

1 HB105  
2 215018-3  
3 By Representatives Gaston, Drummond, McClammy, Hall,  
4 Ledbetter, Marques, Ingram, Sanderford, Stadthagen, Bedsole,  
5 Robbins, Givan, Pettus, Howard, Shiver, Faust, Coleman, Hurst,  
6 Holmes, Warren, Hollis, McCutcheon, Stringer and Standridge  
7 RFD: Judiciary  
8 First Read: 11-JAN-22

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT

7  
8 Relating to abuse; to amend Section 38-9-8, Code of  
9 Alabama 1975; to establish a registry for individuals  
10 convicted of certain crimes or found to have committed certain  
11 acts of abuse against certain individuals; to require certain  
12 care providers to query the registry for employees and  
13 prospective employees; to require the Department of Human  
14 Resources to adopt rules; to establish criminal penalties; and  
15 in connection therewith to have as its purpose or effect the  
16 requirement of a new or increased expenditure of local funds  
17 within the meaning of Amendment 621 of the Constitution of  
18 Alabama of 1901, as amended by Amendment 890, now appearing as  
19 Section 111.05 of the Official Recompilation of the  
20 Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall be known and may be cited  
23 as "Shirley's Law."

24 Section 2. Section 38-9-8, Code of Alabama 1975, is  
25 amended to read as follows:

26 "§38-9-8.

1           "(a) All physicians and other practitioners of the  
2 healing arts or any caregiver having reasonable cause to  
3 believe that any protected person has been subjected to  
4 physical abuse, neglect, exploitation, sexual abuse, or  
5 emotional abuse shall report or cause a report to be made as  
6 follows:

7           "(1) An oral report, by telephone or otherwise,  
8 shall be made immediately, followed by a written report, to  
9 the county department of human resources or to the chief of  
10 police of the city or city and county, or to the sheriff of  
11 the county if the observation is made in an unincorporated  
12 territory, except that reports of a nursing home employee who  
13 abuses, neglects, or misappropriates the property of a nursing  
14 home resident shall be made to the Department of Public  
15 Health. The requirements to report suspicion of suspected  
16 abuse, neglect, or misappropriation of property of a nursing  
17 home resident by an employee of a nursing home shall be deemed  
18 satisfied if the report is made in accordance with the rules  
19 of the State Board of Health.

20           "(2) Within seven days following an oral report, an  
21 investigation of any alleged abuse, neglect, exploitation,  
22 sexual abuse, or emotional abuse shall be made by the county  
23 department of human resources or the law enforcement official,  
24 whichever receives the report, and a written report prepared  
25 which includes the following:

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

1            "b. Nature and extent of injury suffered by the  
2 person.

3            "c. Any other facts or circumstances known to the  
4 reporter which may aid in the determination of appropriate  
5 action.

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

9            "(c) The county department of human resources shall  
10 not be required to investigate any report of abuse, neglect,  
11 exploitation, sexual abuse, or emotional abuse that occurs in  
12 any facility owned and operated by the Alabama Department of  
13 Corrections or the Alabama Department of Mental Health.

14            "(d) Notwithstanding the foregoing, the Department  
15 of Public Health shall investigate all reports that a nursing  
16 home employee has abused or neglected a nursing home resident,  
17 or misappropriated the property of a nursing home resident, in  
18 accordance with the rules of the State Board of Health and the  
19 federal regulations and guidelines of the Medicaid and  
20 Medicare programs. The Department of Public Health shall  
21 investigate the complaints in accordance with the procedures  
22 and time frames established by the agency. A county department  
23 of human resources shall not be required to investigate the  
24 complaints.

25            "(e) An individual required to make a report  
26 pursuant to subsection (a) who knowingly fails to make a  
27 report shall be guilty of a Class C misdemeanor."

1           Section 3. For the purposes of Sections 2 through 6,  
2 the following terms have the following meanings:

3           (1) ABUSE. The same meaning as in Section 38-9-2,  
4 Code of Alabama 1975.

5           (2) ADULT IN NEED OF PROTECTIVE SERVICES. The same  
6 meaning as in Section 38-9-2, Code of Alabama 1975.

7           (3) ELDER ABUSE. The same meaning as in Section  
8 38-9F-3, Code of Alabama 1975.

9           (4) ELDERLY PERSON. An individual 60 years of age or  
10 older.

