

1 SB274
2 181709-2
3 By Senators Smitherman, Singleton, Dunn, Coleman-Madison and
4 Beasley
5 RFD: Judiciary
6 First Read: 07-MAR-17

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, elder abuse and neglect
9 and financial exploitation of an elderly person are
10 crimes.

11 This bill would establish the Elder Abuse
12 Protection Order and Enforcement Act.

13 This bill would provide for the issuance of
14 elder abuse protection orders to provide greater
15 protection and assistance to victims of elder
16 abuse.

17 This bill would define elder abuse and other
18 terms.

19 This bill would authorize certain
20 individuals in addition to the victim to petition
21 for an elder abuse protection order.

22 This bill would provide penalties for
23 violating an elder abuse protection order.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. However,
13 the bill does not require approval of a local
14 governmental entity or enactment by a 2/3 vote to
15 become effective because it comes within one of the
16 specified exceptions contained in the amendment.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to elder abuse; to amend Section 15-10-3,
23 Code of Alabama 1975; to establish the Elder Abuse Protection
24 Order and Enforcement Act; to provide for the issuance of
25 elder abuse protection orders; to define terms; to authorize
26 certain individuals in addition to the victim to petition for
27 an elder abuse protection order; to provide penalties for

1 violating an elder abuse protection order; and in connection
2 therewith would have as its purpose or effect the requirement
3 of a new or increased expenditure of local funds within the
4 meaning of Amendment 621 of the Constitution of Alabama of
5 1901, now appearing as Section 111.05 of the Official
6 Recompilation of the Constitution of Alabama of 1901, as
7 amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 1 to 11, inclusive, shall be
10 known and may be cited as the Elder Abuse Protection Order and
11 Enforcement Act.

12 Section 2. Sections 1 to 11, inclusive, shall be
13 liberally construed and applied to promote all of the
14 following purposes:

15 (1) To maximize protection of victims of elder
16 abuse.

17 (2) To create a flexible and expeditious method of
18 obtaining a protection order against an individual who has
19 committed elder abuse.

20 (3) To expand the ability of law enforcement
21 officers to assist victims, to enforce the law effectively in
22 cases of elder abuse, and to prevent further incidents of
23 abuse.

24 Section 3. For purposes of Sections 1 to 11,
25 inclusive, the following terms shall have the following
26 meanings:

1 (1) CAREGIVER. The term as defined in Section
2 13A-6-191, Code of Alabama 1975.

3 (2) ELDER ABUSE. The commission of any of the
4 following acts or the intent to commit any of the following
5 acts against an elderly person:

6 a. Abuse, as defined in Section 38-9-2, Code of
7 Alabama 1975.

8 b. Arson, as defined in Sections 13A-7-40 to
9 13A-7-43, inclusive, Code of Alabama 1975.

10 c. Assault, as defined in Sections 13A-6-20 to
11 13A-6-22, inclusive, Code of Alabama 1975.

12 d. Criminal coercion, as defined in Section 13A-6-25
13 Code of Alabama 1975.

14 e. Criminal trespass as defined in Sections 13A-7-2
15 to 13A-7-4.1, inclusive, Code of Alabama 1975.

16 f. Emotional abuse, as defined in Section 13A-6-191,
17 Code of Alabama 1975.

18 g. Financial exploitation, as defined in Section
19 13A-6-191, Code of Alabama 1975.

20 h. Harassment, as defined in Section 13A-11-8, Code
21 of Alabama 1975.

22 i. Kidnapping, as defined in Sections 13A-6-43 and
23 13A-6-44, Code of Alabama 1975.

24 j. Menacing, as defined in Section 13A-6-23, Code of
25 Alabama 1975.

26 k. Reckless endangerment, as defined in Section
27 13A-6-24, Code of Alabama 1975.

1 1. Sexual abuse, as defined as any of the acts in
2 Sections 13A-6-60 to 13A-6-68, Code of Alabama 1975.

3 m. Stalking, as defined in Sections 13A-6-90 to
4 13A-6-91.1, inclusive, Code of Alabama 1975.

5 n. Theft, as defined in Sections 13A-8-2 to 13A-8-5,
6 inclusive, Code of Alabama 1975.

7 o. Unlawful imprisonment, as defined in Sections
8 13A-6-41 and 13A-6-42, Code of Alabama 1975.

9 (3) ELDER ABUSE PROTECTION ORDER or PROTECTION
10 ORDER. An order issued pursuant to Sections 1 to 11,
11 inclusive, including all of the following:

12 a. A restraining order, injunctive order, or order
13 of release from custody issued by a circuit, district,
14 municipal, or probate court that seeks to protect an elderly
15 person.

