

By the Committees on Appropriations; and Criminal Justice; and
Senator Burgess

576-04458-21

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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, survivorship rights, or any
17 other rights if the victim executes a specified
18 instrument; amending s. 736.1104, F.S.; providing that
19 a beneficiary of a trust may not benefit under the
20 trust if the person was convicted of certain offenses
21 involving elderly persons or disabled adults; amending
22 s. 825.101, F.S.; defining terms; amending s. 825.102,
23 F.S.; specifying additional conduct that constitutes
24 abuse of an elderly person or a disabled adult;
25 providing a defense to certain violations; providing
26 criminal penalties; amending s. 825.103, F.S.;
27 specifying additional conduct that constitutes
28 exploitation of an elderly person or a disabled adult;
29 providing criminal penalties; amending s. 825.1035,

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30 F.S.; revising provisions concerning injunctions for
31 protection against exploitation of a vulnerable adult;
32 providing for extension of ex parte temporary
33 injunctions; 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 foreign 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 a disabled
112 adult.—

113 (1) A surviving person who is convicted in any state or
114 foreign jurisdiction of abuse, neglect, exploitation, or
115 aggravated manslaughter of an elderly person or a disabled
116 adult, as those terms are defined in s. 825.101, for conduct

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117 against the decedent or another person on whose death such
118 beneficiary's interest depends is not entitled to any benefits
119 under the will of the decedent or the Florida Probate Code, and
120 the estate of the decedent passes as if the abuser, neglector,
121 exploiter, or killer had predeceased the decedent. Property
122 appointed by the will of the decedent to or for the benefit of
123 the abuser, neglector, exploiter, or killer passes as if the
124 abuser, neglector, exploiter, or killer had predeceased the
125 decedent.

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

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

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

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146 property; joint and multiple-party accounts in banks, savings
147 and loan associations, credit unions, and other financial
148 institutions; and any other form of coownership with
149 survivorship interests.

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

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

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

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

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175 applies.

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

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

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

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

192 (6) Any insurance company, financial institution, or other
193 obligor making payment according to the terms of its policy or
194 obligation is not liable by reason of this section unless more
195 than 2 business days before payment it receives at its home
196 office or principal address written notice, or in the case of a
197 financial institution it receives notice in accordance with s.
198 655.0201, of a claim under this section.

199 (7) This section does not apply if it can be proven by
200 clear and convincing evidence that, after the conviction of
201 abuse, neglect, or exploitation, the victim of the offense, if
202 capacitated, ratifies an intent that the person so convicted of
203 abuse, neglect, or exploitation retain his or her inheritance,

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204 survivorship rights, or any other right that might otherwise be
205 removed by this section by executing a valid written instrument,
206 sworn to and witnessed by two persons who would be competent as
207 witnesses to a will, which expresses a specific intent to allow
208 the convicted person to retain his or her inheritance,
209 survivorship rights, or any other right that might otherwise be
210 removed by this section.

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

213 736.1104 Person ~~Killer~~ not entitled to receive property or
214 other benefits by reason of victim's death.—

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

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

228 (b) In the absence of a qualifying conviction, the court
229 may determine by the greater weight of the evidence whether the
230 decedent's or other person's death was caused by or contributed
231 to by the abuser's, neglecter's, exploiter's, or killer's
232 conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2)

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233 for purposes of this section.

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

243 Section 5. Present subsections (8) through (14) of section
244 825.101, Florida Statutes, are redesignated as subsections (10)
245 through (16), respectively, and new subsections (8) and (9) are
246 added to that section, to read:

247 825.101 Definitions.—As used in this chapter:

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

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

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

256 825.102 Abuse, aggravated abuse, and neglect of an elderly
257 person or disabled adult; penalties.—

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

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

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

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

277
278 A person who knowingly or willfully abuses an elderly person or
279 disabled adult without causing great bodily harm, permanent
280 disability, or permanent disfigurement to the elderly person or
281 disabled adult commits a felony of the third degree, punishable
282 as provided in s. 775.082, s. 775.083, or s. 775.084.

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

286 825.103 Exploitation of an elderly person or disabled
287 adult; penalties.—

288 (1) "Exploitation of an elderly person or disabled adult"
289 means:

290 (c) Breach of a fiduciary duty to an elderly person or

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291 disabled adult by the person's guardian, trustee who is an
292 individual, or agent under a power of attorney which results in
293 an unauthorized appropriation, sale, ~~or~~ transfer of property,
294 kickback, or receipt of an improper benefit. An unauthorized
295 appropriation under this paragraph occurs when the elderly
296 person or disabled adult does not receive the reasonably
297 equivalent financial value in goods or services, or when the
298 fiduciary violates any of these duties:

299 1. For agents appointed under chapter 709:

300 a. Committing fraud in obtaining their appointments;

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

303 c.b. Abusing their powers;

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

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

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

310 a. Committing fraud in obtaining their appointments;

