

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 106

INTRODUCER: Senator Martin

SUBJECT: Exploitation of Vulnerable Adults

DATE: March 18, 2025

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|------------------|-----------|--------------------|
| 1. | <u>Tuszynski</u> | <u>Tuszynski</u> | <u>CF</u> | Favorable |
| 2. | <u>Davis</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | <u>Tuszynski</u> | <u>Yeatman</u> | <u>RC</u> | Pre-meeting |

I. Summary:

SB 106 creates a simplified process to obtain an injunction to protect a vulnerable adult from exploitation. The process may be used to stop a proposed or initiated transfer of funds or property from a vulnerable adult to an unascertainable person.

Under this process, a petitioner must file a detailed affidavit with a court which, most notably, shows:

- Why the petitioner believes the respondent is an unascertainable respondent and how he or she and the vulnerable adult have been in contact;
- All identifying information that the petitioner or vulnerable adult knows about the unascertainable respondent;
- The facts that lead the petitioner to believe that a proposed or initiated transfer of funds or property from a vulnerable adult to the unascertainable person is in response to a fraudulent request; and
- A petitioner's attempts to identify the unascertainable respondent.

Once the court issues the injunction, it is effective when the petitioner files proof with the court of having attempted to serve it on the unascertainable person using the same means of communication that the unascertainable person used to communicate with the vulnerable adult. These means of communication might include the use of social media or email messages.

The injunction suspends for 30 days the proposed or initiated transfer of funds or property from the vulnerable adult to the unascertainable person. When the period expires, the funds or property will be distributed in accordance with a written court order.

The bill becomes effective July 1, 2025.

II. Present Situation:

Trends Regarding Elder Exploitation

“The National Council on Aging estimates that 1 in 10 Americans over the age of 60 have experienced elder abuse,” which can include financial exploitation.¹ According to the most recent report by the Federal Bureau of Investigation (FBI), “[i]n 2023, total losses reported . . . by those over the age of 60 topped \$3.4 billion, an almost 11% increase in reported losses from 2022. There was also a 14% increase in complaints . . . by elderly victims. However, these numbers do not fully capture the frauds and scams targeting this vulnerable cross-section of our population, as only about half of the more than 880,000 complaints received by IC3 in 2023 included age data.”² Average loss per victim was \$33,915, an 11% increase from 2022.³

According to the FBI’s report, Florida ranked second in the nation in the number of fraud victims older than age 60 (8,138) with losses from that fraud reported to be \$293,817,911.⁴

The elderly are particularly vulnerable to financial exploitation. The problem of elder financial exploitation is likely to get worse because of “three interrelated sets of factors,” which are “health-related effects of aging; financial and retirement trends; and demographic trends.”⁵

“Cognitive decline is a key factor . . . , even without the presence of disease,” and “[p]hysical decline and dependency are also risk factors for elder financial exploitation.” “[T]he wealth of older generations” also “makes them targets for financial exploitation.”⁶ “Paradoxically, though, the elderly poor are at even greater risk of financial exploitation.”⁷

“Financial and pension trends further compound the problem.” “The shift from defined benefit to defined contribution plans has placed responsibility onto the elderly themselves to manage their retirement savings—ironically, just at a time in their lives when their ability to do so may

¹ *Elder Justice*, National Association of Attorneys General, available at <https://www.naag.org/issues/elder-justice/> (last visited on March 11, 2025). See *Get the Facts on Elder Abuse* (July 8, 2024), available at <https://www.ncoa.org/article/get-the-facts-on-elder-abuse> (last visited on March 11, 2025).

² *2023 Elder Fraud Report*, Federal Bureau of Investigation, at p. 3, available at https://www.ic3.gov/annualreport/reports/2023_ic3elderfraudreport.pdf (last visited on March 11, 2025). This report is further referenced as “2023 Elder Fraud Report.”

³ *2023 Elder Fraud Report*, *supra* note 2, at p. 5.

