

By Senator Burgess

20-00359C-21

20211344__

1 A bill to be entitled
2 An act relating to protection of elderly persons and
3 disabled adults; amending s. 16.56, F.S.; adding
4 offenses concerning elderly persons and disabled
5 adults to the authority of the Office of Statewide
6 Prosecution; amending s. 733.303, F.S.; providing that
7 a person who has been convicted of abuse, neglect, or
8 exploitation of an elderly person or a disabled adult
9 is not qualified to act as a personal representative;
10 creating s. 732.8031, F.S.; providing for forfeiture
11 of specified benefits of persons who have been
12 convicted of certain offenses involving elderly
13 persons or disabled adults; providing that certain
14 persons who have been convicted of certain offenses
15 involving elderly persons or disabled adults may still
16 retain an inheritance or survivorship interest if the
17 victim executes a specified instrument; amending s.
18 736.1104, F.S.; providing that a beneficiary of a
19 trust may not benefit under the trust if the person
20 was convicted of certain offenses involving elderly
21 persons or disabled adults; amending s. 825.101, F.S.;
22 defining terms; amending s. 825.102, F.S.; specifying
23 additional conduct that constitutes abuse of an
24 elderly person or a disabled adult; providing a
25 defense to certain violations; providing criminal
26 penalties; amending s. 825.103, F.S.; specifying
27 additional conduct that constitutes exploitation of an
28 elderly person or a disabled adult; providing criminal
29 penalties; amending s. 825.1035, F.S.; revising

20-00359C-21

20211344__

30 provisions concerning injunctions for protection
31 against exploitation of a vulnerable adult; providing
32 for extension of ex parte temporary injunctions;
33 providing an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Paragraph (a) of subsection (1) of section
38 16.56, Florida Statutes, is amended to read:

39 16.56 Office of Statewide Prosecution.—

40 (1) There is created in the Department of Legal Affairs an
41 Office of Statewide Prosecution. The office shall be a separate
42 "budget entity" as that term is defined in chapter 216. The
43 office may:

44 (a) Investigate and prosecute the offenses of:

45 1. Bribery, burglary, criminal usury, extortion, gambling,
46 kidnapping, larceny, murder, prostitution, perjury, robbery,
47 carjacking, home-invasion robbery, and patient brokering;

48 2. Any crime involving narcotic or other dangerous drugs;

49 3. Any violation of the Florida RICO (Racketeer Influenced
50 and Corrupt Organization) Act, including any offense listed in
51 the definition of racketeering activity in s. 895.02(8)(a),
52 providing such listed offense is investigated in connection with
53 a violation of s. 895.03 and is charged in a separate count of
54 an information or indictment containing a count charging a
55 violation of s. 895.03, the prosecution of which listed offense
56 may continue independently if the prosecution of the violation
57 of s. 895.03 is terminated for any reason;

58 4. Any violation of the Florida Anti-Fencing Act;

20-00359C-21

20211344__

59 5. Any violation of the Florida Antitrust Act of 1980, as
60 amended;

61 6. Any crime involving, or resulting in, fraud or deceit
62 upon any person;

63 7. Any violation of s. 847.0135, relating to computer
64 pornography and child exploitation prevention, or any offense
65 related to a violation of s. 847.0135 or any violation of
66 chapter 827 where the crime is facilitated by or connected to
67 the use of the Internet or any device capable of electronic data
68 storage or transmission;

69 8. Any violation of chapter 815;

70 9. Any violation of chapter 825;

71 10.9. Any criminal violation of part I of chapter 499;

72 11.10. Any violation of the Florida Motor Fuel Tax Relief
73 Act of 2004;

74 12.11. Any criminal violation of s. 409.920 or s. 409.9201;

75 13.12. Any crime involving voter registration, voting, or
76 candidate or issue petition activities;

77 14.13. Any criminal violation of the Florida Money
78 Laundering Act;

79 15.14. Any criminal violation of the Florida Securities and
80 Investor Protection Act; or

81 16.15. Any violation of chapter 787, as well as any and all
82 offenses related to a violation of chapter 787;

