

CHAPTER 2021-221

Committee Substitute for House Bill No. 1041

An act relating to protection of elderly persons and disabled adults; amending s. 16.56, F.S.; adding offenses concerning elderly persons and disabled adults to the authority of the Office of Statewide Prosecution; amending s. 733.303, F.S.; providing that a person who has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult is not qualified to act as a personal representative; creating s. 732.8031, F.S.; providing for forfeiture of specified benefits of persons who have been convicted of certain offenses involving elderly persons or disabled adults; providing that certain persons who have been convicted of certain offenses involving elderly persons or disabled adults may still retain an inheritance, survivorship rights, other rights, or a trust interest if the victim executes a specified instrument; amending s. 736.1104, F.S.; providing that a beneficiary of a trust may not benefit under the trust if the person was convicted of certain offenses involving elderly persons or disabled adults; amending s. 825.101, F.S.; defining terms; amending s. 825.102, F.S.; specifying additional conduct that constitutes abuse of an elderly person or a disabled adult; providing a defense to certain violations; providing criminal penalties; amending s. 825.103, F.S.; specifying additional conduct that constitutes exploitation of an elderly person or a disabled adult; providing criminal penalties; amending s. 825.1035, F.S.; revising provisions concerning injunctions for protection against exploitation of a vulnerable adult; providing for extension of ex parte temporary injunctions; providing an effective date.

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

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

16.56 Office of Statewide Prosecution.—

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

(a) Investigate and prosecute the offenses of:

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

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is

investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

- 4. Any violation of the Florida Anti-Fencing Act;
- 5. Any violation of the Florida Antitrust Act of 1980, as amended;
- 6. Any crime involving, or resulting in, fraud or deceit upon any person;
- 7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;
- 8. Any violation of chapter 815;
- 9. Any violation of chapter 825;
- ~~10.9.~~ Any criminal violation of part I of chapter 499;
- ~~11.10.~~ Any violation of the Florida Motor Fuel Tax Relief Act of 2004;
- ~~12.11.~~ Any criminal violation of s. 409.920 or s. 409.9201;
- ~~13.12.~~ Any crime involving voter registration, voting, or candidate or issue petition activities;
- ~~14.13.~~ Any criminal violation of the Florida Money Laundering Act;
- ~~15.14.~~ Any criminal violation of the Florida Securities and Investor Protection Act; or
- ~~16.15.~~ Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

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

733.303 Persons not qualified.—

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

(a) Has been convicted of a felony.

(b) Has been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101.

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

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

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

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

(1) A surviving person who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against the decedent or another person on whose death such beneficiary's interest depends is not entitled to any benefits under the will of the decedent or the Florida Probate Code, and the estate of the decedent passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the abuser, neglector, exploiter, or killer passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent.

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

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(2) A joint tenant who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against another joint tenant decedent thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's sole property and as if the abuser, neglector, exploiter, or killer has no rights by survivorship. This subsection applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan

associations, credit unions, and other financial institutions; and any other form of coownership with survivorship interests.

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

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond, policy, or other contractual arrangement becomes payable as though the abuser, neglector, exploiter, or killer had predeceased the decedent.

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

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(4) Any other property or interest acquired as a result of the abuse, neglect, exploitation, or manslaughter must be returned in accordance with this section.

(5)(a) This section does not affect the rights of any person who purchases property for value and without notice from the abuser, neglector, exploiter, or killer before rights have been adjudicated in accordance with this section.

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

(6) Any insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless more than 2 business days before payment it receives at its home office or principal address written notice, or in the case of a financial institution it receives notice in accordance with s. 655.0201, of a claim under this section.

(7) This section does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain his or her inheritance, survivorship rights, or any other right that might otherwise be removed by this section by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain his or her inheritance, survivorship rights, or any other right that might otherwise be removed by this section.

