

By the Committee on Criminal Justice; and Senator Burgess

591-03248-21

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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

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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;

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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

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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 in any state or other jurisdiction
103 of abuse, neglect, or exploitation of an elderly person or a
104 disabled adult as those terms are defined in s. 825.101.

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 in any state or
113 other jurisdiction of abuse, neglect, exploitation, or
114 aggravated manslaughter of an elderly person or disabled adult,
115 as those terms are defined in s. 825.101, for conduct against
116 the decedent or another person on whose death such beneficiary's

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117 interest depends is not entitled to any benefits under the will
118 of the decedent or the Florida Probate Code, and the estate of
119 the decedent passes as if the abuser, neglector, exploiter, or
120 killer had predeceased the decedent. Property appointed by the
121 will of the decedent to or for the benefit of the abuser,
122 neglector, exploiter, or killer passes as if the abuser,
123 neglector, exploiter, or killer had predeceased the decedent.

124 (a) A conviction for abuse, neglect, exploitation, or
125 aggravated manslaughter of the decedent or other person creates
126 a rebuttable presumption that this section 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 conduct of the abuser or neglector as those terms are
131 described in s. 825.102, exploiter as described in s. 825.103,
132 or killer as provided in s. 782.07.

133 (2) A joint tenant who is convicted in any state or other
134 jurisdiction of abuse, neglect, exploitation, or aggravated
135 manslaughter of an elderly person or disabled adult, as those
136 terms are defined in s. 825.101, for conduct against another
137 joint tenant decedent thereby effects a severance of the
138 interest of the decedent so that the share of the decedent
139 passes as the decedent's sole property and as if the abuser,
140 neglector, exploiter, or killer has no rights by survivorship.
141 This subsection applies to joint tenancies with right of
142 survivorship and tenancies by the entirety in real and personal
143 property; joint and multiple-party accounts in banks, savings
144 and loan associations, credit unions, and other financial
145 institutions; and any other form of coownership with

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146 survivorship interests.

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

150 (b) In the absence of a qualifying conviction, the court
151 may determine by the greater weight of the evidence whether the
152 decedent's or other person's death was caused by or contributed
153 to by the conduct of the abuser or neglector as those terms are
154 described in s. 825.102, exploiter as described in s. 825.103,
155 or killer as provided in s. 782.07.

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

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

171 (b) In the absence of a qualifying conviction, the court
172 may determine by the greater weight of the evidence whether the
173 decedent's or other person's death was caused by or contributed
174 to by the conduct of the abuser or neglector as those terms are

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175 described in s. 825.102, exploiter as described in s. 825.103,
176 or killer as provided in s. 782.07.

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

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

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

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

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

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

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204 736.1104 ~~Person Killer~~ not entitled to receive property or
205 other benefits by reason of victim's death.-

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

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

218 (b) In the absence of a qualifying conviction, the court
219 may determine by the greater weight of the evidence whether the
220 decedent's or other person's death was caused by or contributed
221 to by the conduct of the abuser or neglecter as those terms are
222 described in s. 825.102, exploiter as described in s. 825.103,
223 or killer as provided in s. 782.07.

224 Section 5. Present subsections (8) through (14) of section
225 825.101, Florida Statutes, are redesignated as subsections (10)
226 through (16), respectively, and new subsections (8) and (9) are
227 added to that section, to read:

228 825.101 Definitions.—As used in this chapter:

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

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233 (9) "Kickback" has the same meaning as in s. 456.054(1).
234 Section 6. Paragraphs (b) and (c) of subsection (1) of
235 section 825.102, Florida Statutes, are amended, and paragraph
236 (d) is added to that subsection, to read:
237 825.102 Abuse, aggravated abuse, and neglect of an elderly
238 person or disabled adult; penalties.—
239 (1) "Abuse of an elderly person or disabled adult" means:
240 (b) An intentional act that could reasonably be expected to
241 result in physical or psychological injury to an elderly person
242 or disabled adult; ~~or~~
243 (c) Active encouragement of any person to commit an act
244 that results or could reasonably be expected to result in
245 physical or psychological injury to an elderly person or
246 disabled adult; or
247 (d) Intentionally, and without lawful authority, isolating
248 or restricting access of an elderly person or a disabled adult
249 to family members for any length of time which could reasonably
250 be expected to result in physical or psychological injury to the
251 elderly person or disabled adult, or with the intent to promote,
252 facilitate, conceal, or disguise some form of criminal activity
253 involving the person or property of the elderly person or
254 disabled adult. It is a defense to a violation of this paragraph
255 that the defendant had reasonable cause to believe that his or
256 her action was necessary to protect the elderly person or
257 disabled adult from danger to his or her welfare.
258
259 A person who knowingly or willfully abuses an elderly person or
260 disabled adult without causing great bodily harm, permanent
261 disability, or permanent disfigurement to the elderly person or

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262 disabled adult commits a felony of the third degree, punishable
263 as provided in s. 775.082, s. 775.083, or s. 775.084.

