

1 HB105
2 215018-6
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
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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

"§38-9-8.

"(a) All physicians and other practitioners of the healing arts or any caregiver having reasonable cause to believe that any protected person has been subjected to physical abuse, neglect, exploitation, sexual abuse, or

1 emotional abuse shall report or cause a report to be made as
2 follows:

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

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

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

23 "b. Nature and extent of injury suffered by the
24 person.

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

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

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

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

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

1 Section 3. For the purposes of Sections ~~2 through 6~~
2 3 through 7, 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.

1 b. Specialty care assisted living communities or
2 centers.

3 c. Home health agencies.

4 d. Hospice programs or residential hospice
5 facilities.

6 e. Hospitals.

7 f. Long-term care facilities.

8 g. Skilled nursing facilities.

9 h. Rehabilitation facilities.

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

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

17 j. Foster homes that serve elderly persons or adults
18 in need of protective services.

19 (12) SEXUAL ABUSE. The same meaning as in Section
20 38-9-2, Code of Alabama 1975.

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

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

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

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

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

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

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

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

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

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

7 (9) A protection from abuse order has been issued
8 against the 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 (10) The individual has been convicted of any act of
12 abuse, neglect, or exploitation as described in Section
13 38-9-7, Code of Alabama 1975.

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

17 ~~(12)~~ (11) The individual has been found by the
18 Department of Human Resources to have committed an act of
19 abuse, elder abuse, emotional abuse, exploitation, financial
20 exploitation, intimidation, neglect, sexual abuse, or undue
21 influence against an elderly person or an adult in need of
22 protective services.

23 (b) The Department of Human Resources shall
24 establish and enforce reasonable rules governing the custody,
25 use, and preservation of the reports and records of abuse,

1 elder abuse, emotional abuse, exploitation, financial
2 exploitation, intimidation, neglect, sexual abuse, or undue
3 influence against an elderly person or an adult in need of
4 protective services. These reports and records and related
5 information or testimony shall be confidential, and shall not
6 be used or disclosed for any purpose other than the following:

7 (1) For purposes of employment required by Section ~~6~~
8 7.

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

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

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

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

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

23 (7) For use by federal, state, or local governmental
24 entities, social service agencies of another state, or any
25 agent of these entities, having a need for the information in

1 order to carry out their responsibilities under law to protect
2 individuals from abuse and neglect.

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

7 Section 5. (a) ~~A court of this state~~ The
8 Administrative Office of Courts shall notify the Department of
9 Human Resources of the criminal conviction or protection order
10 concerning an individual under any of the following
11 circumstances:

12 (1) An individual is found guilty of a crime
13 perpetrated against an elderly person or an adult in need of
14 protective services as described in Section ~~3~~ 4.

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

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

22 (b) (1) Any agency responsible for investigating
23 reports of abuse, neglect, exploitation, sexual abuse, or
24 emotional abuse under Section 38-9-8, Code of Alabama 1975,
25 shall notify the Department of Human Resources of the outcome

1 of the investigation if the report is determined to have been
2 true or founded.

3 (2) In addition to documentation required by the
4 department pursuant to subdivision (1), notification shall
5 include the individual's last known mailing address and any
6 other information that the agency determines is necessary to
7 adequately identify the individual when inquiry to the Alabama
8 Elder and Adult in Need of Protective Services Abuse Registry
9 is made.

10 (c) The department shall adopt rules for the
11 implementation of Sections ~~2 through 6~~ 3 through 7. The rules
12 shall include provisions requiring the submission of
13 documentation for the purposes of notifying the department of
14 a criminal conviction, protection order, or report pursuant to
15 subsections (a) and (b).

16 Section 6. (a) Upon receiving the notification
17 described in Section ~~4~~ 5, the Department of Human Resources,
18 in addition to entering the individual's name and address on
19 the Alabama Elder and Adult in Need of Protective Services
20 Abuse Registry, shall enter information pertaining to the
21 offense or offenses the individual was convicted of; or if an
22 elder abuse protection order against the individual has been
23 issued, or if a protection from abuse order against the
24 individual has been issued for the protection of an elderly
25 person or an adult in need of protective services, information

1 pertaining to why the order was issued and the age of the
2 victim.

3 (b) If the individual whose information is entered
4 on the registry was not convicted of a crime but was found by
5 the department to have otherwise committed acts of abuse,
6 elder abuse, emotional abuse, exploitation, financial
7 exploitation, intimidation, neglect, sexual abuse, or undue
8 influence against an elderly person or an adult in need of
9 protective services, the department, in addition to entering
10 the individual's name and address on the registry, shall also
11 enter information pertaining to the offense or offenses the
12 individual was found by the department to have committed.

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

17 ~~(d) The Department of Human Resources shall adopt~~
18 ~~rules requiring due process for individuals found by the~~
19 ~~department to have committed acts of abuse, elder abuse,~~
20 ~~emotional abuse, exploitation, financial exploitation,~~
21 ~~intimidation, neglect, sexual abuse, or undue influence~~
22 ~~against an elderly person or an adult in need of protective~~
23 ~~services, but who were not criminally convicted or against~~
24 ~~whom an elder abuse protection order or a protection from~~
25 ~~abuse order was not entered. These rules shall provide a~~

1 ~~process by which the individual's name and information may be~~
2 ~~removed from the Alabama Elder and Adult in Need of Protective~~
3 ~~Services Abuse Registry. The department shall implement these~~
4 ~~rules no later than January 1, 2023.~~

5 (d) The Department of Human Resources shall, and the
6 Department of Mental Health and the Alabama Department of
7 Public Health may, adopt rules requiring due process that
8 includes notice by certified mail or by personal service for
9 individuals found to have committed acts of abuse, elder
10 abuse, emotional abuse, exploitation, financial exploitation,
11 intimidation, neglect, sexual abuse, or undue influence
12 against an elderly person or an adult in need of protective
13 services. The Department of Human Resources, by rule, shall
14 provide a process by which the individual's name and
15 information may be removed from the Alabama Elder and Adult in
16 Need of Protective Services Abuse Registry, and shall
17 implement its rules providing for this process no later than
18 January 1, 2023.

19 Section 7. A service provider shall query the
20 Alabama Elder and Adult in Need of Protective Services Abuse
21 Registry with regard to an individual who is an employee or
22 prospective employee of the provider to confirm whether any of
23 the following are true:

24 (1) The individual has been convicted of a crime
25 described in Section ~~3~~ 4.

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

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

8 (4) The Department of Human Resources has made a
9 finding that the individual has committed an act of abuse,
10 elder abuse, emotional abuse, exploitation, financial
11 exploitation, intimidation, neglect, sexual abuse, or undue
12 influence against an elderly person or an adult in need of
13 protective services.

14 Section 8. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, as amended
18 by Amendment 890, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of Alabama of 1901,
20 as amended, because the bill defines a new crime or amends the
21 definition of an existing crime.

22 Section 9. 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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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 09-FEB-22, as amended.

Jeff Woodard
Clerk

Senate	09-MAR-22	Amended and Passed
House	15-MAR-22	Concurred in Senate Amendment