83

84 or any attempt, solicitation, or conspiracy to commit any of the
85 crimes specifically enumerated above. The office shall have such
86 power only when any such offense is occurring, or has occurred,
87 in two or more judicial circuits as part of a related

20-00359C-21

20211344__

88 transaction, or when any such offense is connected with an
89 organized criminal conspiracy affecting two or more judicial
90 circuits. Informations or indictments charging such offenses
91 shall contain general allegations stating the judicial circuits
92 and counties in which crimes are alleged to have occurred or the
93 judicial circuits and counties in which crimes affecting such
94 circuits or counties are alleged to have been connected with an
95 organized criminal conspiracy.

96 Section 2. Subsection (1) of section 733.303, Florida
97 Statutes, is amended to read:

98 733.303 Persons not qualified.—

99 (1) A person is not qualified to act as a personal
100 representative if the person:

101 (a) Has been convicted of a felony.

102 (b) Has been convicted of abuse, neglect, or exploitation
103 of an elderly person or a disabled adult.

104 (c) ~~(b)~~ Is mentally or physically unable to perform the
105 duties.

106 (d) ~~(e)~~ Is under the age of 18 years.

107 Section 3. Section 732.8031, Florida Statutes, is created
108 to read:

109 732.8031 Forfeiture for abuse, neglect, exploitation, or
110 aggravated manslaughter of an elderly person or disabled adult.—

111 (1) A surviving person who is convicted of abuse, neglect,
112 or exploitation under s. 825.102 or s. 825.103 or aggravated
113 manslaughter under s. 782.07(2) of the decedent or another
114 person on whose death such beneficiary's interest depends is not
115 entitled to any benefits under the will of the decedent or the
116 Florida Probate Code, and the estate of the decedent passes as

20-00359C-21

20211344__

117 if the abuser, neglector, exploiter, or killer had predeceased
118 the decedent. Property appointed by the will of the decedent to
119 or for the benefit of the abuser, neglector, exploiter, or
120 killer passes as if the abuser, neglector, exploiter, or killer
121 had predeceased the decedent.

122 (a) A final judgment of conviction for abuse, neglect,
123 exploitation, or aggravated manslaughter of the decedent or
124 other person creates a rebuttable presumption that this section
125 applies.

126 (b) In the absence of a qualifying conviction, the court
127 may determine by the greater weight of the evidence whether the
128 decedent's or other person's death was caused by or contributed
129 to by the abuser, neglector, exploiter, or killer for purposes
130 of this section.

131 (2) A joint tenant who is convicted of abuse, neglect, or
132 exploitation under s. 825.102 or s. 825.103 or aggravated
133 manslaughter under s. 782.07(2) of another joint tenant decedent
134 thereby effects a severance of the interest of the decedent so
135 that the share of the decedent passes as the decedent's sole
136 property and as if the abuser, neglector, exploiter, or killer
137 has no rights by survivorship. This subsection applies to joint
138 tenancies with right of survivorship and tenancies by the
139 entirety in real and personal property; joint and multiple-party
140 accounts in banks, savings and loan associations, credit unions,
141 and other financial institutions; and any other form of
142 coownership with survivorship interests.

143 (a) A final judgment of conviction for abuse, neglect,
144 exploitation, or aggravated manslaughter of the decedent or
145 other person creates a rebuttable presumption that this section

20-00359C-21

20211344__

146 applies.

147 (b) In the absence of a qualifying conviction, the court
148 may determine by the greater weight of the evidence whether the
149 decedent's or other person's death was caused by or contributed
150 to by the abuser, neglector, exploiter, or killer for purposes
151 of this section.

152 (3) A named beneficiary of a bond, life insurance policy,
153 or other contractual arrangement who is convicted of abuse,
154 neglect, or exploitation under s. 825.102 or s. 825.103 or
155 aggravated manslaughter under s. 782.07(2) of the owner or
156 principal obligee of the bond, life insurance policy, or other
157 contractual arrangement or the person upon whose life such
158 policy was issued is not entitled to any benefit under the bond,
159 policy, or other contractual arrangement, and the bond, policy,
160 or other contractual arrangement becomes payable as though the
161 abuser, neglector, exploiter, or killer had predeceased the
162 decedent.

