

FLORIDA HOUSE OF REPRESENTATIVES

FINAL BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 97 TITLE: Service of Process in Proceedings for Protection of Vulnerable Adults SPONSOR(S): Steele and Berfield	COMPANION BILL: CS/SB 106 (Martin) LINKED BILLS: None RELATED BILLS: None
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FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY

Effect of the Bill:

CS/HB 97 authorizes service of process in a proceeding for an injunction for the protection against the exploitation of a vulnerable adult to be made by substituted service when a respondent who is “unascertainable” has communicated with the vulnerable adult by means that makes the respondent untraceable. The bill creates a mechanism by which a petitioner may file a sworn affidavit with the court alleging that the respondent is an “unascertainable respondent” and providing details on how the respondent communicated with the vulnerable adult, the facts leading the petitioner to believe a transfer of funds is in response to a fraudulent request, and all identifying information known about the respondent. Such substituted service must be made by the same manner of communication that the respondent used to contact the vulnerable adult.

Upon issuance of a final injunction by the court after substituted service has been used, a 30-day freeze on any proposed transfer of funds or property is initiated.

Fiscal or Economic Impact:

The bill may have an indeterminate insignificant fiscal impact on state government and may have a positive fiscal impact on the private sector.

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ANALYSIS

EFFECT OF THE BILL:

CS/HB 97 passed as [CS/SB 106](#).

The bill amends [s. 825.1035, F.S.](#), to provide for substituted [service of process](#) on an unascertainable respondent in a case involving an [injunction for protection](#) against the [exploitation of a vulnerable adult](#).¹ The bill works in conjunction with existing law and [fraud detection services](#) within financial institutions to provide enhanced protection to vulnerable adults. The bill defines an “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. (Section [1](#)).

To be able to use substituted service against such an unascertainable respondent, the [petitioner](#) must file a sworn affidavit with the court. The affidavit must include:

- The facts leading the petitioner to believe that the respondent qualifies as an “unascertainable respondent”;
- Information regarding how the vulnerable adult and the respondent have been in contact;

¹ A “vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or ability 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. See [s. 825.101\(16\), F.S.](#); [s. 415.102\(28\), F.S.](#) For the purposes of the injunction process under [s. 825.1035, F.S.](#), the term “vulnerable adult” also includes any person age 65 or older, regardless of infirmity.

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- All identifying information for the unascertainable respondent known to the petitioner or the vulnerable adult;²
- The facts leading the petitioner to believe that a proposed or initiated transfer of funds or property by 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, including, but not limited to, attempts to contact the respondent through the same method of communication the respondent used to communicate with the vulnerable adult. (Section [1](#)).

Upon the filing of the sworn affidavit, the court must enter an order requiring the petitioner to serve the unascertainable respondent, through the same means of communication that the respondent used to contact the vulnerable adult, within two business days after the court issues the temporary order or sets a final hearing. The petitioner must “serve” the unascertainable respondent with notice of the injunction. For substitute service to be effectuated, the petitioner must file proof with the court that he or she has attempted to serve the unascertainable respondent through the same means of communication that the unascertainable respondent used to contact the vulnerable adult. Such proof includes, but is not limited to, a sworn affidavit with screenshots of the attempted service and communication to the unascertainable respondent. (Section [1](#)).

If the court issues a final injunction after substitute service has been used, the funds or property in question must be held for 30 days before it may be distributed for the benefit of the vulnerable adult. (Section [1](#)).

The bill specifies that s. 825.1035(8), F.S., shall be construed for the benefit and protection of a vulnerable adult. (Section [1](#)).

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2025. (Section [2](#)).

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate insignificant fiscal impact on state government by increasing court filings due to the ability to effectuate service on previously untraceable respondents.

PRIVATE SECTOR:

The bill may simplify the process for effectuating service on an unascertainable respondent, providing an opportunity for an injunction to be issued to protect certain assets or property from being transferred to a fraudulent respondent.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Service of Process](#)

“Process” is used by a court or administrative body to acquire or exercise jurisdiction over a person or property.³ There are three primary types of process: original, mesne, and final process. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. Mesne process is an intermediate process issued between the original process and the final judgment. Final process is a writ of execution pursuant to a final judgment issued in the subject legal proceeding.

