

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

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. ~~Failure to~~
12 ~~perform, standing alone, however, is not proof that the~~
13 ~~defendant did not intend to perform.~~

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

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

21 (5) FINANCIAL EXPLOITATION. The use of deception,
22 intimidation, undue influence, force, or threat of force to
23 obtain or exert unauthorized control over an elderly person's
24 property with the intent to deprive the elderly person of his
25 or her property or the breach of a fiduciary duty to an
26 elderly person by the person's guardian, conservator, or agent
27 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. ~~Any natural~~ 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) ~~Emotionally~~ Recklessly emotionally abuses any
18 elderly 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 exceeds two
23 thousand five hundred dollars (\$2,500) constitutes financial
24 exploitation of the elderly person in the first degree.

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

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

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

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

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

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

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

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

1 Section 10. ~~Any person, firm, corporation, or~~
2 ~~official acting pursuant to this act, participating in a~~
3 ~~judicial proceeding resulting therefrom, or acting pursuant to~~
4 ~~any report of abuse, neglect, or financial exploitation of an~~
5 ~~elderly person, in doing so, shall be immune from any civil~~
6 ~~liability that might otherwise be incurred or imposed, unless~~
7 ~~such person acted in bad faith or with malicious purpose.~~

8 Any person or entity acting pursuant to this act in
9 reporting or investigating any report of abuse, neglect, or
10 financial exploitation of an elderly person, or participating
11 in a judicial proceeding resulting therefrom, shall be immune
12 from any civil liability that might otherwise be incurred or
13 imposed as a result of the report, investigation, or
14 participation, unless the person or entity acted recklessly,
15 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. No physician, as defined under Section
21 34-24-50.1 of the Code of Alabama 1975, who is licensed to
22 practice medicine in this state, shall be subject to Sections
23 3, 4, and 5 of this act for any acts or omissions constituting
24 the practice of medicine.

25 Section 13. The provisions of this act are
26 severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 05-FEB-13

Read for the second time and placed
on the calendar 2 amendments 06-FEB-13

Read for the third time and passed
as amended..... 02-APR-13

Yeas 85, Nays 5, Abstains 1

Jeff Woodard
Clerk