⁴ *2023 Elder Fraud Report*, *supra* note 2, at pp. 11 and 12. The FBI states: “This information is based on the total number of complaints from each state, American Territory, and the District of Columbia when the complainant provided state information.”

⁵ Deane, Stephen. *Elder Financial Exploitation* (white paper) (June 2018), at p. i, U.S. Securities and Exchange Commission (SEC), Office of the Investor Advocate, available at <https://www.sec.gov/files/elder-financial-exploitation.pdf> (last visited on 2/25/25). Views expressed in the white paper are those of the author and do not necessarily reflect the views of the SEC. This white paper is further referenced as “Elder Financial Exploitation.”

⁶ *Elder Financial Exploitation*, *supra* note 5. According to the American Bankers Association, “people over 50 years old control over 70 percent of the nation’s wealth.” *Protect the Elderly from Financial Exploitation*, American Bankers Association, available at <https://www.aba.com/advocacy/community-programs/consumer-resources/protect-your-money/elderly-financial-abuse> (last visited on March 11, 2025).

⁷ *Elder Financial Exploitation*, *supra* note 5.

become impaired.”⁸ Finally, “dramatic increases in the elderly population threaten . . . to spur parallel growth in elderly financial exploitation.”⁹

According to the U.S. Census Bureau, persons over 65 years of age represent approximately 21 percent of Florida’s population (or approximately 5 million Floridians).¹⁰ Nationally, in 2022, there were 57.8 million people aged 65 and older (up from 43.1 million in 2012). This population is projected to reach 78.3 million by 2040 and 88.8 million by 2060.¹¹

Florida Laws Relating to Elder Exploitation

Exploitation of an Elderly Person or Disabled Adult under s. 825.103, F.S.

Section 825.103, F.S., punishes exploitation of an elderly person or disabled adult.

For purposes of ch. 825, F.S., an “elderly person” is a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.¹²

For purposes of ch. 825, F.S., a “disabled adult” is a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.¹³

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult includes:

- Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
 - Stands in a position of trust and confidence with the elderly person or disabled adult; or
 - Has a business relationship with the elderly person or disabled adult.
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

⁸ *Id.*

⁹ *Id.*

¹⁰ *QuickFacts Florida*, U.S. Census Bureau, available at <https://www.census.gov/quickfacts/fact/table/FL/PST045222#PST045222> (last visited on March 11, 2025).

¹¹ *2023 Profile of Older Americans*, May 2024, p. 5, U.S. Department of Health and Human Services, Administration for Community Living, available at https://acl.gov/sites/default/files/Profile%20of%20OA/ACL_ProfileOlderAmericans2023_508.pdf (last visited on 3/1/25).

¹² Section 825.101(4), F.S.

¹³ Section 825.101(3), F.S.

- Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or a disabled adult's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult without:
 - A court order, from a court having jurisdiction over the elderly person or disabled adult, which authorizes the modification or alteration;
 - A written instrument executed by the elderly person or disabled adult, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
 - Action of an agent under a valid power of attorney executed by the elderly person or disabled adult which authorizes the modification or alteration.¹⁴

Punishment for exploitation of a vulnerable adult is based on the value of the funds, assets, or property involved:

- Level 8¹⁵ first degree felony¹⁶ (value is \$50,000 or more);
- Level 7 second degree felony¹⁷ (value is 10,000 or more, but less than \$50,000); and
- Level 6 third degree felony¹⁸ (value is less than \$10,000).¹⁹

Injunction for Protection Against Exploitation of a Vulnerable Adult

Section 825.1035, F.S., creates a cause of action for an injunction for protection against exploitation²⁰ of a vulnerable adult.²¹ This injunction may be sought by a vulnerable adult in imminent danger of being exploited; the guardian of a vulnerable adult in imminent danger of being exploited; a person or organization acting on behalf of the vulnerable adult with the

¹⁴ See s. 825.103(1), F.S.