16 b. An order issued by a circuit, district, or
17 municipal court that places conditions on the pre-trial
18 release of a defendant in a criminal case, which may include
19 provisions of bail pursuant to Section 15-13-190, Code of
20 Alabama 1975, that seeks to protect an elderly person.

21 (4) ELDERLY PERSON. A person 60 years of age or
22 older.

23 (5) PLAINTIFF. An elderly person in need of
24 protection from elder abuse.

25 (6) THREAT. Any word or action, expressed or
26 implied, made to cause a plaintiff to fear for his or her
27 safety or for the safety of another person.

1 (7) VIOLATION. The knowing commission of any act or
2 conduct prohibited by an elder abuse protection order or any
3 willful failure to abide by its terms.

4 Section 4. (a) The following courts shall have
5 jurisdiction to issue elder abuse protection orders under this
6 act:

7 (1) Circuit courts.

8 (2) A special circuit court judge appointed pursuant
9 to Section 12-1-14 or 12-1-14.1, Code of Alabama 1975.

10 (3) A district court judge designated by a written
11 standing order from the presiding circuit court judge.

12 (b) An elder abuse protection order may be requested
13 in any pending civil or domestic relations action, as an
14 independent civil action, or in connection with the
15 preliminary, final, or post-judgment relief in a civil action.

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

18 (1) Where the plaintiff or defendant resides.

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

21 (3) Where the abuse occurred.

22 (d) There is no minimum period of residence for the
23 plaintiff in the State of Alabama or in the county in which a
24 case is filed.

25 (e) An elder abuse protection order shall be a
26 status order that is specifically designed to protect the
27 elderly person, and in personam jurisdiction over the

1 defendant shall not be required in order to issue an ex parte
2 or final order under this act.

3 Section 5. (a) The plaintiff's right to relief under
4 this act shall not be affected by his or her leaving the
5 residence or household to avoid further abuse.

6 (b) The remedies and procedures provided in this act
7 are in addition to and no in lieu of any other judicial
8 protection actions that may be initiated by the victim in any
9 other forum.

10 (c) Any elder abuse protection order issued in this
11 state shall be effective and enforceable in every county and
12 jurisdiction in this state.

13 (d) An order issued by a court of another state,
14 tribal nation, or territory that provides the relief or
15 protection similar to an elder abuse protection order under
16 Sections 1 to 11, inclusive, shall be accorded full faith and
17 credit and enforced as if it were an order of this state.

18 Section 6. (a) If a plaintiff lacks the physical or
19 mental capacity to seek protection for himself or herself, the
20 following may file a sworn petition for relief on behalf of
21 the plaintiff:

22 (1) A court appointed guardian. The petition must
23 include a copy of the court order appointing the petitioner as
24 the plaintiff's guardian.

25 (2) A court appointed conservator. The petition must
26 include a copy of the court order appointing the petitioner as
27 the plaintiff's conservator.

1 (3) A temporary guardian appointed pursuant to
2 Section 26-2A-107, Code of Alabama 1975. The petition must
3 include a copy of the court order appointing the petitioner as
4 the plaintiff's temporary guardian.

5 (4) An agent, co-agent, or successor agent appointed
6 under the plaintiff's validly executed power of attorney who
7 acts within the authority of the power of attorney. The
8 petition shall include a copy of the power of attorney.

9 (5) A health care proxy appointed under the
10 plaintiff's validly executed Advance Directive for Health
11 Care, or similar document, who acts within the authority of
12 the designation. The petition shall include a copy of the
13 Advance Directive for Health Care or similar document.

14 (6) An interested person who has the authority to
15 petition for protective placement or other protective services
16 under Section 38-9-6, Code of Alabama 1975.

17 (b) A sworn petition shall allege the incidents of
18 abuse and the specific facts and circumstances that form the
19 basis upon which relief is sought.

20 (c) Standardized petitions for actions pursuant to
21 this act shall be made available through the circuit clerk's
22 offices throughout the state. A circuit clerk shall not be
23 required to provide assistance to individuals in completing
24 the forms or in presenting the petitioner's case to the court.

25 (d) The elderly person for whom the petition is
26 filed must be served with the petition pursuant to the Alabama
27 Rules of Civil Procedure.

1 (e) The court may not assess court costs or other
2 fees for the filing or service of a petition or the issuance
3 of a witness subpoena under this act against a petitioner or
4 plaintiff. Costs and fees may be assessed against the
5 defendant at the discretion of the court.

6 Section 7. (a) The court shall hold a hearing after
7 the filing of a petition under this act upon the request of
8 the defendant or within 10 days of the perfection of service.
9 A final hearing shall be set at which the standard of proof
10 shall be a preponderance of the evidence. If the defendant has
11 not been served, a final hearing may be continued to allow for
12 service to be perfected.

