

STORAGE NAME: h0109s1.lt

DATE: April 11, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER AFFAIRS & LONG TERM CARE
ANALYSIS**

BILL #: CS/HB 109

RELATING TO: The exploitation of elderly persons or disabled adults

SPONSOR(S): Committee on Elder Affairs & Long Term Care, Rep. Peaden & others

TIED BILL(S): CS/SB 1136

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER AFFAIRS & LONG TERM CARE YEAS 11 NAYS 0
 - (2) UTILITIES & COMMUNICATIONS
 - (3) INSURANCE
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

CS/HB 109 provides a cause of action for an elderly person and a disabled adult to recover damages when there is clear and convincing evidence that he or she has been injured because of exploitation as defined in s. 825.103, F.S. This bill provides for threefold the actual damages and reasonable attorney fees and court costs. A written demand must be issued before filing an action for damages under s. 772.11, F.S. If the person to whom the written demand is made complies within 30 days, a written release from further civil liability for that act will be granted.

The term "property" does not include patients' or residents' rights or claims for violations of such rights. There would be no civil liability under s. 772.11, F.S., regarding the provision of health care, residential care, long-term care, or custodial care at licensed facilities or care provided by appropriately licensed personnel in any setting in which personnel are authorized to practice.

The bill provides for the right to maintain an action following the death of the elderly person or disabled adult and transfers that right to the personal representative of the decedent or the person entitled to succeed to the decedent's estate.

The bill includes provisions for a speedy trial in civil actions involving an elderly person or disabled adult.

This bill substantially amends the following sections of the Florida Statutes: 825.101 and 772.11.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

According to experts in elder law, the financial exploitation of elder citizens by persons in whom elders have placed trust and confidence to manage their funds, assets, and property is a serious growing problem. The life savings of an elder person are often confiscated by a family member or long term business associate in whom the elder person placed a great deal of trust at one time. This problem continues to escalate in Florida where the elderly population is increasing. The criminal justice system has had limited success in the prosecution of these exploiters and according to the experts, when criminal prosecution has been achieved elder persons are usually unable to recover their lost property.

During FY 1998-99, the Florida Department of Law Enforcement reports that 511 persons were arrested for the violation of s. 825.103, F.S., exploitation of an elderly person or a disabled adult. Of those arrests, only 18.6 percent (95 persons) were sentenced with a conviction of exploitation of an elderly person or a disabled adult as the primary offense. Eighty percent (76 persons) of those persons were convicted of s. 825.103(2) (c), F.S., because the funds, assets, or property involved in the exploitation were valued at less than \$20,000; 16 percent (15 persons) were convicted of s. 825.103(2)(b). F.S., because the funds, assets, or property involved in the exploitation were valued at \$20,000 or more, but less than \$100,000; and 4 percent (4 persons) of those were convicted of s. 825.103(2)(a), F.S., because the funds, assets, or property involved in the exploitation were valued at \$100,000 or more.

The National Center on Elder Abuse at the American Public Human Services Association conducted a 4-year study to estimate the incidence of elder abuse and neglect in the United States during 1996. Of the 115,110 substantiated reports for which information was available, 61.6 percent (70,942 cases) were reports of incidents in which elders were maltreated by other people (perpetrators). Of the 70,942, thirty percent (21,427) were for financial or material exploitation. Female elders were more likely to be the victims of all categories of abuse, except for abandonment. Sixty-three percent of the financial/material exploitation victims were women. Eighty five percent of the perpetrators of financial/material exploitation were under age 60 years and 41.1 percent were 40 years of age or younger.

Section 825.103, F.S., contains penalties for the exploitation of an elderly person or a disabled person by: 1) a person who is in a position of trust and confidence or has a

business relationship with the elderly person or disabled adult, or 2) a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

There are currently no provisions contained in ch. 825, F.S., or s. 772.11, F.S., which provide for a cause of action to recover damages in situations where an elderly person or disabled adult has been exploited. The speedy trial provisions contained in s. 825.106, F.S., pertain only to criminal actions in which an elderly person or disabled adult has been a victim of abuse, neglect, or exploitation.

