

By the Committee on Elder Affairs & Long-Term Care and
Representatives Peaden and Fasano

1 A bill to be entitled
2 An act relating to the exploitation of elderly
3 persons or disabled adults; amending s.
4 825.101, F.S.; defining the term "position of
5 trust and confidence"; amending s. 772.11,
6 F.S.; prescribing civil remedies for theft for
7 certain offenses in which the victim is an
8 elderly person; providing construction;
9 providing an exclusion of certain civil
10 liability; preserving court jurisdiction under
11 certain circumstances; providing procedures;
12 providing for continuation of such a cause of
13 action on the death of such person; amending s.
14 415.1051, F.S.; requiring appointment of
15 professional guardians on a rotating basis
16 under certain circumstances; providing
17 criteria; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsection (11) of section 825.101, Florida
22 Statutes, is amended to read:

23 825.101 Definitions.--As used in this chapter:

24 (11) "Position of trust and confidence" with respect
25 to an elderly person or a disabled adult means the position of
26 a person who:

27 (a) Is a parent, spouse, adult child, or other
28 relative by blood or marriage of the elderly person or
29 disabled adult;

30 (b) Is a joint tenant or tenant in common with the
31 elderly person or disabled adult;

1 (c) Has a legal or fiduciary relationship with the
2 elderly person or disabled adult, including, but not limited
3 to, a court-appointed or voluntary guardian, trustee,
4 attorney, or conservator; ~~or~~

5 (d) Is a caregiver of the elderly person or disabled
6 adult or is any other person who has been entrusted with or
7 has assumed responsibility for the use or management of the
8 elderly person's or disabled adult's funds, assets, or
9 property; or.

10 (e) Is any other person who has been entrusted with or
11 has assumed responsibility for the use or management of the
12 elderly person's or disabled adult's funds, assets, or
13 property.

14 Section 2. Section 772.11, Florida Statutes, is
15 amended to read:

16 772.11 Civil remedy for theft.--

17 (1) Any person who proves by clear and convincing
18 evidence that he or she has been injured in any fashion by
19 reason of any violation of the provisions of ss.
20 812.012-812.037 or s. 825.103(1) has a cause of action for
21 threefold the actual damages sustained and, in any such
22 action, is entitled to minimum damages in the amount of \$200,
23 and reasonable attorney's fees and court costs in the trial
24 and appellate courts. Before filing an action for damages
25 under this section, the person claiming injury must make a
26 written demand for \$200 or the treble damage amount of the
27 person liable for damages under this section. If the person to
28 whom a written demand is made complies with such demand within
29 30 days after receipt of the demand, that person shall be
30 given a written release from further civil liability for the
31 specific act of theft by the person making the written demand.

1 Any person who has a cause of action under this section may
2 recover the damages allowed under this section from the
3 parents or legal guardian of any unemancipated minor who lives
4 with his or her parents or legal guardian and who is liable
5 for damages under this section. In no event shall punitive
6 damages be awarded under this section. The defendant shall be
7 entitled to recover reasonable attorney's fees and court costs
8 in the trial and appellate courts upon a finding that the
9 claimant raised a claim which was without substantial fact or
10 legal support. In awarding attorney's fees and costs under
11 this section, the court shall not consider the ability of the
12 opposing party to pay such fees and costs. Nothing under this
13 section shall be interpreted as limiting any right to recover
14 attorney's fees or costs provided under other provisions of
15 law.

16 (2) For purposes of the causes of action arising from
17 this section, the term "property" does not include patients'
18 or residents' rights or claims for violations of such rights.

19 (3) This section does not impose civil liability
20 regarding the provision of health care, residential care,
21 long-term care, or custodial care at licensed facilities or
22 care provided by appropriately licensed personnel in any
23 setting in which such personnel are authorized to practice.

24 (4) The death of an elderly person or disabled adult
25 does not cause the court to lose jurisdiction of any claim for
26 relief for theft when the victim of the theft is an elderly
27 person or disabled adult.

28 (5) Upon petition, after the death of an elderly
29 person or disabled adult, the right of the decedent to
30 maintain an action under this section shall be transferred to
31 the personal representative of the decedent or, if there is no

1 personal representative, to the person or persons entitled to
2 succeed to the decedent's estate.

3 (6) In a civil action under this section in which an
4 elderly person or disabled adult is a party, the elderly
5 person or disabled adult may move the court to advance the
6 trial on the docket. The presiding judge, after consideration
7 of the age and health of the party, may advance the trial on
8 the docket. The motion may be filed and served with the civil
9 complaint or at any time thereafter.

10 Section 3. Subsections (1) through (5) of section
11 415.1051, Florida Statutes, are renumbered as subsections (2)
12 through (6), respectively, and a new subsection (1) is added
13 to said section, to read:

14 415.1051 Protective services interventions when
15 capacity to consent is lacking; nonemergencies; emergencies;
16 orders; limitations.--

17 (1) When petitioning for the appointment of a
18 professional guardian or referring a case to a professional
19 guardian, the department, or any employee of the department,
20 shall do so on a rotating basis from a list of professional
21 guardians who have communicated to the department their
22 willingness to serve. In order to be included on such a list,
23 a professional guardian must be willing to accept at least one
24 indigent case for every three cases accepted.

25 Section 4. This act shall take effect July 1, 2000.
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