

By the Committee on Children and Families; and Senators
Carlton and Peadar

300-1483-01

1 A bill to be entitled

2 An act relating to elderly persons and disabled

3 adults; amending s. 825.101, F.S.; defining the

4 term "position of trust and confidence";

5 amending s. 772.11, F.S.; prescribing civil

6 remedies for theft and other offenses in which

7 the victim is an elderly person or disabled

8 adult; providing that a violation of patient

9 rights is not a cause of action under the act;

10 providing for continuation of a cause of action

11 upon the death of the elderly person or

12 disabled adult; authorizing the court to

13 advance a trial on the docket which involves a

14 victim who is an elderly person or disabled

15 adult; providing an effective date.

16

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

18

19 Section 1. Subsection (11) of section 825.101, Florida

20 Statutes, is amended to read:

21 825.101 Definitions.--As used in this chapter:

22 (11) "Position of trust and confidence" with respect

23 to an elderly person or a disabled adult means the position of

24 a person who:

25 (a) Is a parent, spouse, adult child, or other

26 relative by blood or marriage of the elderly person or

27 disabled adult;

28 (b) Is a joint tenant or tenant in common with the

29 elderly person or disabled adult;

30 (c) Has a legal or fiduciary relationship with the

31 elderly person or disabled adult, including, but not limited

1 to, a court-appointed or voluntary guardian, trustee,
2 attorney, or conservator; ~~or~~

3 (d) Is a caregiver of the elderly person or disabled
4 adult; ~~or~~

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

9 Section 2. Section 772.11, Florida Statutes, is
10 amended to read:

11 772.11 Civil remedy for theft.--

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

15 812.012-812.037 or s. 825.103(1) has a cause of action for
16 threefold the actual damages sustained and, in any such
17 action, is entitled to minimum damages in the amount of \$200,
18 and reasonable attorney's fees and court costs in the trial
19 and appellate courts. Before filing an action for damages
20 under this section, the person claiming injury must make a
21 written demand for \$200 or the treble damage amount of the
22 person liable for damages under this section. If the person to
23 whom a written demand is made complies with such demand within
24 30 days after receipt of the demand, that person shall be
25 given a written release from further civil liability for the
26 specific act of theft by the person making the written demand.
27 Any person who has a cause of action under this section may
28 recover the damages allowed under this section from the
29 parents or legal guardian of any unemancipated minor who lives
30 with his or her parents or legal guardian and who is liable
31 for damages under this section. ~~In no event shall~~ Punitive

1 damages may not be awarded under this section. The defendant
2 is ~~shall be~~ entitled to recover reasonable attorney's fees and
3 court costs in the trial and appellate courts upon a finding
4 that the claimant raised a claim that ~~which~~ was without
5 substantial fact or legal support. In awarding attorney's fees
6 and costs under this section, the court may ~~shall~~ not consider
7 the ability of the opposing party to pay such fees and costs.
8 ~~Nothing under~~ This section does not limit ~~shall be interpreted~~
9 ~~as limiting~~ any right to recover attorney's fees or costs
10 provided under any other ~~provisions of~~ law.

11 (2) For purposes of a cause of action arising under
12 this section, the term "property" does not include the rights
13 of a patient or a resident or a claim for a violation of such
14 rights.

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

20 (4) The death of an elderly person or disabled adult
21 does not cause the court to lose jurisdiction of any claim for
22 relief for theft when the victim of the theft is an elderly
23 person or disabled adult.

24 (5) Upon petition, after the death of an elderly
25 person or disabled adult, the right of the decedent to
26 maintain an action under this section shall be transferred to
27 the personal representative of the decedent or, if there is no
28 personal representative, to the person entitled to succeed to
29 the decedent's estate.

30 (6) In a civil action under this section in which an
31 elderly person or disabled adult is a party, the elderly

1 person or disabled adult may move the court to advance the
2 trial on the docket. The presiding judge, after consideration
3 of the age and health of the party, may advance the trial on
4 the docket. The motion may be filed and served with the civil
5 complaint or at any time thereafter.

6 Section 3. This act shall take effect July 1, 2001.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 374

11 Removes the requirement that the Department of Children and
12 Family Services maintain a list of professional guardians and
13 select a professional guardian on a rotating basis when
petitioning the court for the appointment of a professional
guardian under ch. 744, F.S.

14 Removes the requirement that the professional guardian accept
15 at least one indigent case for every three cases accepted.