

1 HB411
2 135805-1
3 By Representative Scott
4 RFD: Children and Senior Advocacy
5 First Read: 23-FEB-12

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8 SYNOPSIS: This bill would require the Department of
9 Senior Services and the Department of Banking to
10 develop rules regarding the minimum training
11 standards used by financial institutions for their
12 current and new employees who have direct contact
13 with consumers.

14 This bill would also require any officer,
15 trustee, or employee of a financial institution
16 with reasonable cause to believe that any protected
17 person has been subjected to exploitation to report
18 or cause a report to be made in accordance with
19 Alabama's mandatory reporter provision.
20

21 A BILL
22 TO BE ENTITLED
23 AN ACT
24

25 To amend Sections 38-3-8, 38-9-2, and 38-9-8, Code
26 of Alabama 1975, relating to the prevention of financial
27 exploitation of elderly citizens.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 38-3-8, 38-9-2, and 38-9-8, Code
3 of Alabama 1975, are amended to read as follows:

4 "§38-3-8.

5 "The Department of Senior Services shall:

6 "(1) Be the designated state agency to administer
7 programs of the federal government relating to the aged,
8 requiring action within the state, that are not the specific
9 responsibility of another state agency under federal or state
10 statutes and to administer programs for the aged when
11 designated as an operating agency by another state agency. The
12 department may not take over from another state agency any of
13 the specific responsibilities held by such other state agency
14 nor may the department withhold from another state agency any
15 state or federal funds designated for programs administered by
16 that agency. The department shall be the state agency to
17 administer funds granted by the federal government under the
18 "Older Americans Act of 1965," 42 U.S.C. §3001, as amended,
19 except for programs administered by another state agency. The
20 department shall cooperate with federal and state agencies,
21 counties, municipal corporations, and private agencies or
22 facilities within the state in furtherance of the purposes as
23 set forth in this chapter.

24 "(2) Advise, consult, and coordinate with other
25 state agencies upon request which are proposing plans,
26 programs, and rules primarily affecting persons 60 years of
27 age or older.

1 "(3) Plan, initiate, coordinate, and evaluate
2 statewide programs, services, and activities regulated by the
3 department for elderly people which are not duplicative of
4 services, programs, and activities provided by other state
5 agencies.

6 "(4) Disseminate information concerning the problems
7 of elderly people and establish and maintain a central
8 clearinghouse of information on public programs at all levels
9 of government that would be of interest or benefit to the
10 elderly.

11 "(5) Report annually to the Governor and the
12 Legislature on the programs of the department.

13 "(6) Have authority to contract with public or
14 private groups to perform services for the department.

15 "(7) Adopt rules pursuant to the Alabama
16 Administrative Procedure Act to govern the operation of
17 services and facilities for the elderly that are regulated by
18 the department and determine that those services and
19 facilities are operated in conformity with these rules.

20 "(8) Determine the needs of the elderly and provide
21 information on their needs to all levels of government.

22 "(9) Report immediately any suspected abuse,
23 neglect, and exploitation to the Department of Human Resources
24 as a mandatory reporter as specified in Section 38-9-8.

25 "(10) Develop by joint rulemaking with the Banking
26 Department minimum training standards which shall be used by

1 financial institutions for their current and new employees
2 with direct customer contact.

3 "a. The Banking Department shall retain sole
4 visitation and enforcement authority under this subsection.

5 "b. The Banking Department shall provide bi-annual
6 reports to the Department of Senior Services setting forth
7 aggregate statistics on the training programs required under
8 this subsection.

9 "§38-9-2.

10 "For the purposes of this chapter, the following
11 terms shall have the following meanings:

12 "(1) ABUSE. The infliction of physical pain, injury,
13 or the willful deprivation by a caregiver or other person of
14 services necessary to maintain mental and physical health.