13 (b) The court may enter such temporary ex parte
14 protection orders as it deems necessary to protect the
15 plaintiff from abuse. The court shall grant or deny a petition
16 for a temporary ex parte protection order filed under this act
17 within three business days of the filing of the petition. Any
18 granted temporary ex parte protection order shall be effective
19 until the final hearing date.

20 (c) If a final hearing under subsection (a) is
21 continued, the court may make or extend temporary ex parte
22 protection orders under subsection (b) as it deems reasonably
23 necessary.

24 Section 8. (a) If it appears from a petition for an
25 elder abuse protection order or a petition to modify an elder
26 abuse protection order that elder abuse has occurred or a

1 modification is warranted, the court may do either of the
2 following:

3 (1) Without notice or hearing, immediately issue an
4 ex parte elder abuse protection order or modify an ex parte
5 elder abuse protection order as it deems necessary.

6 (2) After providing notice as required by the
7 Alabama Rules of Civil Procedure, issue an elder abuse
8 protection order or modify an elder abuse protection order
9 after a hearing whether or not the defendant appears.

10 (b) Based upon a risk of imminent potential harm to
11 the plaintiff, a court may grant one or more of the following
12 ex parte forms of relief without prior notice to the defendant
13 or a hearing:

14 (1) Enjoin the defendant from threatening to commit
15 or committing acts of elder abuse against the plaintiff and
16 any other individual designated by the court.

17 (2) Restrain and enjoin the defendant from
18 harassing, stalking, annoying, telephoning, contacting, or
19 otherwise communicating, either directly or indirectly, with
20 the plaintiff or threatening or engaging in conduct that would
21 place the plaintiff or any other individual designated by the
22 court in reasonable fear of bodily injury.

23 (3) Order the defendant to stay away from the
24 plaintiff's residence, place of employment, or any specified
25 place frequented by the plaintiff that the defendant has no
26 legitimate reason to frequent.

1 (4) Remove and exclude the defendant from the
2 residence of the plaintiff, regardless of ownership of the
3 residence.

4 (5) Order possession and use of an automobile or
5 other essential personal effects, regardless of ownership, and
6 direct the appropriate law enforcement officer to accompany
7 the plaintiff to the residence of the plaintiff or other
8 specified locations as necessary to protect the plaintiff from
9 abuse.

10 (6) Prohibit the defendant from transferring,
11 concealing, encumbering, or otherwise disposing of specified
12 property mutually owned or leased by the parties or in which
13 the plaintiff had an ownership interest within the last 12
14 months.

15 (7) Prohibit the defendant from transferring the
16 funds, benefits, property, resources, belongings, or assets of
17 the plaintiff to any person other than the plaintiff.

18 (8) Direct the defendant to refrain from exercising
19 control over the funds, benefits, property, resources,
20 belongings, or assets of the plaintiff.

21 (9) Require the defendant to provide an accounting
22 of the disposition of the plaintiff's income and other
23 resources, and of the plaintiff's debts and expenses.

24 (10) Restrain the defendant from exercising any
25 powers the defendant has been granted as the plaintiff's agent
26 under power of attorney.

1 (11) Require the defendant to comply with the
2 instructions of the plaintiff's guardian, conservator, or
3 agent under power of attorney.

4 (12) Order other relief as it deems necessary to
5 provide for the safety and welfare of the plaintiff and any
6 individual designated by the court.

7 (c) The court may grant one or more of the following
8 forms of relief in a final order after notice and hearing:

9 (1) Grant the relief available in subsection (b).

10 (2) Require the defendant to return custody or
11 control of the funds, benefits, property, resources,
12 belongings, or assets to the plaintiff.

13 (3) Order restitution.

14 (4) Prohibit the defendant from possessing a firearm
15 or other weapon specified by the court, except when the weapon
16 is necessary for employment as a law enforcement officer or
17 military personnel.

18 (5) Order the defendant to pay attorneys' fees and
19 court costs.

20 (d) Any temporary ex parte protection order issued
21 pursuant to this act shall remain in effect until the final
22 order is entered.

23 (e) Any final elder abuse protection order shall be
24 of permanent duration unless otherwise specified by the court.

25 (f) An elder abuse protection order may not affect
26 in any manner title to real property.

1 Section 9. (a) A copy of an elder abuse protection
2 order shall be issued to the plaintiff, the defendant, and the
3 law enforcement officials with jurisdiction to enforce the
4 protection order.

5 (b) If the defendant is appointed as the plaintiff's
6 guardian or conservator, a copy of any protection order shall
7 be issued to the court that made the appointment.

8 (c) Ex parte and final elder abuse protection orders
9 shall be in a format as provided by the Administrative Office
10 of Courts. If a court wishes to provide additional information
11 in these standardized court orders, the court may attach
12 additional pages containing this additional information.