Generally, service of process is made by:

² All information known to the petitioner or the vulnerable adults includes, but is not limited to, pseudonyms, tax identification numbers, e-mail addresses, telephone or cellular numbers, software application programs used, social media usernames and handles, or other similar information.

³ Black’s Law Dictionary 837 (6th ed. 1995).

- Delivering a copy of the process to the person to be served; or
- Leaving the process at the person's usual place of abode⁴ with any person residing there who is fifteen years of age or older and informing that person of the contents of the process.⁵

[Substituted Service](#)

The Florida Secretary of State, as head of the Florida Department of State, is involved in many aspects of service of process. In some scenarios involving nonresident business entities, Florida law allows service of process through substituted service on the Florida Secretary of State when a party is unable to personally serve the individual or the business entity's representative.⁶

Substituted service on the Secretary of State is effectuated by electronic or physical delivery addressed to the Secretary of State. A copy of the process must be sent to the individual or entity at the last known address by certified or registered mail, by use of a commercial firm regularly engaged in the business of document or package delivery, or by electronic transmission.⁷ Court decisions interpreting the statute requires that a party using substituted service on the Secretary of State make an honest and conscientious effort, in addition to the mailing, to provide the defendant with actual notice of the lawsuit,⁸ which may be noticed through a known email.⁹

[Exploitation of a Vulnerable Adult](#)

Section [825.103, F.S.](#), prohibits specified exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. Under [s. 825.101\(4\), F.S.](#), an elderly person is defined as 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. A disabled adult is defined as 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.¹⁰

Under [s. 825.103, F.S.](#), exploitation of an elderly person or disabled adult ("EPDA") is a crime that means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who:
 - Stands in a position of trust and confidence with the EPDA; or
 - Has a business relationship with the EPDA.¹¹
- Obtaining or using, or endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who knows or reasonably should know that the EPDA lacks the capacity¹² to consent.¹³

⁴ "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).

⁵ S. [48.031\(1\)\(a\), F.S.](#)

⁶ S. [48.161, F.S.](#); s. [48.181, F.S.](#)

⁷ S. [48.161, F.S.](#)

⁸ *All Mobile Video v. Whitener*, 773 So. 2d 587, 589-90 (Fla. 1st DCA 2000) (plaintiff knew telephone and fax number of defendant company but did not call or fax for new address when mailed copy of process was returned).

⁹ *Crystal Springs Partners, Ltd. v. Michael R. Band, P.A.*, 132 So. 3d 1230 (Fla 3rd DCA 2014) (law firm plaintiff knew former client's email address and should have emailed copy of process in addition to mailing).

¹⁰ S. [825.101\(3\), F.S.](#)

¹¹ S. [825.103\(1\)\(a\), F.S.](#)

¹² "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property. S. [825.101\(10\), F.S.](#)

¹³ S. [825.103\(1\)\(b\), F.S.](#)

- Breach of a fiduciary duty to an EPDA by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback,¹⁴ or receipt of an improper benefit.¹⁵ An unauthorized appropriation occurs when the EPDA does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates a specified duty.¹⁶
- Misappropriating, misusing, or transferring without authorization money belonging to an EPDA from an account¹⁷ in which the EPDA placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.¹⁸
- Intentionally or negligently failing to effectively use an EPDA's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the EPDA.¹⁹
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA'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 EPDA without:
 - A court order which authorizes the modification or alteration;
 - A written instrument executed by the EPDA, 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 which authorizes the modification or alteration.²⁰

[Fraud Detection Services](#)

Financial institutions such as banks employ software, programming, and security measures to detect fraudulent activity within their accounts. A bank may flag a transaction for potential fraud based on geolocation information, pattern recognition, behavioral analysis, machine learning and artificial intelligence, data analytics, real-time monitoring, and more.²¹ When a bank is alerted to possible fraudulent activity or a fraudulent transfer, it often pauses the transaction and alerts the account holder of suspected fraud. The account holder, generally, can approve the transaction as legitimate or contest it as fraudulent, preventing the assets from being transferred.

