

1 SB340
2 192017-1
3 By Senators Smitherman and Orr
4 RFD: Health and Human Services
5 First Read: 22-FEB-18

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8 SYNOPSIS: This bill would revise outdated references
9 in the definition of "protected person" under the
10 Adult Protective Services Act of 1976.

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12 A BILL
13 TO BE ENTITLED
14 AN ACT

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16 Relating to the Adult Protective Services Act of
17 1976; to amend Section 38-9-2, Code of Alabama 1975, to revise
18 certain references in the definition of "protected person."

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 38-9-2, Code of Alabama 1975, is
21 amended to read as follows:

22 "§38-9-2.

23 "For the purposes of this chapter, the following
24 terms shall have the following meanings:

25 "(1) ABUSE. The infliction of physical pain, injury,
26 or the willful deprivation by a caregiver or other person of
27 services necessary to maintain mental and physical health.

1 "(2) ADULT IN NEED OF PROTECTIVE SERVICES. A person
2 18 years of age or older whose behavior indicates that he or
3 she is mentally incapable of adequately caring for himself or
4 herself and his or her interests without serious consequences
5 to himself or herself or others, or who, because of physical
6 or mental impairment, is unable to protect himself or herself
7 from abuse, neglect, exploitation, sexual abuse, or emotional
8 abuse by others, and who has no guardian, relative, or other
9 appropriate person able, willing, and available to assume the
10 kind and degree of protection and supervision required under
11 the circumstances.

12 "(3) CAREGIVER. An individual who has the
13 responsibility for the care of a protected person as a result
14 of family relationship or who has assumed the responsibility
15 for the care of the person voluntarily, by contract, or as a
16 result of the ties of friendship.

17 "(4) COURT. The circuit court.

18 "(5) DEPARTMENT. The Department of Human Resources
19 of the State of Alabama.

20 "(6) EMOTIONAL ABUSE. The willful or reckless
21 infliction of emotional or mental anguish or the use of a
22 physical or chemical restraint, medication, or isolation as
23 punishment or as a substitute for treatment or care of any
24 protected person.

25 "(7) EMPLOYEE OF A NURSING HOME. A person permitted
26 to perform work in a nursing home by the nursing home
27 administrator or by a person or an entity with an ownership

1 interest in the facility, or by both. A person shall be
2 considered an employee whether or not he or she receives
3 compensation for the work performed.

4 "(8) EXPLOITATION. The expenditure, diminution, or
5 use of the property, assets, or resources of a protected
6 person without the express voluntary consent of that person or
7 his or her legally authorized representative or the admission
8 of or provision of care to a protected person who needs to be
9 in the care of a licensed hospital by an unlicensed hospital
10 after a court order obtained by the State Board of Health has
11 directed closure of the unlicensed hospital. For the purpose
12 of this section and Sections 38-9-6 and 38-9-7, the term
13 "unlicensed hospital" shall have the meaning ascribed to it in
14 Section 22-21-33, and the term "licensed hospital" shall have
15 the meaning ascribed to it in Section 22-21-20.

16 "(9) INTENTIONALLY. A person acts intentionally with
17 respect to a result or to conduct described by a statute
18 defining an offense, when his or her purpose is to cause that
19 result or to engage in that conduct.

20 "(10) INTERESTED PERSON. Any adult relative, friend,
21 or guardian of a protected person, or any official or
22 representative of a public or private agency, corporation, or
23 association concerned with his or her welfare.

24 "(11) MISAPPROPRIATION OF PROPERTY OF A NURSING HOME
25 RESIDENT. The deliberate misplacement or wrongful, temporary,
26 or permanent use or withholding of belongings or money of a

1 resident of a nursing home without the consent of the
2 resident.

3 "(12) NEGLECT. The failure of a caregiver to provide
4 food, shelter, clothing, medical services, or health care for
5 the person unable to care for himself or herself; or the
6 failure of the person to provide these basic needs for himself
7 or herself when the failure is the result of the person's
8 mental or physical inability.

9 "(13) NURSING FACILITY. A facility which is licensed
10 as a nursing home by the Alabama Department of Public Health
11 pursuant to Article 2, Chapter 21, Title 22.

12 "(14) OTHER LIKE INCAPACITIES. Those conditions
13 incurred as the result of accident or mental or physical
14 illness, producing a condition which substantially impairs an
15 individual from adequately providing for his or her own care
16 or protecting his or her own interests or protecting himself
17 or herself from physical or mental injury or abuse.

18 "(15) PERSON. Any natural human being.

19 "(16) PHYSICAL INJURY. Impairment of physical
20 condition or substantial pain.

21 "(17) PROTECTED PERSON. Any person over 18 years of
22 age subject to protection under this chapter or any person,
23 including, but not limited to, persons ~~who are senile~~ with
24 Alzheimer's disease or dementia, persons with intellectual
25 disabilities and developmental disabilities, or any person
26 over 18 years of age that is mentally or physically incapable
27 of adequately caring for himself or herself and his or her

1 interests without serious consequences to himself or herself
2 or others.

3 "(18) PROTECTIVE SERVICES. Those services whose
4 objective is to protect an incapacitated person from himself
5 or herself and from others.

6 "(19) RECKLESSLY. A person acts recklessly with
7 respect to a result or to a circumstance described by a
8 statute defining an offense when he or she is aware of and
9 consciously disregards a substantial and unjustifiable risk
10 that the result will occur or that the circumstance exists.
11 The risk shall be of such nature and degree that its disregard
12 constitutes a gross deviation from the standard conduct that a
13 reasonable person would observe in the situation. A person who
14 creates a risk but is unaware of that risk solely by reason of
15 voluntary intoxication, as defined in subdivision (e) (2) of
16 Section 13A-3-2, acts recklessly with respect thereto.

17 ~~"(20) SENILITY. Organic brain damage caused by
18 advanced age or other physical illness to the extent that the
19 person so afflicted is substantially impaired in his or her
20 ability to adequately provide for his or her own care.~~

21 ~~"(21)~~ (20) SERIOUS PHYSICAL INJURY. Physical injury
22 which creates a risk of death, or which causes serious and
23 protracted disfigurement, protracted impairment of health,
24 protracted loss of the function of any bodily organ, or the
25 impairment of the function of any bodily organ.

26 ~~"(22)~~ (21) SEXUAL ABUSE. Any conduct that is a crime
27 as defined in Sections 13A-6-60 to 13A-6-70, inclusive."

1 Section 2. 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.