

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Burton offered the following:

**Amendment**

Remove lines 103-327 and insert:

6 (b) Has been convicted in any state or foreign  
7 jurisdiction of abuse, neglect, or exploitation of "an elderly  
8 person" or a "disabled adult," as those terms are defined in s.  
9 825.101.

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

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

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

15 732.8031 Forfeiture for abuse, neglect, exploitation, or  
16 aggravated manslaughter of an elderly person or disabled adult.-

## Amendment No.1

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

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

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

40       (2) A joint tenant who is convicted in any state or  
41 foreign jurisdiction of abuse, neglect, exploitation, or

## Amendment No.1

42 aggravated manslaughter of "an elderly person" or a "disabled  
43 adult," as those terms are defined in s. 825.101, for conduct  
44 against another joint tenant decedent thereby effects a  
45 severance of the interest of the decedent so that the share of  
46 the decedent passes as the decedent's sole property and as if  
47 the abuser, neglecter, exploiter, or killer has no rights by  
48 survivorship. This subsection applies to joint tenancies with  
49 right of survivorship and tenancies by the entirety in real and  
50 personal property; joint and multiple-party accounts in banks,  
51 savings and loan associations, credit unions, and other  
52 financial institutions; and any other form of coownership with  
53 survivorship interests.

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

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

64 (3) A named beneficiary of a bond, life insurance policy,  
65 or other contractual arrangement who is convicted in any state  
66 or foreign jurisdiction of abuse, neglect, exploitation, or

## Amendment No.1

67 aggravated manslaughter of "an elderly person" or a "disabled  
68 adult," as those terms are defined in s. 825.101, for conduct  
69 against the owner or principal obligee of the bond, life  
70 insurance policy, or other contractual arrangement or the person  
71 upon whose life such policy was issued is not entitled to any  
72 benefit under the bond, policy, or other contractual  
73 arrangement, and the bond, policy, or other contractual  
74 arrangement becomes payable as though the abuser, neglector,  
75 exploiter, or killer had predeceased the decedent.

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

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

86 (4) Any other acquisition of property or interest by the  
87 abuser, neglector, exploiter, or killer, including a life estate  
88 in homestead property, shall be treated in accordance with the  
89 principles of this section.

90 (5) (a) This section does not affect the rights of any  
91 person who, before rights under this section have been

Amendment No.1

92 adjudicated, purchases from the abuser, neglector, exploiter, or  
93 killer for value and without notice property that the abuser,  
94 neglector, exploiter, or killer would have acquired except for  
95 this section.

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

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

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

116 Section 4. Subsection (3) is added to section 736.1104,

Amendment No.1

117 Florida Statutes, to read:

118 736.1104 Person Killer not entitled to receive property or  
119 other benefits by reason of victim's death.-

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

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

133 (b) In the absence of a qualifying conviction, the court  
134 may determine by the greater weight of the evidence whether the  
135 decedent's or other person's death was either caused by or  
136 contributed to by the abuser's, neglector's, exploiter's, or  
137 killer's conduct as defined in s. 825.102, s. 825.103, or s.  
138 782.07 (2) for purposes of this section.

139 (c) This section does not apply if it can be proven by  
140 clear and convincing evidence that, after the conviction of  
141 abuse, neglect or exploitation, the victim of the offense, if

Amendment No.1

142 capacitated, ratifies an intent that the person so convicted of  
143 abuse, neglect, or exploitation retain a trust interest by  
144 executing a valid, written instrument, sworn to and witnessed by  
145 two persons who would be competent as witnesses to a will, which  
146 expresses a specific intent to allow the convicted person to  
147 retain a trust interest.

148 Section 5. Subsections (8) through (14) of section  
149 825.101, Florida Statutes, are renumbered as subsections (10)  
150 through (16), respectively, and new subsections (8) and (9) are  
151 added to that section, to read:

152 825.101 Definitions.—As used in this chapter:

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

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

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

161 825.102 Abuse, aggravated abuse, and neglect of an elderly  
162 person or disabled adult; penalties.—

163 (1) "Abuse of an elderly person or disabled adult" means:

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

## Amendment No.1

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

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

182  
183 A person who knowingly or willfully abuses an elderly person or  
184 disabled adult without causing great bodily harm, permanent  
185 disability, or permanent disfigurement to the elderly person or  
186 disabled adult commits a felony of the third degree, punishable  
187 as provided in s. 775.082, s. 775.083, or s. 775.084.

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

191 825.103 Exploitation of an elderly person or disabled



Amendment No.1

192 adult; penalties.-

193 (1) "Exploitation of an elderly person or disabled adult"  
194 means:

195 (c) Breach of a fiduciary duty to an elderly person or  
196 disabled adult by the person's guardian, trustee who is an  
197 individual, or agent under a power of attorney which results in  
198 an unauthorized appropriation, sale, ~~or~~ transfer of property,  
199 kickback, or receipt of an improper benefit. An unauthorized  
200 appropriation under this paragraph occurs when the elderly  
201 person or disabled adult does not receive the reasonably  
202 equivalent financial value in goods or services, or when the  
203 fiduciary violates any of these duties:

204 1. For agents appointed under chapter 709:

205 a. Committing fraud in obtaining their appointments;

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

208 c.b. Abusing their powers;

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

211 e.d. Acting contrary to the principal's sole benefit or  
212 best interest; or

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

215 a. Committing fraud in obtaining their appointments;

216 b. Obtaining appointments with the purpose and design of

Amendment No.1

217 benefiting someone other than the principal or beneficiary;  
218 ~~c.b.~~ Abusing their powers; or  
219 ~~d.e.~~ Wasting, embezzling, or intentionally mismanaging the  
220 assets of the ward or beneficiary of the trust;  
221 (d) Misappropriating, misusing, or transferring without  
222 authorization money belonging to an elderly person or disabled  
223 adult from an account in which the elderly person or disabled  
224 adult placed the funds, owned the funds, and was the sole  
225 contributor or payee of the funds before the misappropriation,  
226 misuse, or unauthorized transfer. This paragraph only applies to  
227 the following types of accounts:  
228 1. Personal accounts;  
229 2. Joint accounts created with the intent that only the  
230 elderly person or disabled adult enjoys all rights, interests,  
231 and claims to moneys deposited into such account; or  
232 3. Convenience accounts created in accordance with s.  
233 655.80; ~~or~~  
234 (e) Intentionally or negligently failing to effectively  
235 use an elderly person's or disabled adult's income and assets  
236 for the necessities required for that person's support and  
237 maintenance, by a caregiver or a person who stands in a position  
238 of trust and confidence with the elderly person or disabled  
239 adult; or  
240 (f) Knowingly obtaining or using, endeavoring to obtain or  
241 use, or conspiring with another to obtain or use an elderly

Amendment No.1

242 person's or a disabled adult's funds, assets, property, or  
243 estate through intentional modification, alteration, or  
244 fraudulent creation of a plan of distribution or disbursement  
245 expressed in a will, trust agreement, or other testamentary  
246 devise of the elderly person or disabled adult without:

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

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

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

257  
258