

By Senator Carlton

24-757A-00

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. 825.103,  
6           F.S.; providing a cause of action for a person  
7           who proves, by clear and convincing evidence,  
8           injury by reason of the exploitation of an  
9           elderly person or disabled adult; providing for  
10          minimum damages; providing for attorney's fees  
11          and costs; requiring a written demand before  
12          filing such an action; providing for a written  
13          release from further civil liability following  
14          compliance with a written demand; providing for  
15          the jurisdiction of the court to continue  
16          following the death of an exploited elderly  
17          person or disabled adult; providing for  
18          transfer of the right to maintain an action  
19          following the death of an exploited elderly  
20          person or disabled adult; amending s. 825.106,  
21          F.S.; authorizing a motion for a speedy trial  
22          in a civil action in which an elderly person or  
23          disabled adult is a victim; providing an  
24          effective date.

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

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

30           825.101 Definitions.--As used in this chapter:  
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1           (11) "Position of trust and confidence" with respect  
2 to an elderly person or a disabled adult means the position of  
3 a person who:

4           (a) Is a parent, spouse, adult child, or other  
5 relative by blood or marriage of the elderly person or  
6 disabled adult;

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

9           (c) Has a legal or fiduciary relationship with the  
10 elderly person or disabled adult, including, but not limited  
11 to, a court-appointed or voluntary guardian, trustee,  
12 attorney, or conservator; ~~or~~

13           (d) Is a caregiver of the elderly person or disabled  
14 adult; or

15           (e) Is any other person who has been entrusted with or  
16 has assumed responsibility for the use or management of the  
17 elderly person's or disabled adult's funds, assets, or  
18 property.

19           Section 2. Section 825.103, Florida Statutes, is  
20 amended to read:

21           825.103 Exploitation of an elderly person or disabled  
22 adult; penalties.--

23           (1) "Exploitation of an elderly person or disabled  
24 adult" means:

25           (a) Knowingly, by deception or intimidation, obtaining  
26 or using, or endeavoring to obtain or use, an elderly person's  
27 or disabled adult's funds, assets, or property with the intent  
28 to temporarily or permanently deprive the elderly person or  
29 disabled adult of the use, benefit, or possession of the  
30 funds, assets, or property, or to benefit someone other than  
31 the elderly person or disabled adult, by a person who:

1           1. Stands in a position of trust and confidence with  
2 the elderly person or disabled adult; or

3           2. Has a business relationship with the elderly person  
4 or disabled adult; or

5           (b) Obtaining or using, endeavoring to obtain or use,  
6 or conspiring with another to obtain or use an elderly  
7 person's or disabled adult's funds, assets, or property with  
8 the intent to temporarily or permanently deprive the elderly  
9 person or disabled adult of the use, benefit, or possession of  
10 the funds, assets, or property, or to benefit someone other  
11 than the elderly person or disabled adult, by a person who  
12 knows or reasonably should know that the elderly person or  
13 disabled adult lacks the capacity to consent.

14           (2)(a) If the funds, assets, or property involved in  
15 the exploitation of the elderly person or disabled adult is  
16 valued at \$100,000 or more, the offender commits a felony of  
17 the first degree, punishable as provided in s. 775.082, s.  
18 775.083, or s. 775.084.

19           (b) If the funds, assets, or property involved in the  
20 exploitation of the elderly person or disabled adult is valued  
21 at \$20,000 or more, but less than \$100,000, the offender  
22 commits a felony of the second degree, punishable as provided  
23 in s. 775.082, s. 775.083, or s. 775.084.

24           (c) If the funds, assets, or property involved in the  
25 exploitation of an elderly person or disabled adult is valued  
26 at less than \$20,000, the offender commits a felony of the  
27 third degree, punishable as provided in s. 775.082, s.  
28 775.083, or s. 775.084.

29           (3)(a) Any person who proves by clear and convincing  
30 evidence that he or she has been injured in any fashion by  
31 reason of the exploitation of an elderly person or disabled

1 adult has a cause of action for threefold the actual damages  
2 sustained and, in any such action, is entitled to minimum  
3 damages in the amount of \$1,000, and reasonable attorney's  
4 fees and court costs in the trial and appellate courts. Before  
5 filing an action for damages under this subsection, the person  
6 claiming injury must make a written demand for an amount up to  
7 the treble-damage amount, but not less than \$1,000, of the  
8 person liable for damages for the exploitation of an elderly  
9 person or disabled adult. If the person to whom written demand  
10 is made complies with such demand within 30 days after receipt  
11 of the demand, that person shall be given a written release  
12 from further civil liability for the specific act of  
13 exploitation by the person making the written demand.

14 (b) The death of the elderly person or disabled adult  
15 does not cause the court to lose jurisdiction of any claim for  
16 relief for exploitation of an elderly person or disabled  
17 adult.

18 (c) Upon petition, after the death of the elderly  
19 person or disabled adult, the right to maintain an action  
20 shall be transferred to the personal representative of the  
21 decedent, or if none, to the person or persons entitled to  
22 succeed to the decedent's estate.

23 Section 3. Section 825.106, Florida Statutes, is  
24 amended to read:

25 825.106 Civil or criminal actions involving elderly  
26 persons or disabled adults; speedy trial.--In a civil or  
27 criminal action in which an elderly person or disabled adult  
28 is a victim, the elderly person or disabled adult in a civil  
29 action, or the state in a criminal proceeding, may move the  
30 court to advance the trial on the docket. The presiding  
31 judge, after consideration of the age and health of the

1 victim, may advance the trial on the docket. The motion may  
2 be filed and served with the civil complaint or at any time  
3 thereafter or, in a criminal proceeding,with the information  
4 or charges or at any time thereafter.

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

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8 SENATE SUMMARY

9 Provides a cause of action for a person who proves, by  
10 clear and convincing evidence, injury by reason of  
11 exploitation of an elderly person or disabled adult.  
12 Provides for recovery of treble damages, or \$1,000, and  
13 attorney's fees and costs. Requires that a person make a  
14 written demand before filing an action for damages.  
15 Provides for a written release from further civil  
16 liability following compliance with a written demand.  
17 Provides that the right to maintain an action following  
18 the death of an exploited elderly person or disabled  
19 adult transfers to the personal representative or person  
20 succeeding to the decedent's estate. Provides for a  
21 speedy trial in any civil action in which an elderly  
22 person or disabled adult is a victim.  
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