15 "(2) ADULT IN NEED OF PROTECTIVE SERVICES. A person
16 18 years of age or older whose behavior indicates that he or
17 she is mentally incapable of adequately caring for himself or
18 herself and his or her interests without serious consequences
19 to himself or herself or others, or who, because of physical
20 or mental impairment, is unable to protect himself or herself
21 from abuse, neglect, exploitation, sexual abuse, or emotional
22 abuse by others, and who has no guardian, relative, or other
23 appropriate person able, willing, and available to assume the
24 kind and degree of protection and supervision required under
25 the circumstances.

26 "(3) CAREGIVER. An individual who has the
27 responsibility for the care of a protected person as a result

1 of family relationship or who has assumed the responsibility
2 for the care of the person voluntarily, by contract, or as a
3 result of the ties of friendship.

4 "(4) COURT. The circuit court.

5 "(5) DEPARTMENT. The Department of Human Resources
6 of the State of Alabama.

7 "(6) EMOTIONAL ABUSE. The willful or reckless
8 infliction of emotional or mental anguish or the use of a
9 physical or chemical restraint, medication, or isolation as
10 punishment or as a substitute for treatment or care of any
11 protected person.

12 "(7) EMPLOYEE OF A NURSING HOME. A person permitted
13 to perform work in a nursing home by the nursing home
14 administrator or by a person or an entity with an ownership
15 interest in the facility, or by both. A person shall be
16 considered an employee whether or not he or she receives
17 compensation for the work performed.

18 "(8) EXPLOITATION. The expenditure, diminution, or
19 use of the property, assets, or resources of a protected
20 person without the express voluntary consent of that person or
21 his or her legally authorized representative or the admission
22 of or provision of care to a protected person who needs to be
23 in the care of a licensed hospital by an unlicensed hospital
24 after a court order obtained by the State Board of Health has
25 directed closure of the unlicensed hospital. For the purpose
26 of this section and Sections 38-9-6 and 38-9-7, the term
27 "unlicensed hospital" shall have the meaning ascribed to it in

1 Section 22-21-33, and the term "licensed hospital" shall have
2 the meaning ascribed to it in Section 22-21-20.

3 "(9) FINANCIAL INSTITUTION. Any bank, savings and
4 loan association, or credit union.

5 "(9)(10) INTENTIONALLY. A person acts intentionally
6 with respect to a result or to conduct described by a statute
7 defining an offense, when his or her purpose is to cause that
8 result or to engage in that conduct.

9 "(10)(11) INTERESTED PERSON. Any adult relative,
10 friend, or guardian of a protected person, or any official or
11 representative of a public or private agency, corporation, or
12 association concerned with his or her welfare.

13 "(11)(12) MISAPPROPRIATION OF PROPERTY OF A NURSING
14 HOME RESIDENT. The deliberate misplacement or wrongful,
15 temporary, or permanent use or withholding of belongings or
16 money of a resident of a nursing home without the consent of
17 the resident.

18 "(12)(13) NEGLECT. The failure of a caregiver to
19 provide food, shelter, clothing, medical services, or health
20 care for the person unable to care for himself or herself; or
21 the failure of the person to provide these basic needs for
22 himself or herself when the failure is the result of the
23 person's mental or physical inability.

24 "(13)(14) NURSING FACILITY. A facility which is
25 licensed as a nursing home by the Alabama Department of Public
26 Health pursuant to Article 2, Chapter 21, Title 22.

1 "~~(14)~~(15) OTHER LIKE INCAPACITIES. Those conditions
2 incurred as the result of accident or mental or physical
3 illness, producing a condition which substantially impairs an
4 individual from adequately providing for his or her own care
5 or protecting his or her own interests or protecting himself
6 or herself from physical or mental injury or abuse.

7 "~~(15)~~(16) PERSON. Any natural human being.

8 "~~(16)~~(17) PHYSICAL INJURY. Impairment of physical
9 condition or substantial pain.

10 "~~(17)~~(18) PROTECTED PERSON. Any person over 18 years
11 of age subject to protection under this chapter or any person,
12 including, but not limited to, persons who are senile, persons
13 with intellectual disabilities and developmental disabilities,
14 or any person over 18 years of age that is mentally or
15 physically incapable of adequately caring for himself or
16 herself and his or her interests without serious consequences
17 to himself or herself or others.

