

## **BILL ANALYSIS**

C.S.S.B. 576  
By: Menéndez  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under a current rule of the Health and Human Services Commission (HHSC), it is extremely difficult to prove exploitation of an elderly individual or an individual with a disability in certain instances because the caregiver simply needs to proclaim that the money the client had given them was a loan. This is most difficult in the events of cognitive decline because all the caregiver has to say at the time is that before the client lost capacity to consent, they allowed the loan. In most instances, there is no way to definitely prove one way or another whether this is true. C.S.S.B. 576 seeks to address this issue by establishing a rebuttable presumption that any transfer, appropriation, or use of an elderly individual's money or other property by a person who is a paid or unpaid caregiver is an offense of financial abuse of an elderly individual if it is shown on the trial of the offense that the actor knew or should have known that, at the time of the offense, the elderly individual had been diagnosed with dementia, Alzheimer's disease, or a related disorder.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 576 amends the Human Resources Code to require the Department of Family and Protective Services (DFPS), on receipt by DFPS of a report of alleged abuse or exploitation of an individual receiving services from a qualifying provider that DFPS believes constitutes an offense of financial abuse of an elderly individual, to immediately notify an appropriate law enforcement agency, regardless of whether the report alleges conduct that constitutes abuse or exploitation for purposes of provisions regarding investigations of abuse, neglect, or exploitations of individuals receiving such services. This requirement applies only to a report received by DFPS on or after the bill's effective date. The bill revises provisions establishing a duty for a caseworker or the caseworker's supervisor to immediately make a report to law enforcement if, in the course of an investigation of reported abuse, neglect, or exploitation of an elderly person or a person with disabilities, the caseworker or supervisor has cause to believe that the person has been abused, neglected, or exploited by another person in a manner that constitutes an offense under any law by specifying that:

- an investigation of reported abuse, neglect, or exploitation of an individual receiving services from a qualifying provider is included among the investigations to which that provision applies; and

- the criminal offense under any law includes an offense of financial abuse of an elderly individual.

C.S.S.B. 576 amends the Penal Code to establish a rebuttable presumption that any transfer, appropriation, or use of an elderly individual's money or other property by a person who is a paid or unpaid caregiver of the individual is wrongful for purposes of what constitutes "financial abuse" or "financial exploitation" and thus an offense of financial abuse of an elderly individual if it is shown on the trial of the offense that the actor knew or should have known that, at the time of the offense, the elderly individual had been diagnosed with dementia, Alzheimer's disease, or a related disorder. This provision applies only to an offense committed on or after the bill's effective date, and the bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 576 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute revises the provision in the engrossed establishing the rebuttable presumption by changing the presumption from a presumption that the applicable behavior constitutes conduct in violation of statutory provisions establishing the offense of financial abuse of an elderly individual, as in the engrossed, to a presumption that the applicable behavior is wrongful for purposes of what constitutes "financial abuse" or "financial exploitation" and thus an offense of financial abuse of an elderly individual.