

1 SB75  
2 214974-2  
3 By Senator Barfoot  
4 RFD: Judiciary  
5 First Read: 13-JAN-22

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to probate courts; to amend Sections  
12 12-13-1, 38-9-2, and 38-9F-4, Code of Alabama 1975, and to add  
13 Sections 38-9-3.1 and 38-9-6.1 to the Code of Alabama 1975, to  
14 further provide for the original and general jurisdiction of  
15 probate courts; to provide probate courts with jurisdiction  
16 over certain proceedings under the Adult Protective Services  
17 Act of 1976; to authorize certain judges of probate to issue  
18 elder abuse protection orders under certain conditions; and to  
19 make nonsubstantive, technical revisions to update existing  
20 code language to current style.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 12-13-1 and 38-9-2, Code of  
23 Alabama 1975, are amended to read as follows:

24 "§12-13-1.

25 "(a) The probate court shall have original and  
26 general jurisdiction as to all matters mentioned in this  
27 section and shall have original and general jurisdiction as to

1 all other matters which may be conferred upon them by ~~statute~~  
2 law, unless the ~~statute~~ law so conferring jurisdiction  
3 expressly makes the jurisdiction special or limited.

4 "(b) The probate court shall have original and  
5 general jurisdiction over the following matters:

6 "(1) The probate of wills.

7 "(2) The granting of letters testamentary and of  
8 administration and the repeal or revocation of the same.

9 "(3) All controversies in relation to the right of  
10 executorship or of administration.

11 "(4) The settlement of accounts of executors and  
12 administrators.

13 "(5) The sale and disposition of the real and  
14 personal property belonging to and the distribution of  
15 intestate's estates.

16 "(6) The appointment and removal of guardians for  
17 minors and persons of unsound mind.

18 "(7) All controversies as to the right of  
19 guardianship and the settlement of guardians' accounts.

20 "(8) The allotment of dower in land in the cases  
21 provided by law.

22 "(9) The partition of lands within their counties.

23 "(10) The change of the name of any ~~person~~ adult  
24 residing in their county, upon his or her filing a declaration  
25 in writing, signed by him or her, stating the name by which he  
26 or she is known and the name to which he or she wishes it to  
27 be changed.

1           "(11) The change of the name of any minor residing  
2 in their county, upon the filing of a declaration in writing,  
3 signed by the parent or legal guardian of the minor, stating  
4 the name by which the minor is known and the name to which it  
5 is to be changed, along with the consent from all persons who  
6 have natural parental or legal rights of the minor. Consent of  
7 the minor is required if the minor is 14 or more years of age.  
8 This subdivision does not apply to a minor who is involved in  
9 a domestic relations matter that is pending in the circuit  
10 court or to a minor whose name is ordered by a court to be  
11 changed pursuant to the Uniform Parentage Act.

12           ~~"(11) Such other~~ (12) Other cases as jurisdiction is  
13 or may be given to ~~such~~ probate courts by law, ~~in all cases~~ to  
14 be exercised in the manner prescribed by law.

15           "(c) The probate court and circuit court shall have  
16 concurrent original and general jurisdiction of any  
17 proceedings under Chapter 9 of Title 38.

18           ~~"(c)~~ (d) All orders, judgments, and decrees of  
19 probate courts shall be accorded the same validity and  
20 presumptions which are accorded to judgments and orders of  
21 other courts of general jurisdiction.

22           "§38-9-2.

23           "For the purposes of this chapter, the following  
24 terms shall have the following meanings:

25           "(1) ABUSE. The infliction of physical pain, injury,  
26 or the willful deprivation by a caregiver or other person of  
27 services necessary to maintain mental and physical health.

1           "(2) ADULT IN NEED OF PROTECTIVE SERVICES. A person  
2 18 years of age or older whose behavior indicates that he or  
3 she is mentally incapable of adequately caring for himself or  
4 herself and his or her interests without serious consequences  
5 to himself or herself or others, or who, because of physical  
6 or mental impairment, is unable to protect himself or herself  
7 from abuse, neglect, exploitation, sexual abuse, or emotional  
8 abuse by others, and who has no guardian, relative, or other  
9 appropriate person able, willing, and available to assume the  
10 kind and degree of protection and supervision required under  
11 the circumstances.

