

1 HB645  
2 213463-1  
3 By Representative Pringle  
4 RFD: Judiciary  
5 First Read: 27-APR-21

SYNOPSIS: This bill would provide a private right of action for a vulnerable adult or certain representatives of a vulnerable adult against certain individuals who commit acts of financial exploitation against that vulnerable adult.

This bill would provide that a claim for financial exploitation of a vulnerable adult would survive after the death of the vulnerable adult.

This bill would also provide for a statute of limitations for claims of financial exploitation of a vulnerable adult.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to vulnerable adults; to amend Section 8-6-171, Code of Alabama 1975, and to add a new Article 8 to Chapter 6 of Title 8, Code of Alabama 1975, commencing with Section 8-6-190, to provide a private right of action for a

1 vulnerable adult or certain representatives of a vulnerable  
2 adult against certain individuals who commit acts of financial  
3 exploitation against that vulnerable adult; to provide for  
4 survival of a claim of financial exploitation of a vulnerable  
5 adult beyond the death of the vulnerable adult; and to provide  
6 for a statute of limitations.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 8-6-171, Code of Alabama 1975, is  
9 amended to read as follows:

10 "§8-6-171.

11 "In this article, unless the context otherwise  
12 requires, the following words and terms shall have the  
13 following meanings:

14 "(1) AGENT. The same meaning as in ~~subdivision (2)~~  
15 ~~of~~ Section 8-6-2.

16 "(2) BROKER-DEALER. The same meaning as in  
17 ~~subdivision (3)~~ of Section 8-6-2.

18 "(3) COMMISSION. The Alabama Securities Commission.

19 "(4) DEPARTMENT. The Department of Human Resources.

20 "(5) FINANCIAL EXPLOITATION. Any of the following:

21 "a. The wrongful or unauthorized taking,  
22 withholding, appropriation, or use of money, assets, or  
23 property of a vulnerable adult.

24 "b. The failure to repay loans, promissory notes, or  
25 other debts owed to the vulnerable adult or his or her estate  
26 or trust.

1           "c. Any act or omission taken by a person, including  
2 through the use of a power of attorney, guardianship, or  
3 conservatorship of a vulnerable adult, to do either of the  
4 following:

5           "1. Obtain control through deception, intimidation,  
6 or undue influence over the vulnerable adult's money, assets,  
7 or property to deprive the vulnerable adult of the ownership,  
8 use, benefit, or possession of his or her money, assets, or  
9 property.

10           "2. Convert money, assets, or property of the  
11 vulnerable adult to deprive the vulnerable adult of the  
12 ownership, use, benefit, or possession of his or her money,  
13 assets, or property.

14           "(6) INVESTMENT ADVISER. The same meaning as in  
15 ~~subdivision (18)~~ of Section 8-6-2.

16           "(7) INVESTMENT ADVISER REPRESENTATIVE. The same  
17 meaning as in ~~subdivision (19)~~ of Section 8-6-2.

18           "(8) QUALIFIED INDIVIDUAL. Any agent, investment  
19 adviser representative, or person who serves in a supervisory,  
20 compliance, legal, or associated member capacity of a  
21 broker-dealer or investment adviser.

22           "(9) REASONABLY ASSOCIATED INDIVIDUAL or ASSOCIATED  
23 MEMBER. An individual known to the investment adviser  
24 representative, broker-dealer, or firm who is reasonably  
25 associated with the account.

26           "(10) VULNERABLE ADULT. Any of the following:

27           "a. A person 65 years of age or older.

1                    "b. A protected person ~~included and~~ as defined in  
2 ~~Chapter 9 of Title 38~~ Section 38-9-2."

3                    Section 2. Article 8 is added to Chapter 6 of Title  
4 8 of the Code of Alabama 1975, commencing with Section  
5 8-6-190, to read as follows:

6                    §8-6-190.

7                    This act shall be known and may be cited as the  
8 Financial Exploitation Act.

9                    §8-6-191.

10                   (a) For the purposes of this article, the terms  
11 "financial exploitation" and "vulnerable adult" have the same  
12 meanings as in Section 8-6-171.

13                   (b) Notwithstanding Section 6-5-462, a civil action  
14 may be brought to remedy financial exploitation against a  
15 vulnerable adult. The claim shall survive after the death of  
16 the vulnerable adult.

17                    §8-6-192.

18                    A claim may be brought under this article by any of  
19 the following:

20                    (1) A vulnerable adult.

21                    (2) The personal representative of the estate of a  
22 deceased vulnerable adult.

23                    (3) An administrator ad litem appointed pursuant to  
24 Section 43-2-250.

25                    (4) An administrator ad colligendum appointed  
26 pursuant to Section 43-2-47.

1           (5) The vulnerable adult's guardian, guardian ad  
2 litem, or conservator.

3           (6) The vulnerable adult's spouse, parent, or  
4 descendent.

5           (7) The vulnerable adult's agent under a power of  
6 attorney.

7           (8) A person or entity named as a beneficiary to  
8 receive any property, benefit, or contractual right as a  
9 result of the vulnerable adult's death or as a beneficiary of  
10 a trust, created by or for the vulnerable adult, who has a  
11 financial interest in the vulnerable adult's estate or trust.

12           §8-6-193.

13           The probate courts shall have concurrent  
14 jurisdiction with the circuit courts to try claims filed  
15 pursuant to this article.

16           §8-6-194.

17           A claim filed pursuant to this article shall not  
18 accrue until the financial exploitation is discovered or  
19 reasonably should have been discovered, after which a party  
20 shall have three years to file the action. In no event,  
21 however, shall the action be brought more than four years from  
22 the date of the vulnerable adult's death, unless provided  
23 otherwise by contract.

24           §8-6-195.

25           A party who prevails in any such civil action may  
26 recover compensatory damages, punitive damages, costs of the  
27 action, and reasonable attorney's fees.

1                   Section 3. 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.