

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

1 SB75

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4 ENROLLED, An Act,

5 Relating to probate courts; to amend Sections  
6 12-13-1, 38-9-2, and 38-9F-4, Code of Alabama 1975, and to add  
7 Sections 38-9-3.1 and 38-9-6.1 to the Code of Alabama 1975, to  
8 further provide for the original and general jurisdiction of  
9 probate courts; to provide probate courts with jurisdiction  
10 over certain proceedings under the Adult Protective Services  
11 Act of 1976; to authorize certain judges of probate to issue  
12 elder abuse protection orders under certain conditions; and to  
13 make nonsubstantive, technical revisions to update existing  
14 code language to current style.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§12-13-1.

19 "(a) The probate court shall have original and  
20 general jurisdiction as to all matters mentioned in this  
21 section and shall have original and general jurisdiction as to  
22 all other matters which may be conferred upon them by ~~statute~~  
23 law, unless the ~~statute~~ law so conferring jurisdiction  
24 expressly makes the jurisdiction special or limited.

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

3           "(1) The probate of wills.

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

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

8           "(4) The settlement of accounts of executors and  
9 administrators.

10          "(5) The sale and disposition of the real and  
11 personal property belonging to and the distribution of  
12 intestate's estates.

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

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

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

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

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

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

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

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

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

21           "(5) DEPARTMENT. The Department of Human Resources  
22 of the State of Alabama.

23           "(6) EMOTIONAL ABUSE. The willful or reckless  
24 infliction of emotional or mental anguish or the use of a  
25 physical or chemical restraint, medication, or isolation as

1 punishment or as a substitute for treatment or care of any  
2 protected person.

3 "(7) EMPLOYEE OF A NURSING HOME. A person permitted  
4 to perform work in a nursing home by the nursing home  
5 administrator or by a person or an entity with an ownership  
6 interest in the facility, or by both. A person shall be  
7 considered an employee whether or not he or she receives  
8 compensation for the work performed.

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

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

1           "(10) INTERESTED PERSON. Any adult relative, friend,  
2 or guardian of a protected person, or any official or  
3 representative of a public or private agency, corporation, or  
4 association concerned with ~~his or her~~ the welfare of the  
5 protected person.

6           "(11) MISAPPROPRIATION OF PROPERTY OF A NURSING HOME  
7 RESIDENT. The deliberate misplacement or wrongful, temporary,  
8 or permanent use or withholding of belongings or money of a  
9 resident of a nursing home without the consent of the  
10 resident.

11           "(12) NEGLECT. The failure of a caregiver to provide  
12 food, shelter, clothing, medical services, or health care for  
13 the person unable to care for himself or herself; or the  
14 failure of the person to provide these basic needs for himself  
15 or herself when the failure is the result of the person's  
16 mental or physical inability.

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

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

22           "(15) OTHER LIKE INCAPACITIES. Those conditions  
23 incurred as the result of accident or mental or physical  
24 illness, producing a condition ~~which~~ that substantially  
25 impairs an individual from adequately providing for his or her

1 own care or protecting his or her own interests or protecting  
2 himself or herself from physical or mental injury or abuse.

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

4 "(17) PHYSICAL INJURY. Impairment of physical  
5 condition or substantial pain.

6 "(18) PROTECTED PERSON. Any person ~~over~~ 18 years of  
7 age or older subject to protection under this chapter and not  
8 otherwise subject to the jurisdiction of the juvenile court or  
9 any person, including, but not limited to, persons with a  
10 neurodegenerative disease, persons with intellectual  
11 disabilities and developmental disabilities, or any person  
12 ~~over~~ 18 years of age or older who is not otherwise subject to  
13 the jurisdiction of the juvenile court and who ~~that~~ is  
14 mentally or physically incapable of adequately caring for  
15 himself or herself and his or her interests without serious  
16 consequences to himself or herself or others.

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

20 "(20) RECKLESSLY. A person acts recklessly with  
21 respect to a result or to a circumstance described by a  
22 statute defining an offense when he or she is aware of and  
23 consciously disregards a substantial and unjustifiable risk  
24 that the result will occur or that the circumstance exists.  
25 The risk shall be of such nature and degree that its disregard



1 constitutes a gross deviation from the standard conduct that a  
2 reasonable person would observe in the situation. A person who  
3 creates a risk but is unaware of that risk solely by reason of  
4 voluntary intoxication, as defined in subdivision (e)(2) of  
5 Section 13A-3-2, acts recklessly with respect thereto.

6 "(21) SERIOUS PHYSICAL INJURY. Physical injury ~~which~~  
7 that creates a risk of death, or ~~which that~~ causes serious and  
8 protracted disfigurement, protracted impairment of health,  
9 protracted loss of the function of any bodily organ, or the  
10 impairment of the function of any bodily organ.

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

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

16 §38-9-3.1.

17 The probate court and circuit court shall have  
18 concurrent original and general jurisdiction as to all matters  
19 mentioned in this chapter.

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

22 §38-9-6.1.

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

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

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

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

13           (3) Filing a copy of the removal notice with the  
14 clerk of the probate court.

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

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

20           "§38-9F-4.

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

23           "(1) Circuit courts.

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

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

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

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

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

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

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

17           "(3) Where the abuse occurred.

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

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

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

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB75

Senate 16-FEB-22

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,  
Secretary.

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House of Representatives  
Passed: 03-MAR-22

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By: Senator Barfoot