

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

1 SB274

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4 ENROLLED, An Act,

5 Relating to elder abuse; to amend Section 15-10-3,  
6 Code of Alabama 1975; to establish the Elder Abuse Protection  
7 Order and Enforcement Act; to provide for the issuance of  
8 elder abuse protection orders; to define terms; to authorize  
9 certain individuals in addition to the victim to petition for  
10 an elder abuse protection order; to provide penalties for  
11 violating an elder abuse protection order; and in connection  
12 therewith would have as its purpose or effect the requirement  
13 of a new or increased expenditure of local funds within the  
14 meaning of Amendment 621 of the Constitution of Alabama of  
15 1901, now appearing as Section 111.05 of the Official  
16 Recompilation of the Constitution of Alabama of 1901, as  
17 amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 Section 2. Sections 1 to 11, inclusive, shall be  
23 liberally construed and applied to promote all of the  
24 following purposes:

1           (1) To maximize protection of victims of elder  
2 abuse.

3           (2) To create a flexible and expeditious method of  
4 obtaining a protection order against an individual who has  
5 committed elder abuse.

6           (3) To expand the ability of law enforcement  
7 officers to assist victims, to enforce the law effectively in  
8 cases of elder abuse, and to prevent further incidents of  
9 abuse.

10           Section 3. For purposes of Sections 1 to 11,  
11 inclusive, the following terms shall have the following  
12 meanings:

13           (1) CAREGIVER. The term as defined in Section  
14 13A-6-191, Code of Alabama 1975.

15           (2) ELDER ABUSE. The commission of any of the  
16 following acts or the intent to commit any of the following  
17 acts against an elderly person:

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

20           b. Arson, as defined in Sections 13A-7-40 to  
21 13A-7-43, inclusive, Code of Alabama 1975.

22           c. Assault, as defined in Sections 13A-6-20 to  
23 13A-6-22, inclusive, Code of Alabama 1975.

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

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

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

5 g. Financial exploitation, as defined in Sections  
6 13A-6-191 and 8-6-171, Code of Alabama 1975.

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

9 i. Kidnapping, as defined in Sections 13A-6-43 and  
10 13A-6-44, Code of Alabama 1975.

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

13 k. Reckless endangerment, as defined in Section  
14 13A-6-24, Code of Alabama 1975.

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

17 m. Stalking, as defined in Sections 13A-6-90 to  
18 13A-6-91.1, inclusive, Code of Alabama 1975.

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

21 o. Unlawful imprisonment, as defined in Sections  
22 13A-6-41 and 13A-6-42, Code of Alabama 1975.

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

1           a. A restraining order, injunctive order, or order  
2 of release from custody issued by a circuit, district,  
3 municipal, or probate court that seeks to protect an elderly  
4 person.

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

10           (4) ELDERLY PERSON. A person 60 years of age or  
11 older.

12           (5) PLAINTIFF. An elderly person in need of  
13 protection from elder abuse.

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

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

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

23           (1) Circuit courts.

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

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

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

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

9           (1) Where the plaintiff or defendant resides.

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

12           (3) Where the abuse occurred.

13           (d) There is no minimum period of residence for the  
14 plaintiff in the State of Alabama or in the county in which a  
15 case is filed.

16           (e) An elder abuse protection order shall be a  
17 status order that is specifically designed to protect the  
18 elderly person, and in personam jurisdiction over the  
19 defendant shall not be required in order to issue an ex parte  
20 or final order under this act.

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

24           (b) The remedies and procedures provided in this act  
25 are in addition to and no in lieu of any other judicial

1 protection actions that may be initiated by the victim in any  
2 other forum.

3 (c) Any elder abuse protection order issued in this  
4 state shall be effective and enforceable in every county and  
5 jurisdiction in this state.

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

11 Section 6. (a) If a plaintiff lacks the physical or  
12 mental capacity to seek protection for himself or herself, the  
13 following may file a sworn petition for relief on behalf of  
14 the plaintiff:

15 (1) A court appointed guardian. The petition must  
16 include a copy of the court order appointing the petitioner as  
17 the plaintiff's guardian.

18 (2) A court appointed conservator. The petition must  
19 include a copy of the court order appointing the petitioner as  
20 the plaintiff's conservator.

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

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

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

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

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

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

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

24           (e) The court may not assess court costs or other  
25 fees for the filing or service of a petition or the issuance

1 of a witness subpoena under this act against a petitioner or  
2 plaintiff. Costs and fees may be assessed against the  
3 defendant at the discretion of the court.

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

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

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

22 Section 8. (a) If it appears from a petition for an  
23 elder abuse protection order or a petition to modify an elder  
24 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

1 place frequented by the plaintiff that the defendant has no  
2 legitimate reason to frequent.

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

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

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

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

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

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

1           (10) Restrain the defendant from exercising any  
2 powers the defendant has been granted as the plaintiff's agent  
3 under power of attorney.

