

1 SB29
2 146544-3
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 05-FEB-13
6 PFD: 12/18/2012

1 SB29

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4 ENROLLED, An Act,

5 Relating to crimes; to create the crimes of
6 financial exploitation of an elderly person and elder abuse
7 and neglect in the first, second, and third degree; and to
8 provide penalties.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited
11 as the Protecting Alabama's Elders Act.

12 Section 2. For purposes of this act, the following
13 terms shall have the following meanings:

14 (1) CAREGIVER. An individual who has the
15 responsibility for the care of an elderly person as a result
16 of family relationship or who has assumed the responsibility
17 for the care of the person voluntarily, for pecuniary gain, by
18 contract, or as a result of the ties of friendship.

19 (2) DECEPTION. Deception occurs when a person
20 knowingly:

21 a. Creates or confirms another's impression which is
22 false and which the defendant does not believe to be true.

23 b. Fails to correct a false impression which the
24 defendant previously has created or confirmed.

1 c. Fails to correct a false impression when the
2 defendant is under a duty to do so.

3 d. Prevents another from acquiring information
4 pertinent to the disposition of the property involved.

5 e. Sells or otherwise transfers or encumbers
6 property, failing to disclose a lien, adverse claim, or other
7 legal impediment to the enjoyment of the property, whether
8 that impediment is or is not valid, or is not a matter of
9 official record.

10 f. Promises performance which the defendant does not
11 intend to perform or knows will not be performed.

12 (3) ELDERLY PERSON. A person 60 years of age or
13 older.

14 (4) EMOTIONAL ABUSE. The intentional or reckless
15 infliction of emotional or mental anguish or the use of a
16 physical or chemical restraint, medication, or isolation as
17 punishment or as a substitute for treatment or care of any
18 elderly person.

19 (5) FINANCIAL EXPLOITATION. The use of deception,
20 intimidation, undue influence, force, or threat of force to
21 obtain or exert unauthorized control over an elderly person's
22 property with the intent to deprive the elderly person of his
23 or her property or the breach of a fiduciary duty to an
24 elderly person by the person's guardian, conservator, or agent
25 under a power of attorney which results in an unauthorized

1 appropriation, sale, or transfer of the elderly person's
2 property.

3 (6) INTIMIDATION. A threat of physical or emotional
4 harm to an elderly person, or the communication to an elderly
5 person that he or she will be deprived of food and nutrition,
6 shelter, property, prescribed medication, or medical care or
7 treatment.

8 (7) NEGLECT. The failure of a caregiver to provide
9 food, shelter, clothing, medical services, medication, or
10 health care for an elderly person.

11 (8) PERSON. A human being.

12 (9) UNDUE INFLUENCE. Domination, coercion,
13 manipulation, or any other act exercised by another person to
14 the extent that an elderly person is prevented from exercising
15 free judgment and choice.

16 Section 3. (a) A person commits the crime of elder
17 abuse and neglect in the first degree if he or she
18 intentionally abuses or neglects any elderly person and the
19 abuse or neglect causes serious physical injury to the elderly
20 person.

21 (b) Elder abuse and neglect in the first degree is a
22 Class A felony.

23 Section 4. (a) A person commits the crime of elder
24 abuse and neglect in the second degree if he or she does any
25 of the following:

1 (1) Intentionally abuses or neglects any elderly
2 person and the abuse or neglect causes physical injury to the
3 elderly person.

4 (2) Recklessly abuses or neglects any elderly person
5 and the abuse or neglect causes serious physical injury to the
6 elderly person.

7 (3) Recklessly abuses or neglects or emotionally
8 abuses any elderly person having been previously convicted of
9 elder abuse and neglect in the third degree in any court.

10 (b) Elder abuse and neglect in the second degree is
11 a Class B felony.

12 Section 5. (a) A person commits the crime of elder
13 abuse and neglect in the third degree if he or she does any of
14 the following:

15 (1) Recklessly abuses or neglects any elderly person
16 and the abuse or neglect causes physical injury.

17 (2) Recklessly emotionally abuses any elderly
18 person.

19 (b) Elder abuse and neglect in the third degree is a
20 Class A misdemeanor.

21 Section 6. (a) The financial exploitation of an
22 elderly person in which the value of the property taken
23 exceeds two thousand five hundred dollars (\$2,500) constitutes
24 financial exploitation of the elderly person in the first
25 degree.

1 (b) Financial exploitation of an elderly person in
2 the first degree is a Class B felony.

3 Section 7. (a) The financial exploitation of an
4 elderly person in which the value of the property taken
5 exceeds five hundred dollars (\$500) but does not exceed two
6 thousand five hundred dollars (\$2,500) constitutes financial
7 exploitation of the elderly person in the second degree.

8 (b) Financial exploitation of an elderly person in
9 the second degree is a Class C felony.

10 Section 8. (a) The financial exploitation of an
11 elderly person in which the value of the property taken does
12 not exceed five hundred dollars (\$500) constitutes financial
13 exploitation of the elderly person in the third degree.

14 (b) Financial exploitation of an elderly person in
15 the third degree is a Class A misdemeanor.

16 Section 9. (a) In any prosecution brought for
17 financial exploitation of an elderly person, the crime shall
18 be considered to be committed in any county in which any part
19 of the crime took place, regardless of whether the defendant
20 was ever actually present in that county, or in the county of
21 residence of the person who is the subject of the financial
22 exploitation.

23 (b) Any prosecution brought for financial
24 exploitation of an elderly person shall be commenced within
25 seven years after the commission of the offense.

1 (c) It shall not be a defense to financial
2 exploitation of an elderly person that the accused reasonably
3 believed that the victim was not an elderly person.

4 Section 10. Any person or entity acting pursuant to
5 this act in reporting or investigating any report of abuse,
6 neglect, or financial exploitation of an elderly person, or
7 participating in a judicial proceeding resulting therefrom,
8 shall be immune from any civil liability that might otherwise
9 be incurred or imposed as a result of the report,
10 investigation, or participation, unless the person or entity
11 acted recklessly, in bad faith, or with malicious purpose.

12 Section 11. Nothing in this act shall be construed
13 to limit the remedies available to the victim pursuant to any
14 state law relating to domestic violence, the Adult Protective
15 Services Act of 1976, or any other applicable law.

16 Section 12. No physician, as defined under Section
17 34-24-50.1 of the Code of Alabama 1975, who is licensed to
18 practice medicine in this state, shall be subject to Sections
19 3, 4, and 5 of this act for any acts or omissions constituting
20 the practice of medicine.

21 Section 13. The provisions of this act are
22 severable. If any part of this act is declared invalid or
23 unconstitutional, that declaration shall not affect the part
24 which remains.

1 Section 14. 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

Speaker of the House of Representatives

SB29

Senate 19-FEB-13

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

Patrick Harris
Secretary

House of Representatives
Amended and passed 20-MAY-13

Senate concurred in House amendment 20-MAY-13

By: Senator Ward