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9 **A BILL**

10  
11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, BY ADDING ARTICLE 2, CHAPTER 35, TITLE 43 SO  
13 AS TO CREATE THE VULNERABLE ADULT GUARDIAN  
14 AD LITEM PROGRAM WITHIN THE OFFICE ON AGING TO  
15 RECRUIT, TRAIN, AND SUPERVISE VOLUNTEERS TO  
16 SERVE AS COURT APPOINTED GUARDIANS AD LITEM  
17 FOR VULNERABLE ADULTS IN ABUSE, NEGLECT, AND  
18 EXPLOITATION PROCEEDINGS; TO PROVIDE THE DUTIES  
19 AND RESPONSIBILITIES OF A GUARDIAN AD LITEM; TO  
20 PROVIDE THAT A GUARDIAN AD LITEM MAY BE A  
21 LAYPERSON OR AN ATTORNEY; TO PROVIDE  
22 QUALIFICATIONS TO BECOME A GUARDIAN AD LITEM;  
23 TO AUTHORIZE THE VULNERABLE ADULT GUARDIAN  
24 AD LITEM PROGRAM TO INTERVENE IN PROCEEDINGS  
25 TO PETITION FOR REMOVAL OF A GUARDIAN AD LITEM  
26 UNDER CERTAIN CONDITIONS; TO PROVIDE THAT  
27 CERTAIN INFORMATION, REPORTS, AND RECORDS  
28 MUST BE MADE AVAILABLE TO GUARDIANS AD LITEM  
29 BY CERTAIN STATE AND FEDERAL AGENCIES, MEDICAL  
30 AND DENTAL PRACTITIONERS, AND FINANCIAL  
31 INSTITUTIONS; TO PROVIDE THAT REPORTS AND  
32 INFORMATION COLLECTED AND MAINTAINED BY THE  
33 PROGRAM ARE CONFIDENTIAL AND TO PROVIDE FOR  
34 CIVIL IMMUNITY WHEN ACTING IN GOOD FAITH AND IN  
35 THE ABSENCE OF GROSS NEGLIGENCE; AND TO AMEND  
36 SECTION 43-35-45, RELATING, AMONG OTHER THINGS,  
37 TO THE APPOINTMENT OF AN ATTORNEY AND A  
38 GUARDIAN AD LITEM FOR A VULNERABLE ADULT IN A  
39 PROCEEDING, SO AS TO FURTHER PROVIDE THAT THE  
40 COURT SHALL APPOINT AN ATTORNEY FOR A LAY  
41 GUARDIAN AD LITEM AND THAT THE GUARDIAN AD

1 LITEM MAY BE REMOVED IF THE VULNERABLE ADULT  
2 HAS THE CAPACITY TO ASSIST IN THE CASE.

3  
4 Be it enacted by the General Assembly of the State of South  
5 Carolina:

6  
7 SECTION 1. Chapter 35, Title 43 of the 1976 Code is amended  
8 by adding:

9  
10 “Article 2

11  
12 Vulnerable Adult  
13 Guardian Ad Litem Program  
14

15 Section 43-35-200. (A) There is created the Vulnerable Adult  
16 Guardian ad Litem Program in the Office on Aging to serve as a  
17 statewide system to recruit, train, and supervise volunteers to serve  
18 as court-appointed guardians ad litem for vulnerable adults in  
19 abuse, neglect, and exploitation proceedings within the family  
20 court, pursuant to Section 43-35-45 (C).

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

23  
24 Section 43-35-210. In addition to the definitions contained in  
25 Section 43-35-10, for purposes of this article, ‘guardian ad litem’  
26 means an individual appointed by the family court pursuant to  
27 Section 43-35-45 to advocate for the best interests of a vulnerable  
28 adult.

29  
30 Section 43-35-220. (A) The duties and responsibilities of a  
31 guardian ad litem include, but are not limited to:

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

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

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

41 (4) providing the family court, and all parties, with written  
42 reports including, but not limited to, a comprehensive final report  
43 regarding the best interests of the vulnerable adult. The final report

1 must be consistent with the rules of evidence and the rules of the  
2 court, and must include, but is not limited to, evaluation and  
3 assessment of the issues brought before the court, the wishes of the  
4 vulnerable adult, and recommendations for the case plan and the  
5 disposition of the case; and

6 (5) attending all court hearings to protect and promote the  
7 best interests of the vulnerable adult until formally relieved of the  
8 responsibility by the family court. The guardian ad litem is  
9 authorized through counsel to introduce, examine, and  
10 cross-examine witnesses in any proceeding involving the  
11 vulnerable adult, participate in the proceedings to any degree  
12 necessary to represent the vulnerable adult adequately, participate  
13 on any multidisciplinary evaluation team concerning the  
14 vulnerable adult, and make motions necessary to enforce the orders  
15 of the court, seek judicial review, or petition the court for relief on  
16 behalf of the vulnerable adult.

