

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
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;

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.
 75 409.9201;

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

78 | ~~14.13.~~ Any criminal violation of the Florida Money
 79 | Laundering Act;

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

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

84 |
 85 | or any attempt, solicitation, or conspiracy to commit any of the
 86 | crimes specifically enumerated above. The office shall have such
 87 | power only when any such offense is occurring, or has occurred,
 88 | in two or more judicial circuits as part of a related
 89 | transaction, or when any such offense is connected with an
 90 | organized criminal conspiracy affecting two or more judicial
 91 | circuits. Informations or indictments charging such offenses
 92 | shall contain general allegations stating the judicial circuits
 93 | and counties in which crimes are alleged to have occurred or the
 94 | judicial circuits and counties in which crimes affecting such
 95 | circuits or counties are alleged to have been connected with an
 96 | organized criminal conspiracy.

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

99 | 733.303 Persons not qualified.—

100 | (1) A person is not qualified to act as a personal

101 representative if the person:

102 (a) Has been convicted of a felony.

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

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

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

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

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

112 (1) A surviving person who is convicted of abuse, neglect,
 113 or exploitation under s. 825.102 or s. 825.103 or aggravated
 114 manslaughter under s. 782.07(2) of the decedent or another
 115 person on whose death such beneficiary's interest depends is not
 116 entitled to any benefits under the will of the decedent or the
 117 Florida Probate Code, and the estate of the decedent passes as
 118 if the abuser, neglector, exploiter, or killer had predeceased
 119 the decedent. Property appointed by the will of the decedent to
 120 or for the benefit of the abuser, neglector, exploiter, or
 121 killer passes as if the abuser, neglector, exploiter, or killer
 122 had predeceased the decedent.

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

126 applies.

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

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

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

148 (b) In the absence of a qualifying conviction, the court
149 may determine by the greater weight of the evidence whether the
150 decedent's or other person's death was caused by or contributed

151 to by the abuser, neglector, exploiter, or killer for purposes
152 of this section.

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

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

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

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

176 principles of this section.

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

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

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

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

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

200 736.1104 Person ~~Killer~~ not entitled to receive property or

HB 1041

2021

201 other benefits by reason of victim's death.—

202 (3) A beneficiary of a trust who was convicted of abuse,
203 neglect, or exploitation under s. 825.102 or s. 825.103 or
204 aggravated manslaughter under s. 782.07(2) of a settlor or
205 another person on whose death such beneficiary's interest
206 depends is not entitled to any trust interest, including a
207 homestead dependent on the victim's death, and such interest
208 shall devolve as though the abuser, neglecter, exploiter, or
209 killer had predeceased the victim.

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

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

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

223 825.101 Definitions.—As used in this chapter:

224 (8) "Improper benefit" means any remuneration or payment,
225 by or on behalf of any service provider or merchant of goods, to

226 any person as an incentive or inducement to refer customers or
 227 patrons for past or future services or goods.

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

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

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

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

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

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

242 (d) Intentionally, and without lawful authority, isolating
 243 or restricting access of an elderly person or a disabled adult
 244 to family members for any length of time which could reasonably
 245 be expected to result in physical or psychological injury to the
 246 elderly person or disabled adult, or with the intent to promote,
 247 facilitate, conceal, or disguise some form of criminal activity
 248 involving the person or property of the elderly person or
 249 disabled adult. It is a defense to a violation of this paragraph
 250 that the defendant had reasonable cause to believe that his or

251 her action was necessary to protect the elderly person or
 252 disabled adult from danger to his or her welfare.

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

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

262 825.103 Exploitation of an elderly person or disabled
 263 adult; penalties.—

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

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

275 1. For agents appointed under chapter 709:

- 276 a. Committing fraud in obtaining their appointments;
- 277 b. Obtaining appointments with the purpose and design of
- 278 benefiting someone other than the principal or beneficiary;
- 279 ~~c.b.~~ Abusing their powers;
- 280 ~~d.e.~~ Wasting, embezzling, or intentionally mismanaging the
- 281 assets of the principal or beneficiary; or
- 282 ~~e.d.~~ Acting contrary to the principal's sole benefit or
- 283 best interest; or
- 284 2. For guardians and trustees who are individuals and who
- 285 are appointed under chapter 736 or chapter 744:
- 286 a. Committing fraud in obtaining their appointments;
- 287 b. Obtaining appointments with the purpose and design of
- 288 benefiting someone other than the principal or beneficiary;
- 289 ~~c.b.~~ Abusing their powers; or
- 290 ~~d.e.~~ Wasting, embezzling, or intentionally mismanaging the
- 291 assets of the ward or beneficiary of the trust;
- 292 (d) Misappropriating, misusing, or transferring without
- 293 authorization money belonging to an elderly person or disabled
- 294 adult from an account in which the elderly person or disabled
- 295 adult placed the funds, owned the funds, and was the sole
- 296 contributor or payee of the funds before the misappropriation,
- 297 misuse, or unauthorized transfer. This paragraph only applies to
- 298 the following types of accounts:
- 299 1. Personal accounts;
- 300 2. Joint accounts created with the intent that only the

