

By Senators Carlton and Peadar

24-218-01

1 A bill to be entitled
 2 An act relating to elderly persons and disabled
 3 adults; requiring that the Department of
 4 Children and Family Services select
 5 professional guardians on a rotating basis from
 6 a list of guardians who have agreed to serve;
 7 requiring that any such guardian agree to
 8 accept a certain proportion of indigent cases;
 9 amending s. 825.101, F.S.; defining the term
 10 "position of trust and confidence"; amending s.
 11 772.11, F.S.; prescribing civil remedies for
 12 theft and other offenses in which the victim is
 13 an elderly person or disabled adult; providing
 14 that a violation of patient rights is not a
 15 cause of action under the act; providing for
 16 continuation of a cause of action upon the
 17 death of the elderly person or disabled adult;
 18 authorizing the court to advance a trial on the
 19 docket which involves a victim who is an
 20 elderly person or disabled adult; providing an
 21 effective date.

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

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 25 Section 1. Appointment of professional guardian.--When
 26 the Department of Children and Family Services petitions for
 27 the appointment of a professional guardian under chapter 744,
 28 Florida Statutes, or refers a case to a professional guardian,
 29 the department shall select a guardian, on a rotating basis,
 30 from a list of professional guardians who have communicated to
 31 the department their willingness to serve. In order to be

1 included on the department's list, a professional guardian
2 must agree to accept at least one indigent case for every
3 three cases that the guardian accepts.

4 Section 2. Subsection (11) of section 825.101, Florida
5 Statutes, is amended to read:

6 825.101 Definitions.--As used in this chapter:

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

10 (a) Is a parent, spouse, adult child, or other
11 relative by blood or marriage of the elderly person or
12 disabled adult;

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

15 (c) Has a legal or fiduciary relationship with the
16 elderly person or disabled adult, including, but not limited
17 to, a court-appointed or voluntary guardian, trustee,
18 attorney, or conservator; ~~or~~

19 (d) Is a caregiver of the elderly person or disabled
20 adult; or

21 (e) Is any other person who has been entrusted with or
22 has assumed responsibility for the use or management of the
23 elderly person's or disabled adult's funds, assets, or
24 property.

25 Section 3. Section 772.11, Florida Statutes, is
26 amended to read:

27 772.11 Civil remedy for theft.--

28 (1) Any person who proves by clear and convincing
29 evidence that he or she has been injured in any fashion by
30 reason of any violation of ~~the provisions of ss.~~

31 812.012-812.037 or s. 825.103(1) has a cause of action for

1 threefold the actual damages sustained and, in any such
2 action, is entitled to minimum damages in the amount of \$200,
3 and reasonable attorney's fees and court costs in the trial
4 and appellate courts. Before filing an action for damages
5 under this section, the person claiming injury must make a
6 written demand for \$200 or the treble damage amount of the
7 person liable for damages under this section. If the person to
8 whom a written demand is made complies with such demand within
9 30 days after receipt of the demand, that person shall be
10 given a written release from further civil liability for the
11 specific act of theft by the person making the written demand.
12 Any person who has a cause of action under this section may
13 recover the damages allowed under this section from the
14 parents or legal guardian of any unemancipated minor who lives
15 with his or her parents or legal guardian and who is liable
16 for damages under this section. ~~In no event shall~~ Punitive
17 damages may not be awarded under this section. The defendant
18 is ~~shall be~~ entitled to recover reasonable attorney's fees and
19 court costs in the trial and appellate courts upon a finding
20 that the claimant raised a claim that ~~which~~ was without
21 substantial fact or legal support. In awarding attorney's fees
22 and costs under this section, the court may ~~shall~~ not consider
23 the ability of the opposing party to pay such fees and costs.
24 ~~Nothing under~~ This section does not limit ~~shall be interpreted~~
25 ~~as limiting~~ any right to recover attorney's fees or costs
26 provided under any other ~~provisions of~~ law.

27 (2) For purposes of a cause of action arising under
28 this section, the term "property" does not include the rights
29 of a patient or a resident or a claim for a violation of such
30 rights.

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1 (3) This section does not impose civil liability
2 regarding the provision of health care, residential care,
3 long-term care, or custodial care at a licensed facility or
4 care provided by appropriately licensed personnel in any
5 setting in which such personnel are authorized to practice.

6 (4) The death of an elderly person or disabled adult
7 does not cause the court to lose jurisdiction of any claim for
8 relief for theft when the victim of the theft is an elderly
9 person or disabled adult.

10 (5) Upon petition, after the death of an elderly
11 person or disabled adult, the right of the decedent to
12 maintain an action under this section shall be transferred to
13 the personal representative of the decedent or, if there is no
14 personal representative, to the person entitled to succeed to
15 the decedent's estate.

16 (6) In a civil action under this section in which an
17 elderly person or disabled adult is a party, the elderly
18 person or disabled adult may move the court to advance the
19 trial on the docket. The presiding judge, after consideration
20 of the age and health of the party, may advance the trial on
21 the docket. The motion may be filed and served with the civil
22 complaint or at any time thereafter.

23 Section 4. This act shall take effect July 1, 2001.
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SENATE SUMMARY

Requires that professional guardians appointed by the court or selected by the Department of Children and Family Services be selected on a rotating basis from a list compiled by the department. Requires that a guardian on the department's list agree to accept at least one indigent case for every three cases. Provides civil remedies for the exploitation of an elderly person or disabled adult. Provides that a violation of patient rights is not a cause of action for civil remedies under the act. Upon the death of the elderly person or disabled adult who has a civil cause of action, authorizes the court to transfer the right to maintain the action to the decedent's personal representative. Provides for the court to advance on the docket a case involving a victim who is an elderly person or disabled adult.