163 (a) A final judgment of conviction for abuse, neglect,
164 exploitation, or aggravated manslaughter of the decedent or
165 other person creates a rebuttable presumption that this section
166 applies.

167 (b) In the absence of a qualifying conviction, the court
168 may determine by the greater weight of the evidence whether the
169 decedent's or other person's death was caused by or contributed
170 to by the abuser, neglector, exploiter, or killer for purposes
171 of this section.

172 (4) Any other acquisition of property or interest by the
173 abuser, neglector, exploiter, or killer, including a life estate
174 in homestead property, shall be treated in accordance with the

20-00359C-21

20211344__

175 principles of this section.

176 (5) (a) This section does not affect the rights of any
177 person who, before rights under this section have been
178 adjudicated, purchases from the abuser, neglector, exploiter, or
179 killer for value and without notice property that the abuser,
180 neglector, exploiter, or killer would have acquired except for
181 this section.

182 (b) The abuser, neglector, exploiter, or killer is liable
183 for the amount of the proceeds or the value of the property
184 under paragraph (a).

185 (6) Any insurance company, bank, or other obligor making
186 payment according to the terms of its policy or obligation is
187 not liable by reason of this section unless before payment it
188 receives at its home office or principal address written notice
189 of a claim under this section.

190 (7) This section does not apply if, after the conviction of
191 abuse, neglect, or exploitation, the victim of the offense, if
192 capacitated, executes a written instrument, sworn to and
193 witnessed by two persons who would be competent as witnesses to
194 a will, which expresses a specific intent to allow the person so
195 convicted of abuse, neglect, or exploitation to retain his or
196 her inheritance or survivorship rights.

197 Section 4. Subsection (3) is added to section 736.1104,
198 Florida Statutes, to read:

199 736.1104 Person ~~Killer~~ not entitled to receive property or
200 other benefits by reason of victim's death.-

201 (3) A beneficiary of a trust who was convicted of abuse,
202 neglect, or exploitation under s. 825.102 or s. 825.103 or
203 aggravated manslaughter under s. 782.07(2) of a settlor or

20-00359C-21

20211344__

204 another person on whose death such beneficiary's interest
205 depends is not entitled to any trust interest, including a
206 homestead dependent on the victim's death, and such interest
207 shall devolve as though the abuser, neglecter, exploiter, or
208 killer had predeceased the victim.

209 (a) A final judgment of conviction for abuse, neglect,
210 exploitation, or aggravated manslaughter of the decedent or
211 other person creates a rebuttable presumption that this section
212 applies.

213 (b) In the absence of a qualifying conviction, the court
214 may determine by the greater weight of the evidence whether the
215 decedent's or other person's death was either caused by or
216 contributed to by the abuser, neglecter, exploiter, or killer
217 for purposes of this section.

218 Section 5. Subsections (8) through (14) of section 825.101,
219 Florida Statutes, are renumbered as subsections (10) through
220 (16), respectively, and new subsections (8) and (9) are added to
221 that section, to read:

222 825.101 Definitions.—As used in this chapter:

223 (8) "Improper benefit" means any remuneration or payment,
224 by or on behalf of any service provider or merchant of goods, to
225 any person as an incentive or inducement to refer customers or
226 patrons for past or future services or goods.

227 (9) "Kickback" has the same meaning as in s. 456.054(1).