The injunction process provided in [s. 825.1035, F.S.](#), may become relevant once an account holder has been made aware that fraudulent activity has been detected. In the situation of a vulnerable adult who has been notified that potentially fraudulent activity has occurred, the vulnerable adult or certain persons acting on his or her behalf, may file an injunction with the court to request the court freeze the fraudulent transaction of assets or property.²²

With the increased use of technology in every facet of daily life, fraudulent scams that target elderly and vulnerable individuals are a common concern. Some common fraudulent scams targeting these populations include:

- Government impersonation scams, in which scammers call unsuspecting older adults and pretend to be from the Internal Revenue Service, Social Security Administration, or Medicare. They may say the older adult has unpaid taxes and threaten arrest if they do not pay immediately. Alternatively, the scammers may

¹⁴ "Kickback" means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense. S. [456.054\(1\), F.S.](#)

¹⁵ "Improper benefit" means 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. S. [825.101\(8\), F.S.](#)

¹⁶ S. [825.103\(1\)\(c\), F.S.](#)

¹⁷ This type of exploitation only applies to the following types of accounts: personal accounts; joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to monies deposited into such account; or convenience accounts created in accordance with [s. 655.80, F.S.](#) S. [825.103\(d\)\(1-3\), F.S.](#)

¹⁸ S. [825.103\(1\)\(d\), F.S.](#)

¹⁹ S. [825.103\(1\)\(e\), F.S.](#)

²⁰ S. [825.103\(1\)\(f\), F.S.](#)

²¹ See <https://www.transunion.com/business-needs/fraud-prevention/banking-fraud-detection#:~:text=Banks%20use%20geolocation%20data%20from,may%20be%20flagged%20for%20review> (last visited on Feb. 5, 2025).

²² S. [825.1035\(5\)\(a\)\(2\)\(c\), F.S.](#)

say Social Security or Medicare benefits will be cut off if the older adult does not provide personal identifying information, which can later be used to commit identity theft.²³

- Sweepstakes scams, in which scammers call an older adult to say he or she has won a lottery or prize of some kind. If the older adult wants to claim his or her winnings, the older adult must send money, cash, or gift cards to cover supposed taxes and processing fees, or the older adult must send his or her bank account information to receive the alleged winnings.²⁴
- Computer tech support scams, which prey on older people's lack of knowledge about computers and cybersecurity. A pop-up message or blank screen usually appears on a computer or phone, telling the user his or her device is damaged and needs fixing. When the older person calls the support number for help, the scammer may either request remote access to the older person's computer and/or demand he or she pay a fee to have it repaired.²⁵
- "Grandparent" scams, in which a scammer calls a would-be grandparent and says something along the lines of: "Hi, Grandma, do you know who this is?" When the unaware grandparent guesses the name of the grandchild the scammer most sounds like, the scammer is able to instantly secure the older person's trust. The fake grandchild then asks for money to solve some urgent financial problem (such as overdue rent, car repairs, or jail bond).²⁶

In 2023, the FBI received over 101,068 complaints of fraud reported by adults over the age of 60 resulting in a total loss of \$3,427,717,654. The average financial loss in 2023 per complaint was \$33,915.²⁷

Injunction for Protection of a Vulnerable Adult

Temporary Ex-Parte Injunction

Under [s. 825.1035, F.S.](#), a vulnerable adult in imminent danger of being exploited may file a petition²⁸ for an injunction for protection against exploitation. There is no requirement for any exploitation to have already occurred before the vulnerable adult may petition for an injunction.²⁹ A court may grant a temporary injunction ex parte, pending a full hearing on the petition, upon making specified findings including that an immediate and present danger of exploitation of the vulnerable adult exists.³⁰ A temporary ex parte injunction may be effective for up to 15 days, unless good cause is shown to extend the injunction, in which case, the temporary injunction may be extended one time for an additional 30 days. Such a temporary injunction may:

