

1 HB105  
2 215018-2  
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

8 SYNOPSIS: This bill would establish a registry for  
9 individuals who have been convicted of certain  
10 crimes against elders or who are found by the  
11 Department of Human Resources to have committed  
12 various forms of elder abuse or abuse against  
13 adults in need of protective services.

14 This bill would require certain care  
15 providers to query the registry with regard to  
16 employees and prospective employees.

17 This bill would require the Department of  
18 Human Resources to adopt rules.

19 This bill would also establish criminal  
20 penalties.

21 Amendment 621 of the Constitution of Alabama  
22 of 1901, as amended by Amendment 890, now appearing  
23 as Section 111.05 of the Official Recompilation of  
24 the Constitution of Alabama of 1901, prohibits a  
25 general law whose purpose or effect would be to  
26 require a new or increased expenditure of local  
27 funds from becoming effective with regard to a

1 local governmental entity without enactment by a  
2 2/3 vote unless: it comes within one of a number of  
3 specified exceptions; it is approved by the  
4 affected entity; or the Legislature appropriates  
5 funds, or provides a local source of revenue, to  
6 the entity for the purpose.

7 The purpose or effect of this bill would be  
8 to require a new or increased expenditure of local  
9 funds within the meaning of the amendment. However,  
10 the bill does not require approval of a local  
11 governmental entity or enactment by a 2/3 vote to  
12 become effective because it comes within one of the  
13 specified exceptions contained in the amendment.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT  
18

19 Relating to abuse; to amend Section 38-9-8, Code of  
20 Alabama 1975; to establish a registry for individuals  
21 convicted of certain crimes or found to have committed certain  
22 acts of abuse against certain individuals; to require certain  
23 care providers to query the registry for employees and  
24 prospective employees; to require the Department of Human  
25 Resources to adopt rules; to establish criminal penalties; and  
26 in connection therewith to have as its purpose or effect the  
27 requirement of a new or increased expenditure of local funds

1 within the meaning of Amendment 621 of the Constitution of  
2 Alabama of 1901, as amended by Amendment 890, now appearing as  
3 Section 111.05 of the Official ReCompilation of the  
4 Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 38-9-8, Code of Alabama 1975, is  
7 amended to read as follows:

8 "§38-9-8.

9 "(a) All physicians and other practitioners of the  
10 healing arts or any caregiver having reasonable cause to  
11 believe that any protected person has been subjected to  
12 physical abuse, neglect, exploitation, sexual abuse, or  
13 emotional abuse shall report or cause a report to be made as  
14 follows:

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

1           "(2) Within seven days following an oral report, an  
2 investigation of any alleged abuse, neglect, exploitation,  
3 sexual abuse, or emotional abuse shall be made by the county  
4 department of human resources or the law enforcement official,  
5 whichever receives the report, and a written report prepared  
6 which includes the following:

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

8           "b. Nature and extent of injury suffered by the  
9 person.

10          "c. Any other facts or circumstances known to the  
11 reporter which may aid in the determination of appropriate  
12 action.

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

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

21          "(d) Notwithstanding the foregoing, the Department  
22 of Public Health shall investigate all reports that a nursing  
23 home employee has abused or neglected a nursing home resident,  
24 or misappropriated the property of a nursing home resident, in  
25 accordance with the rules of the State Board of Health and the  
26 federal regulations and guidelines of the Medicaid and  
27 Medicare programs. The Department of Public Health shall

1 investigate the complaints in accordance with the procedures  
2 and time frames established by the agency. A county department  
3 of human resources shall not be required to investigate the  
4 complaints.

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

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

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

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

14 (3) ELDER ABUSE. The same meaning as in Section  
15 38-9F-3, Code of Alabama 1975.

16 (4) ELDERLY PERSON. An individual 60 years of age or  
17 older.

18 (5) 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 or adult in need of protective services.

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

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

1           b. A volunteer who has duties that involve, or may  
2 involve, one-on-one contact with a patient, resident, or  
3 client.

4           (7) EXPLOITATION. The same meaning as in Section  
5 38-9-2, Code of Alabama 1975.

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

7           a. The wrongful or unauthorized taking, withholding,  
8 appropriation, or use of money, assets, or property of an  
9 elderly person or an adult in need of protective services.

10          b. The use of deception, intimidation, undue  
11 influence, force, or threat of force to obtain or exert  
12 unauthorized control over an elderly person's money, assets,  
13 or property or the money, assets, or property of an adult in  
14 need of protective services with the intent to deprive that  
15 individual of his or her money, assets, or property.

16          c. The breach of a fiduciary duty to an elderly  
17 person or an adult in need of protective services under a  
18 power of attorney or through a conservatorship or guardianship  
19 which results in an unauthorized appropriation, sale, or  
20 transfer of the individual's money, assets, or property.

21          (9) INTIMIDATION. A threat of physical or emotional  
22 harm to an elderly person or an adult in need of protective  
23 services, or the communication to an elderly person or adult  
24 in need of protective services that he or she will be deprived  
25 of food and nutrition, shelter, property, prescribed  
26 medication, or medical care or treatment.

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

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

4 a. Assisted living communities or centers.

5 b. Specialty care assisted living communities or  
6 centers.

7 c. Home health agencies.

8 d. Hospice programs or residential hospice  
9 facilities.

10 e. Hospitals.

11 f. Long-term care facilities.

12 g. Skilled nursing facilities.

13 h. Rehabilitation facilities.

14 i. Group homes and other residential facilities  
15 serving adults in need of protective services.

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

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

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

25 Section 3. (a) The Department of Human Resources  
26 shall establish and maintain a registry, to be known as the  
27 Alabama Elder and Adult in Need of Protective Services Abuse

1 Registry, containing the names of any individual for whom any  
2 of the following are true:

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

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

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

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

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

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

21 (7) The individual has been convicted of any act of  
22 elder abuse as defined in Section 38-9F-3, Code of Alabama  
23 1975.

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

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

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

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

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

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

26           (1) For purposes of employment required by Section  
27 6.

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

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

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

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

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

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

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

24 Section 4. (a) A court of this state shall notify  
25 the Department of Human Resources of the criminal conviction  
26 or protection order concerning an individual under any of the  
27 following 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 5. (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 Section 6. A service provider shall query the  
15 Alabama Elder and Adult in Need of Protective Services Abuse  
16 Registry with regard to an individual who is an employee or  
17 prospective employee of the provider to confirm whether any of  
18 the following are true:

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

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

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

1                   (4) The Department of Human Resources has made a  
2 finding that the individual has committed an act of abuse,  
3 elder abuse, emotional abuse, exploitation, financial  
4 exploitation, intimidation, neglect, sexual abuse, or undue  
5 influence against an elderly person or an adult in need of  
6 protective services.

7                   Section 7. Although this bill would have as its  
8 purpose or effect the requirement of a new or increased  
9 expenditure of local funds, the bill is excluded from further  
10 requirements and application under Amendment 621, as amended  
11 by Amendment 890, now appearing as Section 111.05 of the  
12 Official Recompilation of the Constitution of Alabama of 1901,  
13 as amended, because the bill defines a new crime or amends the  
14 definition of an existing crime.

15                   Section 8. This act shall become effective on the  
16 first day of the third month following its passage and  
17 approval by the Governor, or its otherwise becoming law.