228 Section 6. Paragraphs (b) and (c) of subsection (1) of
229 section 825.102, Florida Statutes, are amended, and paragraph
230 (d) is added to that subsection, to read:

231 825.102 Abuse, aggravated abuse, and neglect of an elderly
232 person or disabled adult; penalties.—

20-00359C-21

20211344__

233 (1) "Abuse of an elderly person or disabled adult" means:
234 (b) An intentional act that could reasonably be expected to
235 result in physical or psychological injury to an elderly person
236 or disabled adult; ~~or~~
237 (c) Active encouragement of any person to commit an act
238 that results or could reasonably be expected to result in
239 physical or psychological injury to an elderly person or
240 disabled adult; or
241 (d) Intentionally, and without lawful authority, isolating
242 or restricting access of an elderly person or a disabled adult
243 to family members for any length of time which could reasonably
244 be expected to result in physical or psychological injury to the
245 elderly person or disabled adult, or with the intent to promote,
246 facilitate, conceal, or disguise some form of criminal activity
247 involving the person or property of the elderly person or
248 disabled adult. It is a defense to a violation of this paragraph
249 that the defendant had reasonable cause to believe that his or
250 her action was necessary to protect the elderly person or
251 disabled adult from danger to his or her welfare.

252
253 A person who knowingly or willfully abuses an elderly person or
254 disabled adult without causing great bodily harm, permanent
255 disability, or permanent disfigurement to the elderly person or
256 disabled adult commits a felony of the third degree, punishable
257 as provided in s. 775.082, s. 775.083, or s. 775.084.

258 Section 7. Paragraphs (c), (d), and (e) of subsection (1)
259 of section 825.103, Florida Statutes, are amended, and paragraph
260 (f) is added to that subsection, to read:

261 825.103 Exploitation of an elderly person or disabled

20-00359C-21

20211344__

262 adult; penalties.—

263 (1) "Exploitation of an elderly person or disabled adult"
264 means:

265 (c) Breach of a fiduciary duty to an elderly person or
266 disabled adult by the person's guardian, trustee who is an
267 individual, or agent under a power of attorney which results in
268 an unauthorized appropriation, sale, ~~or~~ transfer of property,
269 kickback, or receipt of an improper benefit. An unauthorized
270 appropriation under this paragraph occurs when the elderly
271 person or disabled adult does not receive the reasonably
272 equivalent financial value in goods or services, or when the
273 fiduciary violates any of these duties:

274 1. For agents appointed under chapter 709:

275 a. Committing fraud in obtaining their appointments;

276 b. Obtaining appointments with the purpose and design of
277 benefiting someone other than the principal or beneficiary;

278 c.~~b~~. Abusing their powers;

279 d.~~e~~. Wasting, embezzling, or intentionally mismanaging the
280 assets of the principal or beneficiary; or

281 e.~~d~~. Acting contrary to the principal's sole benefit or
282 best interest; or

283 2. For guardians and trustees who are individuals and who
284 are appointed under chapter 736 or chapter 744:

285 a. Committing fraud in obtaining their appointments;

286 b. Obtaining appointments with the purpose and design of
287 benefiting someone other than the principal or beneficiary;

288 c.~~b~~. Abusing their powers; or

289 d.~~e~~. Wasting, embezzling, or intentionally mismanaging the
290 assets of the ward or beneficiary of the trust;

20-00359C-21

20211344__

291 (d) Misappropriating, misusing, or transferring without
292 authorization money belonging to an elderly person or disabled
293 adult from an account in which the elderly person or disabled
294 adult placed the funds, owned the funds, and was the sole
295 contributor or payee of the funds before the misappropriation,
296 misuse, or unauthorized transfer. This paragraph only applies to
297 the following types of accounts:

298 1. Personal accounts;

299 2. Joint accounts created with the intent that only the
300 elderly person or disabled adult enjoys all rights, interests,
301 and claims to moneys deposited into such account; or

302 3. Convenience accounts created in accordance with s.
303 655.80; ~~or~~

304 (e) Intentionally or negligently failing to effectively use
305 an elderly person's or disabled adult's income and assets for
306 the necessities required for that person's support and
307 maintenance, by a caregiver or a person who stands in a position
308 of trust and confidence with the elderly person or disabled
309 adult; or

310 (f) Knowingly obtaining or using, endeavoring to obtain or
311 use, or conspiring with another to obtain or use an elderly
312 person's or a disabled adult's funds, assets, property, or
313 estate through intentional modification or alteration of a plan
314 of distribution or disbursement expressed in a will, trust
315 agreement, or other testamentary devise of the elderly person or
316 disabled adult without:

317 1. A court order, from a court having jurisdiction over the
318 elderly person or disabled adult, which authorizes the
319 modification or alteration;

20-00359C-21

20211344__

320 2. A written instrument executed by the elderly person or
321 disabled adult, sworn to and witnessed by two persons who would
322 be competent as witnesses to a will, which authorizes the
323 modification or alteration; or

324 3. Action of an agent under a valid power of attorney
325 executed by the elderly person or disabled adult which
326 authorizes the modification or alteration.

