

By the Committees on Judiciary; Children and Families; and  
Senator Carlton

308-2072-00

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. 772.11,  
6           F.S.; prescribing civil remedies for theft for  
7           certain offenses in which the victim is an  
8           elderly person; providing for continuation of  
9           such a cause of action on the death of such  
10          person; providing an effective date.

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

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

16           825.101 Definitions.--As used in this chapter:

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

20           (a) Is a parent, spouse, adult child, or other  
21 relative by blood or marriage of the elderly person or  
22 disabled adult;

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

25           (c) Has a legal or fiduciary relationship with the  
26 elderly person or disabled adult, including, but not limited  
27 to, a court-appointed or voluntary guardian, trustee,  
28 attorney, or conservator; ~~or~~

29           (d) Is a caregiver of the elderly person or disabled  
30 adult;or

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1           (e) Is any other person who has been entrusted with or  
2 has assumed responsibility for the use or management of the  
3 elderly person's or disabled adult's funds, assets, or  
4 property.

5           Section 2. Section 772.11, Florida Statutes, is  
6 amended to read:

7           772.11 Civil remedy for theft.--

8           (1) Any person who proves by clear and convincing  
9 evidence that he or she has been injured in any fashion by  
10 reason of any violation of the provisions of ss.  
11 812.012-812.037 or s. 825.103(1) has a cause of action for  
12 threefold the actual damages sustained and, in any such  
13 action, is entitled to minimum damages in the amount of \$200,  
14 and reasonable attorney's fees and court costs in the trial  
15 and appellate courts. Before filing an action for damages  
16 under this section, the person claiming injury must make a  
17 written demand for \$200 or the treble damage amount of the  
18 person liable for damages under this section. If the person to  
19 whom a written demand is made complies with such demand within  
20 30 days after receipt of the demand, that person shall be  
21 given a written release from further civil liability for the  
22 specific act of theft by the person making the written demand.  
23 Any person who has a cause of action under this section may  
24 recover the damages allowed under this section from the  
25 parents or legal guardian of any unemancipated minor who lives  
26 with his or her parents or legal guardian and who is liable  
27 for damages under this section. In no event shall punitive  
28 damages be awarded under this section. The defendant shall be  
29 entitled to recover reasonable attorney's fees and court costs  
30 in the trial and appellate courts upon a finding that the  
31 claimant raised a claim which was without substantial fact or

1 legal support. In awarding attorney's fees and costs under  
2 this section, the court shall not consider the ability of the  
3 opposing party to pay such fees and costs. Nothing under this  
4 section shall be interpreted as limiting any right to recover  
5 attorney's fees or costs provided under other provisions of  
6 law.

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

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

15 (4) The death of an elderly person or disabled adult  
16 does not cause the court to lose jurisdiction of any claim for  
17 relief for theft when the victim of the theft is an elderly  
18 person or disabled adult.

19 (5) Upon petition, after the death of an elderly  
20 person or disabled adult, the right of the decedent to  
21 maintain an action under this section shall be transferred to  
22 the personal representative of the decedent or, if there is no  
23 personal representative, to the person or persons entitled to  
24 succeed to the decedent's estate.

25 (6) In a civil action under this section in which an  
26 elderly person or disabled adult is a party, the elderly  
27 person or disabled adult may move the court to advance the  
28 trial on the docket. The presiding judge, after consideration  
29 of the age and health of the party, may advance the trial on  
30 the docket. The motion may be filed and served with the civil  
31 complaint or at any time thereafter.

1           Section 3. This act shall take effect July 1, 2000.

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3                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
4                                   COMMITTEE SUBSTITUTE FOR  
5   CS/SB 1136

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7 Clarifies that, after the death of an elderly person or  
8 disabled adult, the personal representative of the decedent's  
9 estate has the right to maintain the action provided by this  
10 section.

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