301 elderly person or disabled adult enjoys all rights, interests,
 302 and claims to moneys deposited into such account; or

303 3. Convenience accounts created in accordance with s.
 304 655.80; ~~or~~

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

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

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

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

325 3. Action of an agent under a valid power of attorney

326 executed by the elderly person or disabled adult which
327 authorizes the modification or alteration.

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

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

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

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

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

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

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

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

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

348 (3) FORM OF PETITION.—

349 (a) A sworn petition filed under this section must allege
350 the existence of exploitation, or the imminent exploitation, of

351 the vulnerable adult and must include the specific facts and
 352 circumstances for which relief is sought. The sworn petition
 353 must be in substantially the following form:

354
 355 PETITION FOR INJUNCTION FOR PROTECTION
 356 AGAINST EXPLOITATION OF A VULNERABLE ADULT
 357

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

- 361 1. The petitioner's name is: _____
- 362 2. The petitioner's address is: _____
- 363 3. The petitioner's relationship to the vulnerable adult
 364 is: _____
- 365 4. How long has the petitioner known the vulnerable adult:
 366 _____
- 367 5. The vulnerable adult's name is: _____
- 368 6. Aliases of the vulnerable adult are: _____
- 369 7. The vulnerable adult's date of birth is: _____
- 370 8.1. The vulnerable adult's address is ~~adult resides at:~~
 371 _____ ~~...(address)....~~
- 372 9. Does the vulnerable adult have one or more impairments
 373 that impact his or her ability to perform normal activities of
 374 daily living or to provide for his or her own care or
 375 protection?

376 Yes No

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

378 apply)

379 Long-term physical disability

380 Sensory disability (e.g., hearing or vision impaired)

381 Cognitive disability

382 Mental or emotional disability

383 Developmental disability

384 Infirmary of aging

385 Other (explain)

386 10.2. The respondent's last known address is ~~respondent~~

387 ~~resides at:~~ _____ ~~...(last known address)....~~

388 11.3. The respondent's last known place of employment is:

389 ~~...(name of business and address)....~~

390 12.4. Physical description of the respondent:

391 Race....

392 Sex....

393 Date of birth....

394 Height....

395 Weight....

396 Eye color....

397 Hair color....

398 Distinguishing marks or scars....

399 13.5. Aliases of the respondent:

400 14.6. The respondent is associated with the vulnerable

401 adult as follows:

402 15.7- The following describes any other cause of action
 403 currently pending between the petitioner and the respondent, any
 404 proceeding under chapter 744 concerning the vulnerable adult,
 405 and any previous or pending attempts by the petitioner to obtain
 406 an injunction for protection against exploitation of the
 407 vulnerable adult in this or any other circuit; related case
 408 numbers, if available; and the results of any such
 409 attempts:.....
 410

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

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

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

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

437 ~~20.12.~~ The petitioner believes that the vulnerable adult's
 438 assets to be frozen are: ...(mark one)....
 439 Worth less than \$1500;
 440 Worth between \$1500 and \$5000; or
 441 Worth more than \$5000.

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

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

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

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

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

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

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

462 ~~23.15.~~ Should the court enter an injunction freezing
 463 assets and credit lines, the petitioner believes that the
 464 critical expenses of the vulnerable adult will be paid for or
 465 provided by the following persons or entities, or the petitioner
 466 requests that the following expenses be paid notwithstanding the
 467 freeze: ...(for each expense, list the name of the payee,
 468 address, account number if known, amount, and a brief
 469 explanation of why payment is critical)....

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

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

HB 1041

2021

476 | later than the date when the ex parte temporary injunction
477 | ceases to be effective. ~~The court may grant a continuance of the~~
478 | ~~hearing, before or during the hearing, for good cause shown by~~
479 | ~~any party, which good cause may include a continuance to obtain~~
480 | ~~service of process. An ex parte injunction is not extended~~
481 | ~~beyond the initial 15 days as a result of a continuance.~~

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