327 Section 8. Paragraph (a) of subsection (2), paragraph (a)
328 of subsection (3), and paragraph (d) of subsection (5) of
329 section 825.1035, Florida Statutes, are amended to read:

330 825.1035 Injunction for protection against exploitation of
331 a vulnerable adult.—

332 (2) WHO MAY FILE; VENUE; RECORDING.—

333 (a) The cause of action may be sought in an adversary
334 proceeding by:

335 1. A vulnerable adult in imminent danger of being
336 exploited;

337 2. The guardian of a vulnerable adult in imminent danger of
338 being exploited;

339 3. A person or organization acting on behalf of the
340 vulnerable adult with the consent of the vulnerable adult or his
341 or her guardian; ~~or~~

342 4. An agent under a valid durable power of attorney with
343 the authority specifically granted in the power of attorney; or

344 ~~5.4.~~ A person who simultaneously files a petition for
345 determination of incapacity and appointment of an emergency
346 temporary guardian with respect to the vulnerable adult.

347 (3) FORM OF PETITION.—

348 (a) A sworn petition filed under this section must allege

20-00359C-21

20211344__

349 the existence of exploitation, or the imminent exploitation, of
350 the vulnerable adult and must include the specific facts and
351 circumstances for which relief is sought. The sworn petition
352 must be in substantially the following form:

353
354 PETITION FOR INJUNCTION FOR PROTECTION
355 AGAINST EXPLOITATION OF A VULNERABLE ADULT
356

357 Before me, the undersigned authority, personally appeared
358 Petitioner ...(Name)..., who has been sworn and says that the
359 following statements are true:

360 1. The petitioner's name is:

361 2. The petitioner's address is:

362 3. The petitioner's relationship to the vulnerable adult
363 is:

364 4. How long has the petitioner known the vulnerable adult:

365 _____
366 5. The vulnerable adult's name is:

367 6. Aliases of the vulnerable adult are:

368 7. The vulnerable adult's date of birth is:

369 8.1. The vulnerable adult's address is ~~adult resides at:~~

370 _____ ...(address)....

371 9. Does the vulnerable adult have one or more impairments
372 that impact his or her ability to perform normal activities of
373 daily living or to provide for his or her own care or
374 protection?

375 Yes _____ No _____

376 If so, what are this person's impairments? (check all that
377 apply)

20-00359C-21

20211344__

378 Long-term physical disability
 379 Sensory disability (e.g., hearing or vision impaired)
 380 Cognitive disability
 381 Mental or emotional disability
 382 Developmental disability
 383 Infirmary of aging
 384 Other (explain)
 385 ~~10.2.~~ The respondent's last known address is ~~respondent~~
 386 ~~resides at: _____ ... (last known address)....~~
 387 ~~11.3.~~ The respondent's last known place of employment is:
 388 ~~... (name of business and address)....~~
 389 ~~12.4.~~ Physical description of the respondent:
 390 Race....
 391 Sex....
 392 Date of birth....
 393 Height....
 394 Weight....
 395 Eye color....
 396 Hair color....
 397 Distinguishing marks or scars....
 398 ~~13.5.~~ Aliases of the respondent:
 399 ~~14.6.~~ The respondent is associated with the vulnerable
 400 adult as follows:
 401 ~~15.7.~~ The following describes any other cause of action
 402 currently pending between the petitioner and the respondent, any
 403 proceeding under chapter 744 concerning the vulnerable adult,
 404 and any previous or pending attempts by the petitioner to obtain
 405 an injunction for protection against exploitation of the
 406 vulnerable adult in this or any other circuit; related case