¹⁵ The Criminal Punishment Code (Code) (ss. 921.002-921.0027, F.S.) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Section 921.0022(2), F.S. Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S. Sentence points escalate as the severity level escalates. These points are relevant to determining whether the offender scores a prison sentence as the minimum sentence, and if so scored, the length of that sentence. The offense severity ranking is either assigned by specifically ranking the offense in the Code offense severity level ranking chart (s. 921.0022(3), F.S) or ranking the offense by "default" based on its felony degree (s. 921.0023, F.S.).

¹⁶ A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹⁷ A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹⁸ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

¹⁹ Sections 825.103(3)(a)-(c) and 921.0022(3)(f)-(h), F.S. Chapter 825, F.S., is not intended to impose criminal liability on a person who makes a good faith effort to assist an elderly person or disabled adult in the management of the funds, assets, or property of the elderly person or disabled adult, which effort fails through no fault of the person. Section 825.105, F.S.

²⁰ Exploitation means exploitation of an elderly person or disabled adult under s. 825.103(1), F.S. Section 825.101(6), F.S.

²¹ "Vulnerable Adult" is defined in s. 415.102(28), F.S., to mean a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

consent of the vulnerable adult or his or her guardian; an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or a person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.²²

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under ss. 741.30, 784.046, 784.0485 and s. 825.1035, F.S., are similar. As to domestic violence, a person who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence has standing to file a sworn petition for an injunction.²³ Based on this initial petition, a court may issue a *temporary* injunction ex-parte.²⁴ During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.²⁵ Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.²⁶ This ex-parte proceeding is often necessary because “the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made.”²⁷

Parties to an injunction are entitled to a full hearing. A temporary injunction is effective for a maximum of 15 days.²⁸ A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross-examine witnesses.²⁹ Based upon the full hearing, a court “must consider the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole” to determine if a permanent injunction is warranted based on the petitioner’s belief that he or she is in imminent danger of becoming a victim of domestic violence.³⁰

Enforcement of a Protective Injunction

Just as filing and issuance of protective injunctions are similar, so is enforcement. A person who willfully violates an injunction for protection commits a misdemeanor of the first degree.³¹ A

²² Section 825.1035(2), F.S.

²³ Section 741.30(1)(a), F.S.

²⁴ Section 741.30(5)(c), F.S.

²⁵ *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements); Additionally, when a “parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is a *presumptively sufficient* basis for an injunction.” (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

²⁶ Section 741.30(5)(b), F.S.

²⁷ *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

²⁸ A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

²⁹ *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

³⁰ *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

³¹ Section 741.31(4)(a), F.S. (domestic violence); s. 784.047(1), F.S. (repeat violence, sexual violence, or dating violence); and s. 825.1036(4)(a), F.S. (exploitation of vulnerable adult).

third offense related to the same protected person is a third degree felony.³² Similarly, a warrantless arrest can be made for violation of an injunction if a law enforcement officer has probable cause to believe that the person has violated an injunction.³³ The general rule requiring a law enforcement officer to witness the offense before making a misdemeanor arrest does not apply to arrests for violation of an injunction.

Service of Process

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against them. Delivery of that notice is referred to as “service of process.” Adequate service of process is also required to summon a witness for testimony or for production of evidence. Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly apprised of a lawsuit or a requirement to produce evidence.

The traditional and best form of service of process is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by being too young to enter into contracts or make major decisions. A large body of law has been devoted to the allowable methods for service of process.³⁴

Service of Process Generally

Generally, service of process is made by:

- Delivering a copy of the process to the person to be served; or
- By leaving the process at his or her usual place of abode³⁵ with any person residing there who is 15 years of age or older and informing the person of the contents of the process.³⁶

Additional requirements exist for service on minors,³⁷ incompetent persons,³⁸ and state prisoners,³⁹ and may exist for service of other specified persons and entities located within the state.⁴⁰

Substituted Service

Substituted service⁴¹ can replace personal service in situations where personal service is not required by law. For example, substituted service may be made on the spouse of a person to be served at any place in the county if:

³² Sections 741.31(4)(c), 784.047(2), and 825.1036(4)(b), F.S.

