

1 SB169
2 215018-4
3 By Senators Figures, Smitherman, Singleton, Coleman-Madison,
4 Hatcher, Beasley, Weaver, Sessions, Elliott, Whatley,
5 Chesteen, Williams, Jones, Orr, Shelnuttt, Chambliss, Reed,
6 Scofield, Givhan, McClendon, Butler, Price, Barfoot,
7 Livingston, Allen, Waggoner, Melson and Gudger
8 RFD: Judiciary
9 First Read: 02-FEB-22

1 SB169

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27 "§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 2. 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, other residential facilities, and
8 community-based services serving adults in need of protective
9 services, as designated by rules adopted by the Department of
10 Human Resources, the Department of Mental Health, and the
11 Alabama Department of Public Health.

12 j. Foster homes that serve elderly persons or adults
13 in need of protective services.

14 (12) SEXUAL ABUSE. The same meaning as in Section
15 38-9-2, Code of Alabama 1975.

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

21 Section 3. (a) The Department of Human Resources
22 shall establish and maintain a registry, to be known as the
23 Alabama Elder and Adult in Need of Protective Services Abuse
24 Registry, containing the names of any individual for whom any
25 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 found by the Department
7 of Human Resources to have committed an act of abuse, elder
8 abuse, emotional abuse, exploitation, financial exploitation,
9 intimidation, neglect, sexual abuse, or undue influence
10 against an elderly person or an adult in need of protective
11 services.

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

21 (1) For purposes of employment required by Section
22 6.

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

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

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

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

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

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

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

20 Section 4. (a) The Administrative Office of Courts
21 shall notify the Department of Human Resources of the criminal
22 conviction or protection order concerning an individual under
23 any of the following circumstances:

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

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

4 (3) The court issues a protection from abuse order
5 against an 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 (b) (1) Any agency responsible for investigating
9 reports of abuse, neglect, exploitation, sexual abuse, or
10 emotional abuse under Section 38-9-8, Code of Alabama 1975,
11 shall notify the Department of Human Resources of the outcome
12 of the investigation if the report is determined to have been
13 true or founded.

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

21 (c) The department shall adopt rules for the
22 implementation of Sections 2 through 6. The rules shall
23 include provisions requiring the submission of documentation
24 for the purposes of notifying the department of a criminal
25 conviction, protection order, or report pursuant to
26 subsections (a) and (b).

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

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

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

26 (d) The Department of Human Resources shall, and the
27 Department of Mental Health and the Alabama Department of

1 Public Health may, adopt rules requiring due process for
2 individuals found to have committed acts of abuse, elder
3 abuse, emotional abuse, exploitation, financial exploitation,
4 intimidation, neglect, sexual abuse, or undue influence
5 against an elderly person or an adult in need of protective
6 services. The Department of Human Resources, by rule, shall
7 provide a process by which the individual's name and
8 information may be removed from the Alabama Elder and Adult in
9 Need of Protective Services Abuse Registry, and shall
10 implement its rules providing for this process no later than
11 January 1, 2023.

12 Section 6. A service provider shall query the
13 Alabama Elder and Adult in Need of Protective Services Abuse
14 Registry with regard to an individual who is an employee or
15 prospective employee of the provider to confirm whether any of
16 the following are true:

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

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

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

26 (4) The Department of Human Resources has made a
27 finding that the individual has committed an act 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.

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

13 Section 8. This act shall become effective on the
14 first day of the third month following its passage and
15 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..... 02-FEB-22

Read for the second time and placed on the calen-
dar 2 amendments..... 09-FEB-22

Read for the third time and passed as amended 10-FEB-22

Yeas 24
Nays 0

Patrick Harris,
Secretary.