

1 SB75  
2 214974-1  
3 By Senator Barfoot  
4 RFD: Judiciary  
5 First Read: 13-JAN-22

8 SYNOPSIS: Existing law provides for the original and  
9 general jurisdiction of probate courts, including  
10 jurisdiction over the change of name of adults.

11 This bill would further provide for the  
12 jurisdiction of probate courts to include  
13 jurisdiction over the change of name of minors,  
14 under certain conditions.

15 Under the Adult Protective Services Act of  
16 1976, only circuit courts have jurisdiction to  
17 preside over protective service proceedings.

18 This bill would provide probate courts with  
19 concurrent general and original jurisdiction over  
20 protective service proceedings under the Adult  
21 Protective Services Act of 1976.

22 Under the Elder Abuse Protection Order and  
23 Enforcement Act, circuit court judges along with  
24 certain specially appointed circuit court judges  
25 and district court judges may issue elder abuse  
26 protection orders.

1                   This bill would authorize judges of probate  
2                   who are members in good standing with the Alabama  
3                   State Bar to issue elder abuse protection orders  
4                   when authorized to do so by a written standing  
5                   order from the presiding circuit court judge.

6                   This bill would also make nonsubstantive,  
7                   technical revisions to update existing code  
8                   language to current style.

9  
10   A BILL  
11   TO BE ENTITLED  
12   AN ACT

13  
14                   Relating to probate courts; to amend Sections  
15                   12-13-1, 38-9-2, and 38-9F-4, Code of Alabama 1975, and to add  
16                   Sections 38-9-3.1 and 38-9-6.1 to the Code of Alabama 1975, to  
17                   further provide for the original and general jurisdiction of  
18                   probate courts; to provide probate courts with jurisdiction  
19                   over certain proceedings under the Adult Protective Services  
20                   Act of 1976; to authorize certain judges of probate to issue  
21                   elder abuse protection orders under certain conditions; and to  
22                   make nonsubstantive, technical revisions to update existing  
23                   code language to current style.

24                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25   Section 1. Sections 12-13-1 and 38-9-2, Code of  
26                   Alabama 1975, are amended to read as follows:

27   "§12-13-1.

1           "(a) The probate court shall have original and  
2 general jurisdiction as to all matters mentioned in this  
3 section and shall have original and general jurisdiction as to  
4 all other matters which may be conferred upon them by ~~statute~~  
5 law, unless the ~~statute~~ law so conferring jurisdiction  
6 expressly makes the jurisdiction special or limited.

7           "(b) The probate court shall have original and  
8 general jurisdiction over the following matters:

9           "(1) The probate of wills.

10          "(2) The granting of letters testamentary and of  
11 administration and the repeal or revocation of the same.

12          "(3) All controversies in relation to the right of  
13 executorship or of administration.

14          "(4) The settlement of accounts of executors and  
15 administrators.

16          "(5) The sale and disposition of the real and  
17 personal property belonging to and the distribution of  
18 intestate's estates.

19          "(6) The appointment and removal of guardians for  
20 minors and persons of unsound mind.

21          "(7) All controversies as to the right of  
22 guardianship and the settlement of guardians' accounts.

23          "(8) The allotment of dower in land in the cases  
24 provided by law.

25          "(9) The partition of lands within their counties.

26          "(10) The change of the name of any ~~person~~ adult  
27 residing in their county, upon his or her filing a declaration

1 in writing, signed by him or her, stating the name by which he  
2 or she is known and the name to which he or she wishes it to  
3 be changed.

4 "(11) The change of the name of any minor residing  
5 in their county, upon the filing of a declaration in writing,  
6 signed by the parent or legal guardian of the minor, stating  
7 the name by which the minor is known and the name to which it  
8 is to be changed, along with the consent from all persons who  
9 have natural parental or legal rights of the minor. Consent of  
10 the minor is required if the minor is 14 or more years of age.  
11 This subdivision does not apply to a minor who is involved in  
12 a domestic relations matter that is pending in the circuit  
13 court.

14 ~~"(11) Such other~~ (12) Other cases as jurisdiction is  
15 or may be given to ~~such~~ probate courts by law, ~~in all cases~~ to  
16 be exercised in the manner prescribed by law.

17 "(c) The probate court and circuit court shall have  
18 concurrent original and general jurisdiction of any  
19 proceedings under Chapter 9 of Title 38.

20 ~~"(c)~~ (d) All orders, judgments, and decrees of  
21 probate courts shall be accorded the same validity and  
22 presumptions which are accorded to judgments and orders of  
23 other courts of general jurisdiction.

24 "§38-9-2.

25 "For the purposes of this chapter, the following  
26 terms shall have the following meanings:

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

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

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

20           "(4) COURT. The circuit court or probate court.

21           "(5) DEPARTMENT. The Department of Human Resources  
22 of the State of Alabama.