4           (11) Require the defendant to comply with the  
5 instructions of the plaintiff's guardian, conservator, or  
6 agent under power of attorney.

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

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

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

13           (2) Require the defendant to return custody or  
14 control of the funds, benefits, property, resources,  
15 belongings, or assets to the plaintiff.

16           (3) Order restitution.

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

21           (5) Order the defendant to pay attorneys' fees and  
22 court costs.

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

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

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

5           Section 9. (a) A copy of an elder abuse protection  
6 order shall be issued to the plaintiff, the defendant, and the  
7 law enforcement officials with jurisdiction to enforce the  
8 protection order.

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

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

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

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

1 fines, shall be punishable by a minimum sentence of 120 days  
2 imprisonment, which may not be suspended.

3 Section 11. A law enforcement officer may arrest any  
4 person for a violation of Sections 1 to 11, inclusive, if the  
5 officer has probable cause to believe that the person has  
6 violated any provision of a valid elder abuse protection  
7 order, whether temporary or permanent. The presentation of an  
8 elder abuse protection order constitutes probable cause for an  
9 officer to believe that a valid order exists. For purposes of  
10 Sections 1 to 11, inclusive, the elder abuse protection order  
11 may be inscribed on a tangible copy or may be stored in an  
12 electronic or other medium if it is retrievable in a  
13 detectable form. Presentation of a certified copy of the elder  
14 abuse protection order is not required for enforcement or to  
15 allow a law enforcement officer to effect a warrantless  
16 arrest. If an elder abuse protection order is not presented to  
17 or otherwise confirmed by a law enforcement officer, the  
18 officer may consider other information in determining whether  
19 there is probable cause to believe that a valid protection  
20 order exists. The law enforcement officer may arrest the  
21 defendant without a warrant although he or she did not  
22 personally see the violation. Knowledge by the officer of the  
23 existence or contents of, or both, or presentation to the  
24 officer by the complainant of, an elder abuse protection order  
25 shall constitute prima facie evidence of the validity of the

1 order. If a law enforcement officer determines that an  
2 otherwise valid elder abuse protection order cannot be  
3 enforced because the defendant has not been notified or served  
4 with the protection order, the law enforcement officer shall  
5 inform the defendant of the order and allow the person a  
6 reasonable opportunity to comply with the order's provisions  
7 before enforcing the order. In the event the law enforcement  
8 officer provides notice of the elder abuse protection order to  
9 the defendant, the officer shall document this fact in the  
10 written report.

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

13 "§15-10-3.

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

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

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

21 "(3) When a felony has been committed and the  
22 officer has reasonable cause to believe that the person  
23 arrested committed the felony.

24 "(4) When the officer has reasonable cause to  
25 believe that the person arrested has committed a felony,

1       although it may afterwards appear that a felony had not in  
2       fact been committed.

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

5               "(6) When the officer has actual knowledge that a  
6       warrant for the person's arrest for the commission of a felony  
7       or misdemeanor has been issued, provided the warrant was  
8       issued in accordance with this chapter. However, upon request  
9       the officer shall show the warrant to the arrested person as  
10      soon as possible. If the officer does not have the warrant in  
11      his or her possession at the time of arrest the officer shall  
12      inform the defendant of the offense charged and of the fact  
13      that a warrant has been issued.

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

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

24              "(b) When a law enforcement officer investigates an  
25      allegation of domestic violence or elder abuse, whether or not

1 an arrest is made, the officer shall make a written report of  
2 the alleged incident, including a statement of the complaint,  
3 and the disposition of the case.

4 "(c) If the defendant is arrested under this section  
5 for committing an act of domestic violence in violation of a  
6 domestic violence protection order or an act of elder abuse in  
7 violation of an elder abuse protection order, the defendant  
8 shall be held in custody until brought before the court as  
9 expeditiously as possible for the purpose of enforcing the  
10 protection order and for consideration of bail in accordance  
11 with Section 15-13-190 and the applicable rules of criminal  
12 procedure, pending a hearing."

13 Section 13. Although this bill would have as its  
14 purpose or effect the requirement of a new or increased  
15 expenditure of local funds, the bill is excluded from further  
16 requirements and application under Amendment 621, now  
17 appearing as Section 111.05 of the Official Recompilation of  
18 the Constitution of Alabama of 1901, as amended, because the  
19 bill defines a new crime or amends the definition of an  
20 existing crime.

21 Section 14. Nothing in this act shall be construed  
22 to limit the enforcement of any other laws or rules that  
23 protect vulnerable adults or limit the jurisdiction of or  
24 action by any regulatory or law enforcement agency.

1                   Section 15. 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.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB274

Senate 25-APR-17

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed 04-MAY-17

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Senate concurred in House amendment 09-MAY-17

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By: Senator Smitherman