18 "~~(18)~~(19) PROTECTIVE SERVICES. Those services whose
19 objective is to protect an incapacitated person from himself
20 or herself and from others.

21 "~~(19)~~(20) RECKLESSLY. A person acts recklessly with
22 respect to a result or to a circumstance described by a
23 statute defining an offense when he or she is aware of and
24 consciously disregards a substantial and unjustifiable risk
25 that the result will occur or that the circumstance exists.
26 The risk shall be of such nature and degree that its disregard
27 constitutes a gross deviation from the standard conduct that a

1 reasonable person would observe in the situation. A person who
2 creates a risk but is unaware of that risk solely by reason of
3 voluntary intoxication, as defined in subdivision (e)(2) of
4 Section 13A-3-2, acts recklessly with respect thereto.

5 "~~(20)~~(21) SENILITY. Organic brain damage caused by
6 advanced age or other physical illness to the extent that the
7 person so afflicted is substantially impaired in his or her
8 ability to adequately provide for his or her own care.

9 "~~(21)~~(22) SERIOUS PHYSICAL INJURY. Physical injury
10 which creates a risk of death, or which causes serious and
11 protracted disfigurement, protracted impairment of health,
12 protracted loss of the function of any bodily organ, or the
13 impairment of the function of any bodily organ.

14 "~~(22)~~(23) SEXUAL ABUSE. Any conduct that is a crime
15 as defined in Sections 13A-6-60 to 13A-6-70, inclusive.

16 "§38-9-8.

17 "(a) All physicians and other practitioners of the
18 healing arts, or any caregiver, or any officer, trustee, or
19 employee of a financial institution having reasonable cause to
20 believe that any protected person has been subjected to
21 physical abuse, neglect, exploitation, sexual abuse, or
22 emotional abuse shall report or cause a report to be made as
23 follows:

24 "(1) An oral report, by telephone or otherwise,
25 shall be made immediately, followed by a written report, to
26 the county department of human resources or to the chief of
27 police of the city or city and county, or to the sheriff of

1 the county if the observation is made in an unincorporated
2 territory, except that reports of a nursing home employee who
3 abuses, neglects, or misappropriates the property of a nursing
4 home resident shall be made to the Department of Public
5 Health. The requirements to report suspicion of suspected
6 abuse, neglect, or misappropriation of property of a nursing
7 home resident by an employee of a nursing home shall be deemed
8 satisfied if the report is made in accordance with the rules
9 of the State Board of Health.

10 "(2) Within seven days following an oral report, an
11 investigation of any alleged abuse, neglect, exploitation,
12 sexual abuse, or emotional abuse shall be made by the county
13 department of human resources or the law enforcement official,
14 whichever receives the report, and a written report prepared
15 which includes the following:

16 "a. Name, age, and address of the person.

17 "b. Nature and extent of injury suffered by the
18 person.

19 "c. Any other facts or circumstances known to the
20 reporter which may aid in the determination of appropriate
21 action.

22 "(b) All reports prepared by a law enforcement
23 official shall be forwarded to the county department of human
24 resources within 24 hours.

25 "(c) The county department of human resources shall
26 not be required to investigate any report of abuse, neglect,
27 exploitation, sexual abuse, or emotional abuse that occurs in

1 any facility owned and operated by the Alabama Department of
2 Corrections or the Alabama Department of Mental Health.

3 "(d) Notwithstanding the foregoing, the Department
4 of Public Health shall investigate all reports that a nursing
5 home employee has abused or neglected a nursing home resident,
6 or misappropriated the property of a nursing home resident, in
7 accordance with the rules of the State Board of Health and the
8 federal regulations and guidelines of the Medicaid and
9 Medicare programs. The Department of Public Health shall
10 investigate the complaints in accordance with the procedures
11 and time frames established by the agency. A county department
12 of human resources shall not be required to investigate the
13 complaints."

14 Section 2. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.