11           (5) EMOTIONAL ABUSE. The intentional or reckless  
12 infliction of emotional or mental anguish, or the use of a  
13 physical or chemical restraint, medication, or isolation as  
14 punishment or as a substitute for treatment or care of any  
15 elderly person or adult in need of protective services.

16           (6) EMPLOYEE. An individual who is either:

17           a. Hired directly or through a contract by a service  
18 provider who has duties that involve, or may involve,  
19 one-on-one contact with a patient, resident, or client.

20           b. A volunteer who has duties that involve, or may  
21 involve, one-on-one contact with a patient, resident, or  
22 client.

23           (7) EXPLOITATION. The same meaning as in Section  
24 38-9-2, Code of Alabama 1975.

25           (8) FINANCIAL EXPLOITATION. Any of the following:

1           a. The wrongful or unauthorized taking, withholding,  
2 appropriation, or use of money, assets, or property of an  
3 elderly person or an adult in need of protective services.

4           b. The use of deception, intimidation, undue  
5 influence, force, or threat of force to obtain or exert  
6 unauthorized control over an elderly person's money, assets,  
7 or property or the money, assets, or property of an adult in  
8 need of protective services with the intent to deprive that  
9 individual of his or her money, assets, or property.

10          c. The breach of a fiduciary duty to an elderly  
11 person or an adult in need of protective services under a  
12 power of attorney or through a conservatorship or guardianship  
13 which results in an unauthorized appropriation, sale, or  
14 transfer of the individual's money, assets, or property.

15          (9) INTIMIDATION. A threat of physical or emotional  
16 harm to an elderly person or an adult in need of protective  
17 services, or the communication to an elderly person or adult  
18 in need of protective services that he or she will be deprived  
19 of food and nutrition, shelter, property, prescribed  
20 medication, or medical care or treatment.

21          (10) NEGLECT. The same meaning as in Section 38-9-2,  
22 Code of Alabama 1975.

23          (11) SERVICE PROVIDER. Any of the following:

24           a. Assisted living communities or centers.

25           b. Specialty care assisted living communities or  
26 centers.

27           c. Home health agencies.

1                   d. Hospice programs or residential hospice  
2 facilities.

3                   e. Hospitals.

4                   f. Long-term care facilities.

5                   g. Skilled nursing facilities.

6                   h. Rehabilitation facilities.

7                   ~~i. Group homes and other residential facilities~~  
8 ~~serving adults in need of protective services.~~

9                   i. Group homes, other residential facilities, and  
10 community-based services serving adults in need of protective  
11 services, as designated by rules adopted by the Department of  
12 Human Resources, the Department of Mental Health, and the  
13 Alabama Department of Public Health.

14                  j. Foster homes that serve elderly persons or adults  
15 in need of protective services.

16                  (12) SEXUAL ABUSE. The same meaning as in Section  
17 38-9-2, Code of Alabama 1975.

18                  (13) UNDUE INFLUENCE. Domination, coercion,  
19 manipulation, or any other act exercised by another individual  
20 to the extent that an elderly person or adult in need of  
21 protective services is prevented from exercising free judgment  
22 and choice.

23                  Section 4. (a) The Department of Human Resources  
24 shall establish and maintain a registry, to be known as the  
25 Alabama Elder and Adult in Need of Protective Services Abuse  
26 Registry, containing the names of any individual for whom any  
27 of the following are true:

1           (1) The individual has been convicted of the crime  
2 of elder abuse and neglect in the first degree pursuant to  
3 Section 13A-6-192, Code of Alabama 1975.

4           (2) The individual has been convicted of the crime  
5 of elder abuse and neglect in the second degree pursuant to  
6 Section 13A-6-193, Code of Alabama 1975.

7           (3) The individual has been convicted of the crime  
8 of elder abuse and neglect in the third degree pursuant to  
9 Section 13A-6-194, Code of Alabama 1975.

10          (4) The individual has been convicted of the crime  
11 of financial exploitation of an elderly person in the first  
12 degree pursuant to Section 13A-6-195, Code of Alabama 1975.

13          (5) The individual has been convicted of the crime  
14 of financial exploitation of an elderly person in the second  
15 degree pursuant to Section 13A-6-196, Code of Alabama 1975.

16          (6) The individual has been convicted of the crime  
17 of financial exploitation of an elderly person in the third  
18 degree pursuant to Section 13A-6-197, Code of Alabama 1975.