³³ Section 901.15(6)-(7), F.S.

³⁴ See generally ch. 48, F.S.

³⁵ “Usual place of abode” means the place where the party actually lives at the time of service of process. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So. 2d 952 (Fla. 2001).

³⁶ Section 48.031(1)(a), F.S.

³⁷ Section 48.041, F.S.

³⁸ Section 48.042, F.S.

³⁹ Section 48.051, F.S.

⁴⁰ Chapter 48, F.S.

⁴¹ Substituted service is service of process upon a party in any manner authorized by statute or rule other than personal service, such as service by mail. BLACK’S LAW DICTIONARY (12th ed. 2024).

- The cause of action is not an adversarial proceeding⁴² between the spouses;
- The spouse of the person to be served requests such service; and
- The spouses reside together in the same dwelling within the county where the service occurs.⁴³

Substituted service may also be done on a person by leaving a copy of the process with a person in charge of a private mailbox, virtual office,⁴⁴ or an executive office or mini suite⁴⁵ if:

- These are the only discoverable addresses for the person to be served; and
- The process server determines that the person to be served maintains a mailbox, a virtual office, or an executive office or mini suite at that location.⁴⁶

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 825.1035, F.S., to create a process for substituted service on an unascertainable respondent when a petitioner is seeking an injunction for protection against exploitation of a vulnerable adult.

The bill defines “unascertainable respondent” as a person whose identity cannot be ascertained or whose identity is unknown, and who has communicated with the vulnerable adult through any means that make tracing the person’s identity impractical.

The bill details a process to effectuate substitute service:

- The petitioner must file a sworn affidavit with the court based on the petitioner’s information and belief that includes:
 - The facts leading the petitioner to believe the respondent is unascertainable;
 - Information detailing how the petitioner and unascertainable respondent have been in contact;
 - All identifying information of the unascertainable respondent known to the petitioner, to include pseudonyms, tax identification numbers, e-mail addresses, telephone numbers, software application programs used, usernames and handles, or other similar information;
 - The facts leading the petitioner to believe that a proposed or initiated transfer of funds or property of the vulnerable adult is a response to a fraudulent request by the unascertainable respondent; and
 - A description of the petitioner’s attempts to identify the unascertainable respondent, to include using the same method of communication that the unascertainable respondent used to communicate with the vulnerable adult.
- Upon filing of the affidavit, the court must order the substitute service through the same means of communication that the unascertainable respondent used to communicate with the vulnerable adult within two business days after the court issues the temporary injunction order.

⁴² An adversarial proceeding involves opposing parties. Examples include divorce and a civil lawsuit

⁴³ Section 48.031(2)(a), F.S.

⁴⁴ “Virtual office” means an office that provides communications services, such as telephone service, and address services without providing dedicated office space, where all communications route through a common receptionist. s. 48.031(6)(b), F.S.

⁴⁵ “Executive office or mini suite” means an office that provides communications services without providing dedicated office space, and where all communications are routed through a common receptionist. s. 48.031(6)(b), F.S.

⁴⁶ Section 48.031(6)(a), F.S.

- After substitute service is made, the petitioner must file proof with the court, including, but not limited to, a sworn affidavit with screen shots, that the petitioner has attempted to serve the unascertainable respondent. The bill deems this court filing as the substitute service on the unascertainable respondent.

Once substitute service is made, the bill requires that any proposed transfer of funds or property in dispute be held for 30 days before those funds or property may be distributed.

Finally, the bill requires that the substitute service language be construed for the benefit and protection of a vulnerable adult.

Section 2 of the bill provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may preserve the assets of vulnerable individuals from scammers, but involve compliance costs by financial institutions holding funds subject to the injunctions described by the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 825.1035 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.