Section 415.1111, F.S., provides for civil penalties that may be imposed on persons by the Department of Children and Family Services who have been named as a perpetrator in a confirmed report of abuse, neglect, or exploitation of a disabled adult or an elderly person. The penalties range from \$250 for the first offense, \$500 for the second offense, and \$1,000 per occurrence for the third and subsequent offenses. The department reports that these penalties have not been imposed on persons under this law.

Section 415.1111(3), F.S., specifies that a disabled adult or an elderly person who has been named as a victim in a confirmed report of abuse, neglect, or exploitation as specified in ch. 415, F.S., has a cause of action against any perpetrator named in the confirmed report and may recover actual and punitive damages for the abuse, neglect, or exploitation. The action may be brought by the disabled adult or elderly person, or that person's guardian, by a person or organization acting on behalf of the disabled adult or elderly person with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased disabled adult or elderly person without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a disabled adult or an elderly person. A party who prevails in this action is entitled to recover reasonable attorney's fees, costs of the action, and damages. The law specifies that these remedies specified in s. 415.1111, F.S., are in addition to and cumulative with other legal and administrative remedies available to a disabled adult or an elderly person.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 109 amends s.772.11, F.S., by providing that a disabled adult or elderly person for whom there is clear and convincing evidence that he or she has been injured in any way because of exploitation, is entitled to minimum damages of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts. The bill specifies actions that must be taken prior to filing a lawsuit for damages under s. 772.11(1), F.S. The bill requires that the person who is claiming injury make a written demand for \$200 or an amount up to three times the damage amount from the person who is liable for damages for exploiting an elderly person or disabled adult. If the person to whom the written demand is made complies within 30 days after receipt, he or she will be given a written release from further civil liability for that specific act of exploitation.

The bill specifies that for purposes of causes of action under s. 772.11, F.S., the term "property" does not include patients' or residents' rights or claims for violations of such rights. The bill also states that there would be no civil liability under s. 772.11, F.S., regarding the provision of health care, residential care, long-term care, or custodial care at licensed facilities or care provided by appropriately licensed personnel in any setting in which personnel are authorized to practice.

The bill specifies that the death of the elderly person or disabled adult does not cause the court to lose jurisdiction of any claim for relief of exploitation of that person. After the death of the elderly person or disabled adult, the right to maintain an action is transferred to the personal representative of the decedent or to the person(s) entitled to succeed to the decedent's estate.

The bill authorizes the elderly person or disabled person to move the court to advance the trial on the docket in a civil action under s. 772.11, F.S.

The bill provides that when the Department of Children & Family Services is petitioning for the appointment of a professional guardian or referring a case to a professional guardian, the department shall do so on a rotating basis. Professionals guardians who are willing to accept at least one indigent case for every three cases accepted, may be included on the list of guardians from which the department will make referrals or seek judicial appointments.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

CS/HB 109 provides the opportunity for victims of exploitation or family members of victims to receive compensation for damages and for attorneys to receive reasonable fees.

The Office of the State Court Administrator reports that PCS/HB 109 will increase the workload in the judicial system. According to the Office, the average proceeding for a tort case (for automobile or for other negligence cases) requires 101 minutes of judicial time and the new cause of action proposed in CS/SB 1136 may require a comparable amount of judicial time. The actual impact to the judicial system cannot be determined because the number of cases filed is not known.

The Office of the State Court Administrator reports that the provisions in PCS/HB 109 for the trial judge to expedite civil action will result in minimal fiscal increase to the courts.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds..

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

STORAGE NAME: h0109s1.lt

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PAGE 6

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

Prepared by:

Staff Director:

Melanie Meyer

Tom Batchelor, Ph.D.