19          (7) The individual has been convicted of any act of  
20 elder abuse as defined in Section 38-9F-3, Code of Alabama  
21 1975.

22          (8) An elder abuse protection order has been issued  
23 against the individual pursuant to Section 38-9F-4, Code of  
24 Alabama 1975.

25          (9) A protection from abuse order has been issued  
26 against the individual pursuant to Chapter 5 of Title 30, Code

1 of Alabama 1975, for the protection of an elderly person or an  
2 adult in need of protective services.

3 (10) The individual has been convicted of any act of  
4 abuse, neglect, or exploitation as described in Section  
5 38-9-7, Code of Alabama 1975.

6 ~~(11) The individual has been convicted of any crime~~  
7 ~~that involves the physical or mental injury or maltreatment of~~  
8 ~~an elderly person or an adult in need of protective services.~~

9 ~~(12)~~ (11) The individual has been found by the  
10 Department of Human Resources to have committed an act of  
11 abuse, elder abuse, emotional abuse, exploitation, financial  
12 exploitation, intimidation, neglect, sexual abuse, or undue  
13 influence against an elderly person or an adult in need of  
14 protective services.

15 (b) The Department of Human Resources shall  
16 establish and enforce reasonable rules governing the custody,  
17 use, and preservation of the reports and records of abuse,  
18 elder abuse, emotional abuse, exploitation, financial  
19 exploitation, intimidation, neglect, sexual abuse, or undue  
20 influence against an elderly person or an adult in need of  
21 protective services. These reports and records and related  
22 information or testimony shall be confidential, and shall not  
23 be used or disclosed for any purpose other than the following:

24 (1) For purposes of employment required by Section  
25 6.

26 (2) For investigation by a law enforcement agency.

1 (3) For use by a grand jury upon its determination  
2 that access to the reports and records is necessary in the  
3 conduct of its official business.

4 (4) For use by a court that finds the information is  
5 necessary for the determination of an issue before the court.

6 (5) For use by any guardian ad litem, guardian, or  
7 conservator authorized by a court to act as a representative  
8 for an elderly person or adult in need of protective services  
9 who is the subject of a report.

10 (6) For use by a physician who has before him or her  
11 an elderly person or an adult in need of protective services  
12 whom the physician reasonably suspects may be abused or  
13 neglected.

14 (7) For use by federal, state, or local governmental  
15 entities, social service agencies of another state, or any  
16 agent of these entities, having a need for the information in  
17 order to carry out their responsibilities under law to protect  
18 individuals from abuse and neglect.

19 (8) For public disclosure of the findings or  
20 information about the case of abuse or neglect that has  
21 resulted in a fatality. Information identifying by name  
22 persons other than the victim shall not be disclosed.

23 Section 5. (a) ~~A court of this state~~ The  
24 Administrative Office of Courts shall notify the Department of  
25 Human Resources of the criminal conviction or protection order  
26 concerning an individual under any of the following  
27 circumstances:

1           (1) An individual is found guilty of a crime  
2 perpetrated against an elderly person or an adult in need of  
3 protective services as described in Section 3.

4           (2) The court issues an elder abuse protection order  
5 against an individual pursuant to Section 38-9F-4, Code of  
6 Alabama 1975.

7           (3) The court issues a protection from abuse order  
8 against an individual pursuant to Chapter 5 of Title 30, Code  
9 of Alabama 1975, for the protection of an elderly person or an  
10 adult in need of protective services.

11           (b) (1) Any agency responsible for investigating  
12 reports of abuse, neglect, exploitation, sexual abuse, or  
13 emotional abuse under Section 38-9-8, Code of Alabama 1975,  
14 shall notify the Department of Human Resources of the outcome  
15 of the investigation if the report is determined to have been  
16 true or founded.

17           (2) In addition to documentation required by the  
18 department pursuant to subdivision (1), notification shall  
19 include the individual's last known mailing address and any  
20 other information that the agency determines is necessary to  
21 adequately identify the individual when inquiry to the Alabama  
22 Elder and Adult in Need of Protective Services Abuse Registry  
23 is made.

24           (c) The department shall adopt rules for the  
25 implementation of Sections 2 through 6. The rules shall  
26 include provisions requiring the submission of documentation  
27 for the purposes of notifying the department of a criminal

1 conviction, protection order, or report pursuant to  
2 subsections (a) and (b).