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

1           "(7) EMPLOYEE OF A NURSING HOME. A person permitted  
2 to perform work in a nursing home by the nursing home  
3 administrator or by a person or an entity with an ownership  
4 interest in the facility, or by both. A person shall be  
5 considered an employee whether or not he or she receives  
6 compensation for the work performed.

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

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

23           "(10) INTERESTED PERSON. Any adult relative, friend,  
24 or guardian of a protected person, or any official or  
25 representative of a public or private agency, corporation, or  
26 association concerned with ~~his or her~~ the welfare of the  
27 protected person.

1           "(11) MISAPPROPRIATION OF PROPERTY OF A NURSING HOME  
2 RESIDENT. The deliberate misplacement or wrongful, temporary,  
3 or permanent use or withholding of belongings or money of a  
4 resident of a nursing home without the consent of the  
5 resident.

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

12           "(13) NEURODEGENERATIVE. Relating to or being a  
13 progressive loss of neurologic function.

14           "(14) NURSING FACILITY. A facility ~~which~~ that is  
15 licensed as a nursing home by the Alabama Department of Public  
16 Health pursuant to Article 2, Chapter 21, Title 22.

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

23           "(16) PERSON. Any natural human being.

24           "(17) PHYSICAL INJURY. Impairment of physical  
25 condition or substantial pain.

26           "(18) PROTECTED PERSON. Any person ~~over 18~~ 19 years  
27 of age or older subject to protection under this chapter or



1 any person, including, but not limited to, persons with a  
2 neurodegenerative disease, persons with intellectual  
3 disabilities and developmental disabilities, or any person  
4 ~~over 18~~ 19 years of age or older who ~~that~~ is mentally or  
5 physically incapable of adequately caring for himself or  
6 herself and his or her interests without serious consequences  
7 to himself or herself or others.

8 "(19) PROTECTIVE SERVICES. Those services whose  
9 objective is to protect an incapacitated person from himself  
10 or herself and from others.

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

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

1           "(22) SEXUAL ABUSE. Any conduct that ~~is~~ constitutes  
2 a crime ~~as defined in Sections 13A-6-60 to 13A-6-70, inclusive~~  
3 under Article 4 of Chapter 6 of Title 13A."

4           Section 2. Section 38-9-3.1 is added to the Code of  
5 Alabama 1975, to read as follows:

6           §38-9-3.1.

7           The probate court and circuit court shall have  
8 concurrent original and general jurisdiction as to all matters  
9 mentioned in this chapter.

10          Section 3. Section 38-9-6.1 is added to the Code of  
11 Alabama 1975, to read as follows:

12          §38-9-6.1.

13          (a) Nothing in this section applies to actions  
14 pending in a probate court where the judge of probate is a  
15 member in good standing with the Alabama State Bar.

16          (b) At any time after the filing of a petition, but  
17 before a hearing contemplated in Section 38-9-6, any protected  
18 person, interested person, or party to an action under this  
19 chapter may remove the action from the probate court to the  
20 circuit court for the county in which the probate court is  
21 located by doing all of the following, which shall effect the  
22 removal:

23                 (1) Filing in the circuit court a notice of removal  
24 together with a copy of all processes, pleadings, and orders  
25 filed in the probate court.

26                 (2) Serving all parties to the action with a copy of  
27 the removal notice.

1           (3) Filing a copy of the removal notice with the  
2 clerk of the probate court.

3           (c) Upon the removal of an action pursuant to  
4 subsection (b), the probate court shall proceed no further.

5           Section 4. Section 38-9F-4, Code of Alabama 1975, is  
6 amended to read as follows:

7           "§38-9F-4.

8           "(a) The following courts shall have jurisdiction to  
9 issue elder abuse protection orders under this chapter:

10          "(1) Circuit courts.

11          "(2) A special circuit court judge appointed  
12 pursuant to Section 12-1-14 or 12-1-14.1.

13          "(3) A district court judge designated by a written  
14 standing order from the presiding circuit court judge.

15          "(4) A judge of probate designated by a written  
16 standing order from the presiding circuit court judge, where  
17 the judge of probate is a member in good standing with the  
18 Alabama State Bar.

19          "(b) An elder abuse protection order may be  
20 requested in any pending civil or domestic relations action,  
21 as an independent civil action, or in connection with the  
22 preliminary, final, or post-judgment relief in a civil action.

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

25          "(1) Where the plaintiff or defendant resides.

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

4                   "(3) Where the abuse occurred.

5                   "(d) There is no minimum period of residence for the  
6 plaintiff in the State of Alabama or in the county in which a  
7 case is filed.

8                   "(e) An elder abuse protection order shall be a  
9 status order that is specifically designed to protect the  
10 elderly person, and in personam jurisdiction over the  
11 defendant shall not be required in order to issue an ex parte  
12 or final order under this chapter."

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