12           "(3) CAREGIVER. An individual who has the  
13 responsibility for the care of a protected person as a result  
14 of family relationship or who has assumed the responsibility  
15 for the care of the person voluntarily, by contract, or as a  
16 result of the ties of friendship.

17           "(4) COURT. The circuit court or probate court.

18           "(5) DEPARTMENT. The Department of Human Resources  
19 of the State of Alabama.

20           "(6) EMOTIONAL ABUSE. The willful or reckless  
21 infliction of emotional or mental anguish or the use of a  
22 physical or chemical restraint, medication, or isolation as  
23 punishment or as a substitute for treatment or care of any  
24 protected person.

25           "(7) EMPLOYEE OF A NURSING HOME. A person permitted  
26 to perform work in a nursing home by the nursing home  
27 administrator or by a person or an entity with an ownership

1 interest in the facility, or by both. A person shall be  
2 considered an employee whether or not he or she receives  
3 compensation for the work performed.

4 "(8) EXPLOITATION. The expenditure, diminution, or  
5 use of the property, assets, or resources of a protected  
6 person without the express voluntary consent of that person or  
7 his or her legally authorized representative or the admission  
8 of or provision of care to a protected person who needs to be  
9 in the care of a licensed hospital by an unlicensed hospital  
10 after a court order obtained by the State Board of Health has  
11 directed closure of the unlicensed hospital. For the purpose  
12 of this section and Sections 38-9-6 and 38-9-7, the term  
13 "unlicensed hospital" shall have the meaning ascribed to it in  
14 Section 22-21-33, and the term "licensed hospital" shall have  
15 the meaning ascribed to it in Section 22-21-20.

16 "(9) INTENTIONALLY. A person acts intentionally with  
17 respect to a result or to conduct described by a statute  
18 defining an offense, when his or her purpose is to cause that  
19 result or to engage in that conduct.

20 "(10) INTERESTED PERSON. Any adult relative, friend,  
21 or guardian of a protected person, or any official or  
22 representative of a public or private agency, corporation, or  
23 association concerned with ~~his or her~~ the welfare of the  
24 protected person.

25 "(11) MISAPPROPRIATION OF PROPERTY OF A NURSING HOME  
26 RESIDENT. The deliberate misplacement or wrongful, temporary,  
27 or permanent use or withholding of belongings or money of a

1 resident of a nursing home without the consent of the  
2 resident.

3 "(12) NEGLECT. The failure of a caregiver to provide  
4 food, shelter, clothing, medical services, or health care for  
5 the person unable to care for himself or herself; or the  
6 failure of the person to provide these basic needs for himself  
7 or herself when the failure is the result of the person's  
8 mental or physical inability.

9 "(13) NEURODEGENERATIVE. Relating to or being a  
10 progressive loss of neurologic function.

11 "(14) NURSING FACILITY. A facility ~~which~~ that is  
12 licensed as a nursing home by the Alabama Department of Public  
13 Health pursuant to Article 2, Chapter 21, Title 22.

14 "(15) OTHER LIKE INCAPACITIES. Those conditions  
15 incurred as the result of accident or mental or physical  
16 illness, producing a condition ~~which~~ that substantially  
17 impairs an individual from adequately providing for his or her  
18 own care or protecting his or her own interests or protecting  
19 himself or herself from physical or mental injury or abuse.

20 "(16) PERSON. Any natural human being.

21 "(17) PHYSICAL INJURY. Impairment of physical  
22 condition or substantial pain.

23 "(18) PROTECTED PERSON. Any person ~~over~~ 18 years of  
24 age or older subject to protection under this chapter and not  
25 otherwise subject to the jurisdiction of the juvenile court or  
26 any person, including, but not limited to, persons with a  
27 neurodegenerative disease, persons with intellectual

1 disabilities and developmental disabilities, or any person  
2 ~~over~~ 18 years of age or older who is not otherwise subject to  
3 the jurisdiction of the juvenile court and who ~~that~~ is  
4 mentally or physically incapable of adequately caring for  
5 himself or herself and his or her interests without serious  
6 consequences to himself or herself or others.

7 "(19) PROTECTIVE SERVICES. Those services whose  
8 objective is to protect an incapacitated person from himself  
9 or herself and from others.