3 Section 6. (a) Upon receiving the notification  
4 described in Section 4, the Department of Human Resources, in  
5 addition to entering the individual's name and address on the  
6 Alabama Elder and Adult in Need of Protective Services Abuse  
7 Registry, shall enter information pertaining to the offense or  
8 offenses the individual was convicted of; or if an elder abuse  
9 protection order against the individual has been issued, or if  
10 a protection from abuse order against the individual has been  
11 issued for the protection of an elderly person or an adult in  
12 need of protective services, information pertaining to why the  
13 order was issued and the age of the victim.

14 (b) If the individual whose information is entered  
15 on the registry was not convicted of a crime but was found by  
16 the department to have otherwise committed acts of abuse,  
17 elder abuse, emotional abuse, exploitation, financial  
18 exploitation, intimidation, neglect, sexual abuse, or undue  
19 influence against an elderly person or an adult in need of  
20 protective services, the department, in addition to entering  
21 the individual's name and address on the registry, shall also  
22 enter information pertaining to the offense or offenses the  
23 individual was found by the department to have committed.

24 (c) The individual's information, once entered on  
25 the registry, shall remain on the registry even if the  
26 individual fulfills the obligations of any criminal sentencing  
27 against that individual, except as provided in subsection (d).

1           ~~(d) The Department of Human Resources shall adopt~~  
2 ~~rules requiring due process for individuals found by the~~  
3 ~~department to have committed acts of abuse, elder abuse,~~  
4 ~~emotional abuse, exploitation, financial exploitation,~~  
5 ~~intimidation, neglect, sexual abuse, or undue influence~~  
6 ~~against an elderly person or an adult in need of protective~~  
7 ~~services, but who were not criminally convicted or against~~  
8 ~~whom an elder abuse protection order or a protection from~~  
9 ~~abuse order was not entered. These rules shall provide a~~  
10 ~~process by which the individual's name and information may be~~  
11 ~~removed from the Alabama Elder and Adult in Need of Protective~~  
12 ~~Services Abuse Registry. The department shall implement these~~  
13 ~~rules no later than January 1, 2023.~~

14           (d) The Department of Human Resources shall, and the  
15 Department of Mental Health and the Alabama Department of  
16 Public Health may, adopt rules requiring due process for  
17 individuals found to have committed acts of abuse, elder  
18 abuse, emotional abuse, exploitation, financial exploitation,  
19 intimidation, neglect, sexual abuse, or undue influence  
20 against an elderly person or an adult in need of protective  
21 services. The Department of Human Resources, by rule, shall  
22 provide a process by which the individual's name and  
23 information may be removed from the Alabama Elder and Adult in  
24 Need of Protective Services Abuse Registry, and shall  
25 implement its rules providing for this process no later than  
26 January 1, 2023.

1                   Section 7. A service provider shall query the  
2 Alabama Elder and Adult in Need of Protective Services Abuse  
3 Registry with regard to an individual who is an employee or  
4 prospective employee of the provider to confirm whether any of  
5 the following are true:

6                   (1) The individual has been convicted of a crime  
7 described in Section 3.

8                   (2) An elder abuse protection order against the  
9 individual has been issued pursuant to Section 38-9F-4, Code  
10 of Alabama 1975.

11                   (3) A protection from abuse order has been issued  
12 against the individual pursuant to Chapter 5 of Title 30, Code  
13 of Alabama 1975, for the protection of an elderly person or an  
14 adult in need of protective services.

15                   (4) The Department of Human Resources has made a  
16 finding that the individual has committed an act of abuse,  
17 elder abuse, emotional abuse, exploitation, financial  
18 exploitation, intimidation, neglect, sexual abuse, or undue  
19 influence against an elderly person or an adult in need of  
20 protective services.

21                   Section 8. Although this bill would have as its  
22 purpose or effect the requirement of a new or increased  
23 expenditure of local funds, the bill is excluded from further  
24 requirements and application under Amendment 621, as amended  
25 by Amendment 890, now appearing as Section 111.05 of the  
26 Official Recompilation of the Constitution of Alabama of 1901,

1 as amended, because the bill defines a new crime or amends the  
2 definition of an existing crime.

3 Section 9. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 11-JAN-22

Read for the second time and placed  
on the calendar 2 amendments ..... 02-FEB-22

Read for the third time and passed  
as amended..... 09-FEB-22

Yeas 101, Nays 0, Abstains 1

Jeff Woodard  
Clerk