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

313 c.b. Abusing their powers; or

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

316 (d) Misappropriating, misusing, or transferring without
317 authorization money belonging to an elderly person or disabled
318 adult from an account in which the elderly person or disabled
319 adult placed the funds, owned the funds, and was the sole

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320 contributor or payee of the funds before the misappropriation,
321 misuse, or unauthorized transfer. This paragraph only applies to
322 the following types of accounts:

323 1. Personal accounts;

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

327 3. Convenience accounts created in accordance with s.
328 655.80; ~~or~~

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

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

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

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

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

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

355 825.1035 Injunction for protection against exploitation of
356 a vulnerable adult.—

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

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

360 1. A vulnerable adult in imminent danger of being
361 exploited;

362 2. The guardian of a vulnerable adult in imminent danger of
363 being exploited;

364 3. A person or organization acting on behalf of the
365 vulnerable adult with the consent of the vulnerable adult or his
366 or her guardian; ~~or~~

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

369 ~~5.4.~~ A person who simultaneously files a petition for
370 determination of incapacity and appointment of an emergency
371 temporary guardian with respect to the vulnerable adult.

372 (3) FORM OF PETITION.—

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

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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

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407 Developmental disability

408 Infirmity of aging

409 Other (explain)

410 ~~10.2.~~ The respondent's last known address is ~~respondent~~
411 ~~resides at:~~ _____ ~~...(last known address)....~~

412 ~~11.3.~~ The respondent's last known place of employment is:
413 ... (name of business and address)....

414 ~~12.4.~~ Physical description of the respondent:

415 Race....

416 Sex....

417 Date of birth....

418 Height....

419 Weight....

420 Eye color....

421 Hair color....

422 Distinguishing marks or scars....

423 ~~13.5.~~ Aliases of the respondent:

424 ~~14.6.~~ The respondent is associated with the vulnerable
425 adult as follows:

426 ~~15.7.~~ The following describes any other cause of action
427 currently pending between the petitioner and the respondent, any
428 proceeding under chapter 744 concerning the vulnerable adult,
429 and any previous or pending attempts by the petitioner to obtain
430 an injunction for protection against exploitation of the
431 vulnerable adult in this or any other circuit; related case
432 numbers, if available; and the results of any such
433 attempts: _____

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435 ~~16.8.~~ The following describes the petitioner's knowledge of

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436 any reports made to a government agency, including, but not
437 limited to, the Department of Elderly Affairs, the Department of
438 Children and Families, and the adult protective services program
439 relating to the abuse, neglect, or exploitation of the
440 vulnerable adult; any investigations performed by a government
441 agency relating to abuse, neglect, or exploitation of the
442 vulnerable adult; and the results of any such reports or
443 investigations:

444 17.9. The petitioner knows the vulnerable adult is either a
445 victim of exploitation or the petitioner has reasonable cause to
446 believe the vulnerable adult is, or is in imminent danger of
447 becoming, a victim of exploitation because the respondent has:
448 ... (describe in the spaces below the incidents or threats of
449 exploitation)....

450 18.10. The following describes the petitioner's knowledge
451 of the vulnerable adult's dependence on the respondent for care;
452 alternative provisions for the vulnerable adult's care in the
453 absence of the respondent, if necessary; available resources the
454 vulnerable adult has to access such alternative provisions; and
455 the vulnerable adult's willingness to use such alternative
456 provisions:

457 19.11. The petitioner knows the vulnerable adult maintains
458 assets, accounts, or lines of credit at the following financial
459 institution(s): ... (list name, address, and account number of
460 each)....

461 20.12. The petitioner believes that the vulnerable adult's
462 assets to be frozen are: ... (mark one)....

463Worth less than \$1500;

464Worth between \$1500 and \$5000; or

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465 Worth more than \$5000.

466 21.13. The petitioner genuinely fears imminent exploitation
467 of the vulnerable adult by the respondent.

468 22.14. The petitioner seeks an injunction for the
469 protection of the vulnerable adult, including: ... (mark
470 appropriate section or sections)....

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

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

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

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

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

486 23.15. Should the court enter an injunction freezing assets
487 and credit lines, the petitioner believes that the critical
488 expenses of the vulnerable adult will be paid for or provided by
489 the following persons or entities, or the petitioner requests
490 that the following expenses be paid notwithstanding the freeze:
491 ... (for each expense, list the name of the payee, address,
492 account number if known, amount, and a brief explanation of why
493 payment is critical)....

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

495 (d) An ex parte temporary injunction may be effective for a
496 fixed period not to exceed 15 days unless good cause is shown to
497 extend the injunction. The ex parte temporary injunction may be
498 extended one time for up to an additional 30 days. A full
499 hearing, as provided by this section, must be set for a date no
500 later than the date when the ex parte temporary injunction
501 ceases to be effective. ~~The court may grant a continuance of the~~
502 ~~hearing, before or during the hearing, for good cause shown by~~
503 ~~any party, which good cause may include a continuance to obtain~~
504 ~~service of process. An ex parte injunction is not extended~~
505 ~~beyond the initial 15 days as a result of a continuance.~~

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