20-00359C-21

20211344__

407 numbers, if available; and the results of any such
408 attempts:.....
409

410 16.8. The following describes the petitioner’s knowledge of
411 any reports made to a government agency, including, but not
412 limited to, the Department of Elderly Affairs, the Department of
413 Children and Families, and the adult protective services program
414 relating to the abuse, neglect, or exploitation of the
415 vulnerable adult; any investigations performed by a government
416 agency relating to abuse, neglect, or exploitation of the
417 vulnerable adult; and the results of any such reports or
418 investigations:

419 17.9. The petitioner knows the vulnerable adult is either a
420 victim of exploitation or the petitioner has reasonable cause to
421 believe the vulnerable adult is, or is in imminent danger of
422 becoming, a victim of exploitation because the respondent has:
423 ...(describe in the spaces below the incidents or threats of
424 exploitation)....

425 18.10. The following describes the petitioner’s knowledge
426 of the vulnerable adult’s dependence on the respondent for care;
427 alternative provisions for the vulnerable adult’s care in the
428 absence of the respondent, if necessary; available resources the
429 vulnerable adult has to access such alternative provisions; and
430 the vulnerable adult’s willingness to use such alternative
431 provisions:

432 19.11. The petitioner knows the vulnerable adult maintains
433 assets, accounts, or lines of credit at the following financial
434 institution(s): ...(list name, address, and account number of
435 each)....

20-00359C-21

20211344__

436 ~~20.12.~~ The petitioner believes that the vulnerable adult's
437 assets to be frozen are: ... (mark one)....

438 ...Worth less than \$1500;

439 ...Worth between \$1500 and \$5000; or

440 ...Worth more than \$5000.

441 ~~21.13.~~ The petitioner genuinely fears imminent exploitation
442 of the vulnerable adult by the respondent.

443 ~~22.14.~~ The petitioner seeks an injunction for the
444 protection of the vulnerable adult, including: ... (mark
445 appropriate section or sections)....

446 ...Prohibiting the respondent from having any direct or
447 indirect contact with the vulnerable adult.

448 ...Immediately restraining the respondent from committing
449 any acts of exploitation against the vulnerable adult.

450 ...Freezing the assets of the vulnerable adult held at
451 ... (name and address of depository or financial institution)...
452 even if titled jointly with the respondent, or in the
453 respondent's name only, in the court's discretion.

454 ...Freezing the credit lines of the vulnerable adult at
455 ... (name and address of financial institution)... even if
456 jointly with the respondent, in the court's discretion.

457 ...Providing any terms the court deems necessary for the
458 protection of the vulnerable adult or his or her assets,
459 including any injunctions or directives to law enforcement
460 agencies.

461 ~~23.15.~~ Should the court enter an injunction freezing assets
462 and credit lines, the petitioner believes that the critical
463 expenses of the vulnerable adult will be paid for or provided by
464 the following persons or entities, or the petitioner requests

20-00359C-21

20211344__

465 that the following expenses be paid notwithstanding the freeze:
466 ... (for each expense, list the name of the payee, address,
467 account number if known, amount, and a brief explanation of why
468 payment is critical)....

469 (5) TEMPORARY INJUNCTION; SERVICE; HEARING.—

470 (d) An ex parte temporary injunction may be effective for a
471 fixed period not to exceed 15 days unless good cause is shown to
472 extend the injunction. The ex parte temporary injunction may be
473 extended one time for up to an additional 30 days. A full
474 hearing, as provided by this section, must be set for a date no
475 later than the date when the ex parte temporary injunction
476 ceases to be effective. ~~The court may grant a continuance of the~~
477 ~~hearing, before or during the hearing, for good cause shown by~~
478 ~~any party, which good cause may include a continuance to obtain~~
479 ~~service of process. An ex parte injunction is not extended~~
480 ~~beyond the initial 15 days as a result of a continuance.~~

481 Section 9. This act shall take effect July 1, 2021.