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

267 825.103 Exploitation of an elderly person or disabled
268 adult; penalties.—

269 (1) "Exploitation of an elderly person or disabled adult"
270 means:

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

280 1. For agents appointed under chapter 709:

281 a. Committing fraud in obtaining their appointments;

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

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

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

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

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

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- 291 a. Committing fraud in obtaining their appointments;
- 292 b. Obtaining appointments with the purpose and design of
- 293 benefiting someone other than the principal or beneficiary;
- 294 ~~c.b.~~ Abusing their powers; or
- 295 ~~d.e.~~ Wasting, embezzling, or intentionally mismanaging the
- 296 assets of the ward or beneficiary of the trust;
- 297 (d) Misappropriating, misusing, or transferring without
- 298 authorization money belonging to an elderly person or disabled
- 299 adult from an account in which the elderly person or disabled
- 300 adult placed the funds, owned the funds, and was the sole
- 301 contributor or payee of the funds before the misappropriation,
- 302 misuse, or unauthorized transfer. This paragraph only applies to
- 303 the following types of accounts:
- 304 1. Personal accounts;
- 305 2. Joint accounts created with the intent that only the
- 306 elderly person or disabled adult enjoys all rights, interests,
- 307 and claims to moneys deposited into such account; or
- 308 3. Convenience accounts created in accordance with s.
- 309 655.80; ~~or~~
- 310 (e) Intentionally or negligently failing to effectively use
- 311 an elderly person's or disabled adult's income and assets for
- 312 the necessities required for that person's support and
- 313 maintenance, by a caregiver or a person who stands in a position
- 314 of trust and confidence with the elderly person or disabled
- 315 adult; or
- 316 (f) Knowingly obtaining or using, endeavoring to obtain or
- 317 use, or conspiring with another to obtain or use an elderly
- 318 person's or a disabled adult's funds, assets, property, or
- 319 estate through intentional modification, alteration, or

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320 fraudulent creation of a plan of distribution or disbursement
321 expressed in a will, trust agreement, or other testamentary
322 devise of the elderly person or disabled adult without:

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

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

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

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

336 825.1035 Injunction for protection against exploitation of
337 a vulnerable adult.—

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

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

341 1. A vulnerable adult in imminent danger of being
342 exploited;

343 2. The guardian of a vulnerable adult in imminent danger of
344 being exploited;

345 3. A person or organization acting on behalf of the
346 vulnerable adult with the consent of the vulnerable adult or his
347 or her guardian; ~~or~~

348 4. An agent under a valid durable power of attorney with

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349 the authority specifically granted in the power of attorney; or

350 ~~5.4-~~ A person who simultaneously files a petition for
 351 determination of incapacity and appointment of an emergency
 352 temporary guardian with respect to the vulnerable adult.

353 (3) FORM OF PETITION.—

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

359
 360 PETITION FOR INJUNCTION FOR PROTECTION
 361 AGAINST EXPLOITATION OF A VULNERABLE ADULT
 362

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

366 1. The petitioner's name is:

367 2. The petitioner's address is:

368 3. The petitioner's relationship to the vulnerable adult
 369 is:

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

371 _____
 372 5. The vulnerable adult's name is:

373 6. Aliases of the vulnerable adult are:

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

375 ~~8.1-~~ The vulnerable adult's address is ~~adult resides at:~~
 376 _____ ~~...(address)....~~

377 9. Does the vulnerable adult have one or more impairments

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378 that impact his or her ability to perform normal activities of
 379 daily living or to provide for his or her own care or
 380 protection?

381 Yes No

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

384 Long-term physical disability

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

386 Cognitive disability

387 Mental or emotional disability

388 Developmental disability

389 Infirmary of aging

390 Other (explain)

391 ~~10.2.~~ The respondent's last known address is ~~respondent~~
 392 ~~resides at:~~ _____ ~~...(last known address)....~~

393 ~~11.3.~~ The respondent's last known place of employment is:
 394 ...(name of business and address)....

395 ~~12.4.~~ Physical description of the respondent:

396 Race....

397 Sex....

398 Date of birth....

399 Height....

400 Weight....

401 Eye color....

402 Hair color....

403 Distinguishing marks or scars....

404 ~~13.5.~~ Aliases of the respondent:

405 ~~14.6.~~ The respondent is associated with the vulnerable
 406 adult as follows:

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

415

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

425 17.9. The petitioner knows the vulnerable adult is either a
 426 victim of exploitation or the petitioner has reasonable cause to
 427 believe the vulnerable adult is, or is in imminent danger of
 428 becoming, a victim of exploitation because the respondent has:
 429 ... (describe in the spaces below the incidents or threats of
 430 exploitation)....

431 18.10. The following describes the petitioner's knowledge
 432 of the vulnerable adult's dependence on the respondent for care;
 433 alternative provisions for the vulnerable adult's care in the
 434 absence of the respondent, if necessary; available resources the
 435 vulnerable adult has to access such alternative provisions; and

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436 the vulnerable adult's willingness to use such alternative
437 provisions:

438 ~~19.11.~~ The petitioner knows the vulnerable adult maintains
439 assets, accounts, or lines of credit at the following financial
440 institution(s): ... (list name, address, and account number of
441 each)....

442 ~~20.12.~~ The petitioner believes that the vulnerable adult's
443 assets to be frozen are: ... (mark one)....

444Worth less than \$1500;

445Worth between \$1500 and \$5000; or

446Worth more than \$5000.

447 ~~21.13.~~ The petitioner genuinely fears imminent exploitation
448 of the vulnerable adult by the respondent.

449 ~~22.14.~~ The petitioner seeks an injunction for the
450 protection of the vulnerable adult, including: ... (mark
451 appropriate section or sections)....

452Prohibiting the respondent from having any direct or
453 indirect contact with the vulnerable adult.

454Immediately restraining the respondent from committing
455 any acts of exploitation against the vulnerable adult.

456Freezing the assets of the vulnerable adult held at
457 ... (name and address of depository or financial institution)...

458 even if titled jointly with the respondent, or in the
459 respondent's name only, in the court's discretion.

460Freezing the credit lines of the vulnerable adult at
461 ... (name and address of financial institution)... even if

462 jointly with the respondent, in the court's discretion.

463Providing any terms the court deems necessary for the
464 protection of the vulnerable adult or his or her assets,

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465 including any injunctions or directives to law enforcement
466 agencies.

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

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

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

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