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

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

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

29 (3) visiting the home setting if appropriate;

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

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

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

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

38

39 Section 43-35-230. (A) A guardian ad litem may be either an  
40 attorney or a layperson. To be appointed as a guardian ad litem  
41 pursuant to Section 43-35-45(C) an individual:

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

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

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

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

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

15  
16 Section 43-35-240. (A) An individual may not be appointed as  
17 a guardian ad litem for a vulnerable adult in an abuse, neglect, or  
18 exploitation proceeding who:

19 (1) has been convicted of a crime enumerated in Chapter 3,  
20 Title 16, Offenses Against the Person; in Chapter 15, Title 16,  
21 Offenses Against Morality and Decency; in Article 3, Chapter 53,  
22 Title 44, Narcotics and Controlled Substances; in Section  
23 43-35-85, Omnibus Adult Protection Act; in Chapter 25, Title 16,  
24 Criminal Domestic Violence; or Section 16-17-490, Contributing  
25 to the Delinquency of a Minor; or

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

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

33  
34 Section 43-35-250. (A) A guardian ad litem is charged in  
35 general with representing the vulnerable adult's best interests.  
36 After appointment by the family court in a case involving an  
37 abused, neglected, or exploited vulnerable adult, the parties to the  
38 action and the court shall notify the guardian ad litem of all court  
39 hearings and proceedings. The obligation of the guardian ad litem  
40 to the court is a continuing obligation and continues until formally  
41 relieved by the court.

42 (B) The Vulnerable Adult Guardian ad Litem Program may  
43 intervene in a vulnerable adult abuse, neglect, or exploitation

1 proceeding in order to petition the court to relieve the guardian ad  
2 litem from appointment for the following reasons:

- 3 (1) incapacity;
- 4 (2) conflict of interest;
- 5 (3) misconduct;
- 6 (4) persistent neglect of duties;
- 7 (5) incompetence; or
- 8 (6) knowing and wilful violation of the Vulnerable Adult

9 Guardian ad Litem Program policies and procedures that affect the  
10 health, safety, or welfare of the vulnerable adult.

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

14  
15 Section 43-35-260. The Department of Social Services shall  
16 make available to the guardian ad litem all reports made and  
17 information collected relating to the vulnerable adult. Appropriate  
18 medical and dental care providers shall provide a guardian ad litem  
19 access to information upon request of the guardian ad litem and  
20 upon proof of appointment as the guardian ad litem for the  
21 vulnerable adult. Records must be made available to the guardian  
22 ad litem by any agency or any individual providing services to the  
23 vulnerable adult and financial records of the vulnerable adult  
24 including, but not limited to, state and federal tax records, banking  
25 and other financial institution records, and public benefits records.

26  
27 Section 43-35-270. (A) All reports and information collected  
28 pursuant to this article maintained by the Vulnerable Adult  
29 Guardian ad Litem Program or by a guardian ad litem are  
30 confidential. These records must be maintained and destroyed in  
31 accordance with program policy.

32 (B) The director of the Vulnerable Adult Guardian ad Litem  
33 Program, or the director's designee, may disclose to the media  
34 information contained in the vulnerable adult protective services  
35 records, if disclosure is limited to discussion of the program's  
36 activities in handling the case. The program may incorporate into  
37 its discussion of the handling of the case any information placed in  
38 the public domain by other public officials, a criminal prosecution,  
39 the alleged perpetrator or the attorney for the alleged perpetrator,  
40 and other public judicial proceedings. For the purposes of this  
41 subsection, information is considered placed in the public domain  
42 if it has been reported in the news media, is contained in public  
43 records of a criminal justice agency, is contained in public records

1 of the court, or has been the subject of testimony in a public  
2 judicial proceeding.

3  
4 Section 43-35-280. After participating in the Vulnerable Adult  
5 Guardian ad Litem Program training, an individual who is  
6 appointed to serve as a guardian ad litem and who serves without  
7 compensation is not liable for any civil damages for any personal  
8 injury as a result of any act or omission by the individual in the  
9 discharge of the duties and responsibilities of a guardian ad litem if  
10 the guardian ad litem acts in good faith and is not guilty of gross  
11 negligence.

12  
13 Section 43-35-290. (A) The General Assembly shall provide the  
14 funds necessary for the Vulnerable Adult Guardian ad Litem  
15 Program to carry out the provisions of this article.”

16  
17 SECTION. 2. Section 43-35-45(C) of the 1976 Code, as added by  
18 Act 110 of 1993, is amended to read:

19  
20 “(C) Within ten days following the filing of a petition pursuant  
21 to this section, the court ~~must~~ shall appoint a guardian ad litem and  
22 an attorney for the vulnerable adult; and an attorney for a lay  
23 guardian ad litem. A party may move to have the guardian ad litem  
24 relieved of his or her services if the party demonstrates that the  
25 vulnerable adult has the capacity to assist counsel in the protective  
26 services case. Within forty days of the filing of a petition ~~being~~  
27 ~~filed,~~ the court shall hold a hearing on the merits.”

28  
29 SECTION 3. This act takes effect upon approval by the Governor.

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