

## Committee on Children, Families, and Elder Affairs

### **CS/HB 1041 — Protection of Elderly Persons and Disabled Adults**

by Judiciary Committee and Rep. Burton and others (CS/CS/SB 1344 Appropriations Committee; Criminal Justice Committee; and Senator Burgess)

The bill creates s. 732.8031, F.S., and amends s. 736.1104, F.S., prohibiting a person who commits any of the following offenses on an elderly or disabled person in any state or jurisdiction from serving as a personal representative or inheriting from the victim's estate, trust, or other beneficiary assets:

- Abuse;
- Neglect;
- Exploitation; or
- Aggravated manslaughter.

The bill amends s. 733.303, F.S., prohibiting individuals convicted of abuse, neglect, or exploitation of an elderly person or disabled adult from serving as personal representatives of an estate.

The bill creates s. 732.8031, F.S., to provide that a final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent creates a rebuttable presumption that any of the following convicted persons may not inherit a beneficiary asset:

- A surviving person whose beneficiary interest depends on the death of the victim.
- A joint tenant with a right of survivorship and a tenant by the entirety in real and personal property, a joint and multiple-party account holder in a bank, savings and loan association, credit union, and any other financial institution, and any other form of coownership with survivorship interests whose survivorship interest depends on the death of the victim.
- A named beneficiary of a bond, life insurance policy, or other contractual arrangement where the victim is 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.

Similarly, the bill amends s. 736.1104, F.S., by prohibiting a beneficiary of a trust convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation, or aggravated manslaughter of an elderly person or disabled adult, from receiving trust benefits when the victim is the settlor of a trust, or another person on whose death such beneficiary's interest depends from inheriting trust interests, including a homestead dependent on the victim's death.

In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the abuser's, neglector's, exploiter's, or killer's conduct as defined in ss. 825.102, 825.103, or 782.07(2), F.S., caused the victim's death, in which the person may not inherit. However, a convicted person may inherit from an estate, trust, or other beneficiary asset if it can be shown by clear and convincing evidence that the capacitated victim reinstated the person as a beneficiary.

The bill provides that any person who knowingly obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use the funds, assets, property, or the estate of an elderly person or disabled adult through the intentional modification, alteration, or fraudulent creation of a planned distribution or disbursement in a will, trust, or other testamentary document commits exploitation under the bill unless they have first obtained any of the following:

- A court order authorizing the modification;
- A written instrument authored by the elderly person or disabled adult, sworn to by the elderly person or disabled adult with two witnesses, authorizing the change; or
- The action of an agent under a valid power of attorney authorized by the elderly person or disabled adult permitting the change.

The bill also:

- Amends s. 16.56, F.S., to authorize the Office of Statewide Prosecution to investigate and prosecute crimes under ch. 825, F.S.
- Amends s. 825.101, F.S., to define the terms:
  - “Improper benefit” as 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; and
  - “Kickback” as having the same meaning as in provided in s. 456.054(1), F.S.
- Amends s. 825.102, F.S., to expand the offense of abuse, aggravated abuse, and neglect of an elderly person or disabled adult by prohibiting intentional isolation or restriction of access to an elderly person or disabled adult from his or her family members which can reasonably be expected to result in physical or psychological injury to elderly person or disabled adult with the intent to promote, facilitate, conceal, or disguise some form of criminal activity.
- Amends s. 825.103, F.S., to:
  - Prohibit seeking out appointment as a guardian, trustee, or agent under power of attorney with the intent to obtain control over the victim’s assets and person for the perpetrator or a third party’s benefit.
  - Prohibit intentional conduct by a perpetrator who modifies or alters the victim’s originally intended estate plan to financially benefit either the perpetrator or a third party in a manner inconsistent with the intent of the elderly person or disabled adult.

Expand the definition of exploitation of an elderly or disabled person to include breach of fiduciary duty resulting in a kickback or receipt of an improper benefit.

The bill also amends s. 825.1035, F.S., to authorize an agent under a durable power of attorney to petition for an injunction for protection against exploitation of a vulnerable adult, and to allow a court to make a one-time extension of the injunction for up to 30 days. The bill amends the statutory form for a petition for an injunction for protection against exploitation of a vulnerable adult in s. 825.1035, F.S., to include sufficient identifying information about the petitioner or the vulnerable adult.

If approved by the Governor, these provisions take effect July 1, 2021.

*Vote: Senate 39-0; House 117-0*