- Prohibit the respondent from having any direct or indirect contact with the vulnerable adult;
- Restrain the respondent from committing any acts of exploitation against the vulnerable adult;³¹
- Freeze the assets or credit lines of the vulnerable adult;
- Award the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share to the vulnerable adult, or bar the respondent from the vulnerable adult's residence; and
- Include other allowable terms the court deems necessary to protect the vulnerable adult or his or her assets, including orders and directives to law enforcement agencies and other entities.³²

In determining whether reasonable cause exists to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider the following factors:

²³ National Council on Aging, *Get the Facts on Elder Abuse*, <https://www.ncoa.org/article/get-the-facts-on-elder-abuse> (last visited Feb. 5, 2025).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Federal Bureau of Investigation Internet Crime Complaint Center, 2023 Elder Fraud Report, https://www.ic3.gov/AnnualReport/Reports/2023_IC3ElderFraudReport.pdf (last visited Feb. 5, 2025).

²⁸ Additionally, the guardian of a vulnerable adult, a person or organization acting on behalf of and with the consent of the vulnerable adult or his or her guardian, an agent acting under power of attorney, or a person simultaneously filing a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult may file a petition for injunction for protection from exploitation. See [s. 825.1035\(2\)\(a\), F.S.](#)

²⁹ [S. 825.1035\(2\)\(e\), F.S.](#)

³⁰ [S. 825.1035\(5\)\(a\)1., F.S.](#)

³¹ The terms of an injunction restraining the respondent remain in effect until the injunction is modified or dissolved. [S. 825.1035\(8\)\(c\), F.S.](#)

³² See [ss. 825.1035\(3\)\(a\)22., F.S.](#), [825.1035\(5\)\(a\)2., F.S.](#), and [825.1035\(8\)\(a\)2., F.S.](#)

- The existence of a verifiable order of protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.
- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.
- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.³³

A court may grant a temporary injunction in the ex parte proceeding if it finds that:³⁴

- An immediate and present danger of exploitation of the vulnerable adult exists.
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law.
- There is a substantial likelihood of success on the merits.
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent.
- Granting the injunction will not disserve the public interest.
- Such injunction provides for the vulnerable adult's physical or financial safety.³⁵

Permanent Injunction and Relief

After a final hearing, a court may grant any additional relief the court deems appropriate, including:

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing the vulnerable adult's frozen assets to be returned to the vulnerable adult or the credit line to be unfrozen;
- Entering a final cost judgment against the respondent and in favor of the petitioner for all taxable costs and entering a final cost judgment against the respondent and in favor of the clerk of the circuit court for all the clerk's filing fees and service charges that were waived; and
- Ordering other relief as necessary to protect the victim.

Who Can Be a Petitioner?

Pursuant to [s. 825.1035\(2\), F.S.](#), a cause of action for an injunction for the protection of a vulnerable adult may be brought 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 consent of the vulnerable adult or of 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.

³³ [S. 825.1035\(6\), F.S.](#)

³⁴ The findings required for a temporary injunction and continuing an injunction after a full hearing on the petition are the same with the exception of probable cause findings that exploitation occurred if the temporary injunction froze the vulnerable adult's assets. See [s. 825.1035\(5\)\(a\)1., F.S.](#), and [s. 825.1035\(8\)\(a\)1., F.S.](#)

³⁵ [S. 825.1035\(5\)\(a\)1., F.S.](#)

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/HB 515	Silvers, Beltran	Rouson	The bill became law on January 1, 2025.
2023	CS/HB 603	LaMarca	Garcia	The bill became law on October 1, 2023.

OTHER RESOURCES:

[U.S. Department of Justice, Elder Justice Initiative: Financial Exploitation](#)

[Consumer Financial Protection Bureau: Reporting Elder Financial Abuse](#)

[National Elder Fraud Hotline: General Information About Financial Scams and Abuse Targeting Older People](#)

[National Council on Aging: Get the Facts on Elder Abuse](#)

[FBI Internet Crime Complaint Center: 2023 Elder Crime Report](#)