

1 SB29
2 146544-2
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 05-FEB-13
6 PFD: 12/18/2012

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to crimes; to create the crimes of
12 financial exploitation of an elderly person and elder abuse
13 and neglect in the first, second, and third degree; and to
14 provide penalties.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. This act shall be known and may be cited
17 as the Protecting Alabama's Elders Act.

18 Section 2. For purposes of this act, the following
19 terms shall have the following meanings:

20 (1) CAREGIVER. An individual who has the
21 responsibility for the care of an elderly person as a result
22 of family relationship or who has assumed the responsibility
23 for the care of the person voluntarily, for pecuniary gain, by
24 contract, or as a result of the ties of friendship.

25 (2) DECEPTION. Deception occurs when a person
26 knowingly:

1 a. Creates or confirms another's impression which is
2 false and which the defendant does not believe to be true.

3 b. Fails to correct a false impression which the
4 defendant previously has created or confirmed.

5 c. Fails to correct a false impression when the
6 defendant is under a duty to do so.

7 d. Prevents another from acquiring information
8 pertinent to the disposition of the property involved.

9 e. Sells or otherwise transfers or encumbers
10 property, failing to disclose a lien, adverse claim, or other
11 legal impediment to the enjoyment of the property, whether
12 that impediment is or is not valid, or is not a matter of
13 official record.

14 f. Promises performance which the defendant does not
15 intend to perform or knows will not be performed.

16 (3) ELDERLY PERSON. A person 60 years of age or
17 older.

18 (4) EMOTIONAL ABUSE. The intentional or reckless
19 infliction of emotional or mental anguish or the use of a
20 physical or chemical restraint, medication, or isolation as
21 punishment or as a substitute for treatment or care of any
22 elderly person.

23 (5) FINANCIAL EXPLOITATION. The use of deception,
24 intimidation, undue influence, force, or threat of force to
25 obtain or exert unauthorized control over an elderly person's
26 property with the intent to deprive the elderly person of his
27 or her property or the breach of a fiduciary duty to an

1 elderly person by the person's guardian, conservator, or agent
2 under a power of attorney which results in an unauthorized
3 appropriation, sale, or transfer of the elderly person's
4 property.

5 (6) INTIMIDATION. A threat of physical or emotional
6 harm to an elderly person, or the communication to an elderly
7 person that he or she will be deprived of food and nutrition,
8 shelter, property, prescribed medication, or medical care or
9 treatment.

10 (7) NEGLECT. The failure of a caregiver to provide
11 food, shelter, clothing, medical services, medication, or
12 health care for an elderly person.

13 (8) PERSON. A human being.

14 (9) UNDUE INFLUENCE. Domination, coercion,
15 manipulation, or any other act exercised by another person to
16 the extent that an elderly person is prevented from exercising
17 free judgment and choice.

18 Section 3. (a) A person commits the crime of elder
19 abuse and neglect in the first degree if he or she
20 intentionally abuses or neglects any elderly person and the
21 abuse or neglect causes serious physical injury to the elderly
22 person.

23 (b) Elder abuse and neglect in the first degree is a
24 Class A felony.

25 Section 4. (a) A person commits the crime of elder
26 abuse and neglect in the second degree if he or she does any
27 of the following:

1 (1) Intentionally abuses or neglects any elderly
2 person and the abuse or neglect causes physical injury to the
3 elderly person.

4 (2) Recklessly abuses or neglects any elderly person
5 and the abuse or neglect causes serious physical injury to the
6 elderly person.

7 (3) Recklessly abuses or neglects or emotionally
8 abuses any elderly person having been previously convicted of
9 elder abuse and neglect in the third degree in any court.

10 (b) Elder abuse and neglect in the second degree is
11 a Class B felony.

12 Section 5. (a) A person commits the crime of elder
13 abuse and neglect in the third degree if he or she does any of
14 the following:

15 (1) Recklessly abuses or neglects any elderly person
16 and the abuse or neglect causes physical injury.

17 (2) Emotionally abuses any elderly person.

18 (b) Elder abuse and neglect in the third degree is a
19 Class A misdemeanor.

20 Section 6. (a) The financial exploitation of an
21 elderly person in which the value of the property taken
22 exceeds two thousand five hundred dollars (\$2,500) constitutes
23 financial exploitation of the elderly person in the first
24 degree.

25 (b) Financial exploitation of an elderly person in
26 the first degree is a Class B felony.

1 Section 7. (a) The financial exploitation of an
2 elderly person in which the value of the property taken
3 exceeds five hundred dollars (\$500) but does not exceed two
4 thousand five hundred dollars (\$2,500) constitutes financial
5 exploitation of the elderly person in the second degree.

6 (b) Financial exploitation of an elderly person in
7 the second degree is a Class C felony.

8 Section 8. (a) The financial exploitation of an
9 elderly person in which the value of the property taken does
10 not exceed five hundred dollars (\$500) constitutes financial
11 exploitation of the elderly person in the third degree.

12 (b) Financial exploitation of an elderly person in
13 the third degree is a Class A misdemeanor.

14 Section 9. (a) In any prosecution brought for
15 financial exploitation of an elderly person, the crime shall
16 be considered to be committed in any county in which any part
17 of the crime took place, regardless of whether the defendant
18 was ever actually present in that county, or in the county of
19 residence of the person who is the subject of the financial
20 exploitation.

21 (b) Any prosecution brought for financial
22 exploitation of an elderly person shall be commenced within
23 seven years after the commission of the offense.

24 (c) It shall not be a defense to financial
25 exploitation of an elderly person that the accused reasonably
26 believed that the victim was not an elderly person.

1 Section 10. Any person or entity acting pursuant to
2 this act in reporting or investigating any report of abuse,
3 neglect, or financial exploitation of an elderly person, or
4 participating in a judicial proceeding resulting therefrom,
5 shall be immune from any civil liability that might otherwise
6 be incurred or imposed as a result of the report,
7 investigation, or participation, unless the person or entity
8 acted recklessly, in bad faith, or with malicious purpose.

9 Section 11. Nothing in this act shall be construed
10 to limit the remedies available to the victim pursuant to any
11 state law relating to domestic violence, the Adult Protective
12 Services Act of 1976, or any other applicable law.

13 Section 12. No physician, as defined under Section
14 34-24-50.1 of the Code of Alabama 1975, who is licensed to
15 practice medicine in this state, shall be subject to Sections
16 3, 4, and 5 of this act for any acts or omissions constituting
17 the practice of medicine.

18 Section 13. The provisions of this act are
19 severable. If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 which remains.

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 05-FEB-13

Read for the second time and placed on the calen-
dar 1 amendment..... 07-FEB-13

Read for the third time and passed as amended 19-FEB-13

Yeas 28
Nays 0

Patrick Harris
Secretary