

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

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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
16 TO BE ENTITLED
17 AN ACT

18
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.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

1 (1) CAREGIVER. An individual who has the
2 responsibility for the care of an elderly person as a result
3 of family relationship or who has assumed the responsibility
4 for the care of the person voluntarily, for pecuniary gain, by
5 contract, or as a result of the ties of friendship.

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

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

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

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

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

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

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

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

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

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

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

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

23 (8) PERSON. Any natural human being.

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

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

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

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

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

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

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

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

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

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

27 (2) Emotionally abuses any elderly person.

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

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

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

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

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

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

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

22 Section 9. (a) In any prosecution brought for
23 financial exploitation of an elderly person, the crime shall
24 be considered to be committed in any county in which any part
25 of the crime took place, regardless of whether the defendant
26 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.