10 "(20) RECKLESSLY. A person acts recklessly with  
11 respect to a result or to a circumstance described by a  
12 statute defining an offense when he or she is aware of and  
13 consciously disregards a substantial and unjustifiable risk  
14 that the result will occur or that the circumstance exists.  
15 The risk shall be of such nature and degree that its disregard  
16 constitutes a gross deviation from the standard conduct that a  
17 reasonable person would observe in the situation. A person who  
18 creates a risk but is unaware of that risk solely by reason of  
19 voluntary intoxication, as defined in subdivision (e)(2) of  
20 Section 13A-3-2, acts recklessly with respect thereto.

21 "(21) SERIOUS PHYSICAL INJURY. Physical injury ~~which~~  
22 that creates a risk of death, or ~~which~~ that causes serious and  
23 protracted disfigurement, protracted impairment of health,  
24 protracted loss of the function of any bodily organ, or the  
25 impairment of the function of any bodily organ.



1           "(22) SEXUAL ABUSE. Any conduct that ~~is~~ constitutes  
2 a crime ~~as defined in Sections 13A-6-60 to 13A-6-70, inclusive~~  
3 under Article 4 of Chapter 6 of Title 13A."

4           Section 2. Section 38-9-3.1 is added to the Code of  
5 Alabama 1975, to read as follows:

6           §38-9-3.1.

7           The probate court and circuit court shall have  
8 concurrent original and general jurisdiction as to all matters  
9 mentioned in this chapter.

10          Section 3. Section 38-9-6.1 is added to the Code of  
11 Alabama 1975, to read as follows:

12          §38-9-6.1.

13          (a) Nothing in this section applies to actions  
14 pending in a probate court where the judge of probate is a  
15 member in good standing with the Alabama State Bar.

16          (b) At any time after the filing of a petition, but  
17 before a hearing contemplated in Section 38-9-6, any protected  
18 person, interested person, or party to an action under this  
19 chapter may remove the action from the probate court to the  
20 circuit court for the county in which the probate court is  
21 located by doing all of the following, which shall effect the  
22 removal:

23                 (1) Filing in the circuit court a notice of removal  
24 together with a copy of all processes, pleadings, and orders  
25 filed in the probate court.

26                 (2) Serving all parties to the action with a copy of  
27 the removal notice.

1           (3) Filing a copy of the removal notice with the  
2 clerk of the probate court.

3           (c) Upon completion of all of the requirements of  
4 subsection (b), jurisdiction shall immediately vest in the  
5 circuit court, and the probate court shall proceed no further.

6           Section 4. Section 38-9F-4, Code of Alabama 1975, is  
7 amended to read as follows:

8           "§38-9F-4.

9           "(a) The following courts shall have jurisdiction to  
10 issue elder abuse protection orders under this chapter:

11           "(1) Circuit courts.

12           "(2) A special circuit court judge appointed  
13 pursuant to Section 12-1-14 or 12-1-14.1.

14           "(3) A district court judge designated by a written  
15 standing order from the presiding circuit court judge.

16           "(4) A judge of probate designated by a written  
17 standing order from the presiding circuit court judge, where  
18 the judge of probate is a member in good standing with the  
19 Alabama State Bar.

20           "(b) An elder abuse protection order may be  
21 requested in any pending civil or domestic relations action,  
22 as an independent civil action, or in connection with the  
23 preliminary, final, or post-judgment relief in a civil action.

24           "(c) A petition for an elder abuse protection order  
25 may be filed in any of the following locations:

26           "(1) Where the plaintiff or defendant resides.

1                   "(2) Where the plaintiff is temporarily located if  
2 he or she has left his or her residence to avoid further  
3 abuse.

4                   "(3) Where the abuse occurred.

5                   "(d) There is no minimum period of residence for the  
6 plaintiff in the State of Alabama or in the county in which a  
7 case is filed.

8                   "(e) An elder abuse protection order shall be a  
9 status order that is specifically designed to protect the  
10 elderly person, and in personam jurisdiction over the  
11 defendant shall not be required in order to issue an ex parte  
12 or final order under this chapter."

13                   Section 5. 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..... 13-JAN-22

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

Read for the third time and passed as amended .... 16-FEB-22

Yeas 29  
Nays 0

Patrick Harris,  
Secretary.