

1           HB45  
2        146815-1  
3        By Representative DeMarco  
4        RFD: Judiciary  
5        First Read: 05-FEB-13  
6        PFD: 01/24/2013

1 146815-1:n:12/31/2012:ANS/tan LRS2012-5973

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8 SYNOPSIS: This bill would create the crimes of elder  
9 abuse and neglect in the first, second, and third  
10 degree and provide other penalties. The bill would  
11 also create the crimes of financial exploitation of  
12 an elderly person in the first, second, and third  
13 degree and provide penalties.

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15 A BILL

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TO BE ENTITLED

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AN ACT

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19 Relating to crimes; to create the crimes of  
20 financial exploitation of an elderly person and elder abuse  
21 and neglect in the first, second, and third degree; and to  
22 provide penalties.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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Section 2. For purposes of this act, the following  
26 terms shall have the following meanings:  
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(1) CAREGIVER. An individual who has the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, for pecuniary gain, by contract, or as a result of the ties of friendship.

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

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

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

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

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

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

f. Promises performance which the defendant does not intend to perform or knows will not be performed. Failure to perform, standing alone, however, is not proof that the defendant did not intend to perform.

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

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

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

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

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

(8) PERSON. Any natural human being.

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

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

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

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

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

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

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

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

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

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

(2) Emotionally abuses any elderly person.

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

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

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

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

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

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

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

Section 9. (a) In any prosecution brought for financial exploitation of an elderly person, the crime shall be considered to be committed in any county in which any part of the crime took place, regardless of whether the defendant was ever actually present in that county, or in the county of

1                   residence of the person who is the subject of the financial  
2                   exploitation.

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

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

9                   Section 10. Any person, firm, corporation, or  
10                  official acting pursuant to this act, participating in a  
11                  judicial proceeding resulting therefrom, or acting pursuant to  
12                  any report of abuse, neglect, or financial exploitation of an  
13                  elderly person, in doing so, shall be immune from any civil  
14                  liability that might otherwise be incurred or imposed, unless  
15                  such person acted in bad faith or with malicious purpose.

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

20                  Section 12. The provisions of this act are  
21                  severable. If any part of this act is declared invalid or  
22                  unconstitutional, that declaration shall not affect the part  
23                  which remains.

24                  Section 13. This act shall become effective on the  
25                  first day of the third month following its passage and  
26                  approval by the Governor, or its otherwise becoming law.