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

736.1104 Person Killer not entitled to receive property or other benefits by reason of victim's death.—

(3) A beneficiary of a trust who was convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against a settlor or another person on whose death such beneficiary's interest depends is not entitled to any trust interest, including a homestead dependent on the victim's death, and such interest shall devolve as though the abuser, neglector, exploiter, or killer had predeceased the victim.

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

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(c) This subsection does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain a trust interest by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain a trust interest.

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

825.101 Definitions.—As used in this chapter:

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

(9) “Kickback” has the same meaning as in s. 456.054(1).

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

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

(1) “Abuse of an elderly person or disabled adult” means:

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; ~~or~~

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(d) Intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult. It is a defense to a violation of this paragraph that the defendant had reasonable cause to believe that his or her action was necessary to protect the elderly person or disabled adult from danger to his or her welfare.

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

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

825.103 Exploitation of an elderly person or disabled adult; penalties.

(1) “Exploitation of an elderly person or disabled adult” means:

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, ~~or~~ transfer of property, kickback, or receipt of an improper benefit. An unauthorized

appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

1. For agents appointed under chapter 709:

a. Committing fraud in obtaining their appointments;

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

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

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

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

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

a. Committing fraud in obtaining their appointments;

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

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

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

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

1. Personal accounts;

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

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

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

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

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

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

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

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

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

(2) WHO MAY FILE; VENUE; RECORDING.—

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

1. A vulnerable adult in imminent danger of being exploited;
2. The guardian of a vulnerable adult in imminent danger of being exploited;
3. A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

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

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

(3) FORM OF PETITION.—

(a) A sworn petition filed under this section must allege the existence of exploitation, or the imminent exploitation, of the vulnerable adult and must include the specific facts and circumstances for which relief is sought. The sworn petition must be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

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

- 1. The petitioner's name is:
2. The petitioner's address is:
3. The petitioner's relationship to the vulnerable adult is:
4. How long has the petitioner known the vulnerable adult:
5. The vulnerable adult's name is:
6. Aliases of the vulnerable adult are:
7. The vulnerable adult's date of birth is:

8.1. The vulnerable adult's address is adult resides at: ... (address)...

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

Yes..... No.....

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

- Long-term physical disability
..... Sensory disability (e.g., hearing or vision impaired)
..... Cognitive disability
..... Mental or emotional disability
..... Developmental disability
..... Infirmary of aging
..... Other (explain)

10.2. The respondent's last known address is respondent resides at: ... (last known address)...

11.3. The respondent's last known place of employment is: ... (name of business and address)...

12.4. Physical description of the respondent:

Race.....

Sex.....

Date of birth.....

Height.....

Weight.....

Eye color.....

Hair color.....

Distinguishing marks or scars.....

13.5. Aliases of the respondent:

14.6. The respondent is associated with the vulnerable adult as follows:

15.7. The following describes any other cause of action currently pending between the petitioner and the respondent, any proceeding under chapter 744 concerning the vulnerable adult, and any previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the vulnerable adult in this or any other circuit; related case numbers, if available; and the results of any such attempts:
.....

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

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

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

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

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

.....Worth less than \$1500;

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

.....Worth more than \$5000.

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

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

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

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

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

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

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

23.15. Should the court enter an injunction freezing assets and credit lines, the petitioner believes that the critical expenses of the vulnerable adult will be paid for or provided by the following persons or entities, or the petitioner requests that the following expenses be paid notwithstanding the freeze: ...(for each expense, list the name of the payee, address, account number if known, amount, and a brief explanation of why payment is critical)....

(5) TEMPORARY INJUNCTION; SERVICE; HEARING.—

(d) An ex parte temporary injunction may be effective for a fixed period not to exceed 15 days unless good cause is shown to extend the injunction. The ex parte temporary injunction may be extended one time for up to an additional 30 days. A full hearing, as provided by this section, must be set for a date no later than the date when the ex parte temporary injunction ceases

~~to be effective. The court may grant a continuance of the hearing, before or during the hearing, for good cause shown by any party, which good cause may include a continuance to obtain service of process. An ex parte injunction is not extended beyond the initial 15 days as a result of a continuance.~~

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

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.