a disability to be excluded, solely because of his or her disability, from programs receiving federal financial assistance. For more information on the rights of persons with disabilities in federally assisted housing as well as the responsibilities of housing providers who receive federal financial assistance, visit our Section 504: Disability Rights in HUD Programs site.

Zoning and Land Use: It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating to their area. For more information, see the Joint Statement of DOJ and HUD on Group Homes, Local Land Use, and the Fair Housing Act.

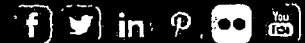
State and Local Laws: Many states and localities have fair housing laws that are substantially equivalent to the Federal Fair Housing Act. Some of these laws prohibit discrimination on additional bases, such as source of income or marital status. Some of these laws may impose more stringent design and construction standards for new multifamily housing.

The Americans with Disabilities Act: In most cases, the ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as offices buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a State university campus.

For more information on the Americans with Disabilities Act, visit the Department of Justice ADA Home Page.

File a Complaint: To file a complaint or for information on how HUD processes housing discrimination complaints, see Fair Housing-It's Your Right.



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CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). Accord: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g., City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 729 (1995); *Project Life v. Glendening*, 139 F. Supp. 703, 710 (D. Md. 2001), *aff'd* 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998) (holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.² Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

South Carolina Department of Labor, Licensing and Regulation

Professional Licensing Boards | Board Member Lookup

Main Menu : **Real Estate Commission**

Note: All fields are not required for searching

Last / Office name: First name:
License number: City:
State Abbreviation:
License Type:

To perform a lookup verify that you
are not a bot by checking the box.

I'm not a robot

reCAPTCHA
Privacy - Terms

**If no checkbox appears above, make sure you are not in Compatibility Mode and are using an updated browser such as Google Chrome.

Your search returned: **2 record(s)**.

CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

Lic #	Last	First	Middle	City	Type
106969	WAGNER	KAREN		CHARLOTTE	Salesman
29869	WAGNER	KAREN	F	VALDOSTA	Property Manager

Search Tip:

You do not have to enter complete names.
For example, "J" and "Smith" will search for records
with a last name of "Smith" and a first name beginning
with "J."

Questions / Contact Information

The Information on this page is a secure, primary source for license verification provided by South Carolina Department Labor, Licensing and Regulation. This website is maintained by LLR staff and is updated nightly reflecting changes to our licensing and enforcement database.

South Carolina Real Estate Commission

Phone: (803) 896-4400
Fax: (803) 896-4427
PO Box 11847
Columbia, S.C. 29211-1847

[Commission Email](#)

[South Carolina Department of Labor, Licensing & Regulation](#)

[Print this page](#)

Board: Real Estate Commission

KAREN F WAGNER
VALDOSTA, GA

License number: 29869

License type: Property Manager

Status: ACTIVE

Expiration: 06/30/2018

Office: AMBLING MANAGEMENT COMPANY LLC

Board Public Action History:

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Board: Real Estate Commission

KAREN WAGNER
CHARLOTTE, NC

License number: 106969

License type: Salesman

Status: ACTIVE

Expiration: 06/30/2019

Office: COTTINGHAM CHALK HAYES REALTORS

Board Public Action History:

[View Orders](#)

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BON SECOURS MEDICAL GROUP

POWDERSVILLE PRIMARY CARE

290 Enterprise Dr

Easley SC 29642-8280

864-365-0290

10/2/2017 2:45 PM

Mr. Christopher Holcombe
138 Brookstone Drive
Easley SC 29642

To whom it may concern:

This letter is written at the request and consent of our patient, Mr. Christopher Holcombe. Mr. Holcomb is a quadriplegic who also suffers from Hypertension, neurogenic bladder with recurrent UTI, Anxiety and depression. He is very limited in his ability to obtain gainful employment. He is, for the most part, fairly independent for all ADL'S. Because of his limitations, it remains important that he maintains adequate housing to best manage his medical conditions and maintain his ability to live independently. Should you need additional information, please obtain consent and feel free to contact our office at the above address.

Sincerely,

Collis L. Barksdale, MD

Christopher Holcombe XXXXX3799



BON SECOURS MEDICAL GROUP

POWDERSVILLE PRIMARY CARE
290 Enterprise Dr
Easley SC 29642-8280
864-365-0290

3/28/2018 11:40 AM

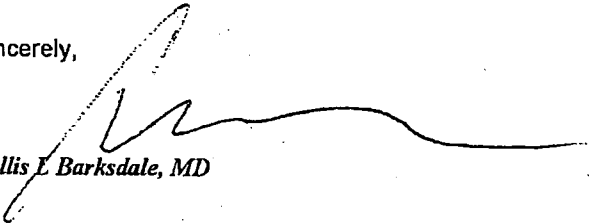
Mr. Christopher Holcombe
138 Brookstone Drive
Easley SC 29642

To Whom It May Concern:

This letter is written at the request of patient Mr. Christopher Holcomb. Mr. Holcomb has been seen at our office for depression and anxiety. He also is treated for hypertension. He began experiencing worsening depression and anxiety around August 2017. His symptoms began after he became face with the notion that he would be losing his home. It was at that time that he was started on antidepressant medication which he continues to take. He is paraplegic and is wheelchair bound and has permanent disability. He currently denies any suicidal or homicidal ideation. He has not been referred to psychiatry but he continues to have symptoms of depression despite his medication.

I hope that this information is helpful to you. Should you need any additional information, please feel free to contact our office at the above address.

Sincerely,



Collis E. Barksdale, MD

Christopher Holcombe XXXXX3799



A Division of Access Healthcare Services

1901 Laurens Rd

7/24/2017

Greenville SC 29607

864-242-1947

To Whom It May Concern,

Care Givers Home Care provides in homecare assistance to Chris Holcombe on a weekly basis up to 15 hours per week. The personal care aide assists the client with activities of daily living including light household duties related to client's diagnosis of spinal cord injury. Mr. Holcombe's mobility is limited related to this diagnosis and he uses a wheel chair for locomotion. Caregivers Home Care has provided these personal care services to Mr. Holcombe since March 2015. These services are authorized with case management at Anderson County Department of Disabilities and Special Needs Board. Please feel free to contact me at 864-242-1947 if you have any questions.

Misty Hendrix

A handwritten signature in black ink, appearing to read "Misty Hendrix", written over a horizontal line.

Nurse Supervisor



September 19, 2016

To Whom It May Concern:

Mr. Christopher Earl Holcombe was under my care during his inpatient rehabilitation stay at Roger C. Peace Rehabilitation Hospital from September 7, 1999 through October 22, 1999. I saw Chris regularly during that time to support his adjustment to having both a traumatic brain injury and T12 paraplegia. I have followed him off and on during the ensuing seventeen years.

Chris has evolved from being totally dependent on the care of others to being a strong, capable, determined and independent single parent. With great effort and perseverance he returned to driving and went back to school while managing the challenges of living with a disability.

Although he has achieved an exceptional level of adjustment, his disabilities continue to pose significant obstacles to his everyday functioning. Everything he does requires considerable more energy and effort than it did prior to his injuries. In order to maintain his physical and mental health, he has to pay particularly care to his stress level. A high level of stress interferes with his needed focus on self-care and has the potential to precipitate a medical crisis.

It is my belief that a challenge to his long-stable living situation could be disastrous to his health and well-being.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anita D. McQuillen', with a long horizontal flourish extending to the right.

Anita D. McQuillen, PhD

Licensed Psychologist

Clinical Neuropsychologist

(864) 455-2600