13 Section 10. (a) A violation of an elder abuse
14 protection order is a Class A misdemeanor, which shall be
15 punishable as provided in law.

16 (b) A second conviction for a violation of an elder
17 abuse protection order, in addition to any other penalty or
18 fine, shall be punishable by a minimum of 30 days
19 imprisonment, which may not be suspended. A third or
20 subsequent conviction, in addition to any other penalties or
21 fines, shall be punishable by a minimum sentence of 120 days
22 imprisonment, which may not be suspended.

23 Section 11. A law enforcement officer may arrest any
24 person for a violation of Sections 1 to 11, inclusive, if the
25 officer has probable cause to believe that the person has
26 violated any provision of a valid elder abuse protection
27 order, whether temporary or permanent. The presentation of an

1 elder abuse protection order constitutes probable cause for an
2 officer to believe that a valid order exists. For purposes of
3 Sections 1 to 11, inclusive, the elder abuse protection order
4 may be inscribed on a tangible copy or may be stored in an
5 electronic or other medium if it is retrievable in a
6 detectable form. Presentation of a certified copy of the elder
7 abuse protection order is not required for enforcement or to
8 allow a law enforcement officer to effect a warrantless
9 arrest. If an elder abuse protection order is not presented to
10 or otherwise confirmed by a law enforcement officer, the
11 officer may consider other information in determining whether
12 there is probable cause to believe that a valid protection
13 order exists. The law enforcement officer may arrest the
14 defendant without a warrant although he or she did not
15 personally see the violation. Knowledge by the officer of the
16 existence or contents of, or both, or presentation to the
17 officer by the complainant of, an elder abuse protection order
18 shall constitute prima facie evidence of the validity of the
19 order. If a law enforcement officer determines that an
20 otherwise valid elder abuse protection order cannot be
21 enforced because the defendant has not been notified or served
22 with the protection order, the law enforcement officer shall
23 inform the defendant of the order and allow the person a
24 reasonable opportunity to comply with the order's provisions
25 before enforcing the order. In the event the law enforcement
26 officer provides notice of the elder abuse protection order to

1 the defendant, the officer shall document this fact in the
2 written report.

3 Section 12. Section 15-10-3, Code of Alabama 1975,
4 is amended to read as follows:

5 "§15-10-3.

6 "(a) An officer may arrest a person without a
7 warrant, on any day and at any time in any of the following
8 instances:

9 "(1) If a public offense has been committed or a
10 breach of the peace threatened in the presence of the officer.

11 "(2) When a felony has been committed, though not in
12 the presence of the officer, by the person arrested.

13 "(3) When a felony has been committed and the
14 officer has reasonable cause to believe that the person
15 arrested committed the felony.

16 "(4) When the officer has reasonable cause to
17 believe that the person arrested has committed a felony,
18 although it may afterwards appear that a felony had not in
19 fact been committed.

20 "(5) When a charge has been made, upon reasonable
21 cause, that the person arrested has committed a felony.

22 "(6) When the officer has actual knowledge that a
23 warrant for the person's arrest for the commission of a felony
24 or misdemeanor has been issued, provided the warrant was
25 issued in accordance with this chapter. However, upon request
26 the officer shall show the warrant to the arrested person as
27 soon as possible. If the officer does not have the warrant in

1 his or her possession at the time of arrest the officer shall
2 inform the defendant of the offense charged and of the fact
3 that a warrant has been issued.

4 "(7) When the officer has reasonable cause to
5 believe that a felony or misdemeanor has been committed by the
6 person arrested in violation of a protection order, including
7 a domestic violence protection order or an elder abuse
8 protection order, issued by a court of competent jurisdiction.

9 "(8) When an offense involves domestic violence as
10 defined in Section 13A-6-139.1 or elder abuse as defined in
11 Section 3 of the act adding this amendatory language, and the
12 arrest is based on probable cause, regardless of whether the
13 offense is a felony or misdemeanor.

14 "(b) When a law enforcement officer investigates an
15 allegation of domestic violence or elder abuse, whether or not
16 an arrest is made, the officer shall make a written report of
17 the alleged incident, including a statement of the complaint,
18 and the disposition of the case.

19 "(c) If the defendant is arrested under this section
20 for committing an act of domestic violence in violation of a
21 domestic violence protection order or an act of elder abuse in
22 violation of an elder abuse protection order, the defendant
23 shall be held in custody until brought before the court as
24 expeditiously as possible for the purpose of enforcing the
25 protection order and for consideration of bail in accordance
26 with Section 15-13-190 and the applicable rules of criminal
27 procedure, pending a hearing."

1 Section 13. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 14. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.