

**STORAGE NAME:** h0793s1.jo.doc  
**DATE:** April 24, 2001

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIAL OVERSIGHT  
ANALYSIS**

**BILL #:** CS/HB 793  
**RELATING TO:** Elderly Persons & Disabled Adults  
**SPONSOR(S):** Committee on Elder & Long Term Care and Representative Hogan  
**TIED BILL(S):** none

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) ELDER & LONG TERM CARE YEAS 10 NAYS 0
  - (2) JUDICIAL OVERSIGHT (W/D)
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
- 

I. SUMMARY:

Current law provides that a victim of civil theft may sue the perpetrator, and receive treble damages plus attorney's fees.

This bill amends the civil theft statute to provide that exploitation of certain elderly persons or disabled adults may also be civilly pursued under the civil theft law.

Certain actions related to patient care, residential care, or long-term care, are exempted from the civil theft statute. Additionally, the court may advance on the calendar a cause of action for exploitation of an elderly person or disabled adult.

This bill also clarifies the definition of "position of trust and confidence" as it relates to exploitation of an elderly person or disabled adult.

This bill does not appear to have a fiscal impact on state or local government.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill provides a new cause of action.

B. PRESENT SITUATION:

Chapter 825, F.S., provides criminal penalties for certain actions constituting abuse, neglect, or exploitation of an elderly person or a disabled adult. Section 825.011(4), F.S., defines "disabled adult" to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.011(5), F.S., defines "elderly person" to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Section 825.101(11), F.S., defines "position of trust and confidence" with respect to an elderly person or a disabled adult, to mean the position of a person who:

- (a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;
- (b) Is a joint tenant or tenant in common with the elderly person or disabled adult;
- (c) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
- (d) Is a caregiver of the elderly person or disabled adult or is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

Section 825.103(1), F.S., provides that "exploitation of an elderly person or disabled adult" means:

- (a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of

the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

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

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

Section 772.11, F.S., provides a civil remedy for theft. Any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037, F.S., (criminal theft statutes) has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts. Before filing an action for damages under this section, the person claiming injury must make a written demand for \$200 or the treble damage amount of the person liable for damages. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that person must be given a written release from further civil liability for the specific act of theft by the person making the written demand. Any person who has a cause of action for civil theft may recover damages from the parents or legal guardian of any unemancipated minor who lives with his or her parents or legal guardian and who is liable for damages. Punitive damages are prohibited. The defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs in an action for civil theft, the court may not consider the ability of the opposing party to pay such fees and costs.

#### C. EFFECT OF PROPOSED CHANGES:

This bill clarifies the definition of "position of trust and confidence" in s. 825.101(11), F.S.

This bill amends s. 772.11, F.S., regarding a civil remedy for theft, to provide a cause of action for exploitation of an elderly person or disabled adult, as defined in s. 825.103(1), F.S. Like an action for civil theft, the successful plaintiff in an action for exploitation of an elderly person or a disabled adult may be awarded treble damages plus costs and attorney's fees.

This bill also amends s. 772.11, F.S., as it applicable to civil theft and to an elderly person or a disabled adult, to provide that:

- For purposes of a cause of action arising under s. 772.11, F.S., the term "property" does not include the rights of a patient or a resident or a claim for a violation of such rights.
- There is no civil liability under s. 772.11, F.S., regarding the provision of health care, residential care, long-term care, or custodial care at a licensed facility or care provided by appropriately licensed personnel in any setting in which such personnel are authorized to practice.

- The death of an elderly person or disabled adult does not cause the court to lose jurisdiction of any claim for relief for theft when the victim of the theft is an elderly person or disabled adult.
- Upon petition, after the death of an elderly person or disabled adult, the right of the decedent to maintain an action under this section is transferred to the personal representative of the decedent or, if there is no personal representative, to the person entitled to succeed to the decedent's estate.
- In a civil action under s. 772.11, F.S., in which an elderly person or disabled adult is a party, the elderly person or disabled adult may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial on the docket. The motion may be filed and served with the civil complaint or at any time thereafter.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

**Comments by Committee on Judicial Oversight**

New subsection 772.11(5), created by this bill, conflicts with Rule 1.260 of the Florida Rules of Civil Procedure, which rule governs the substitution of parties upon death of one. Article V, s. 2(a), Fla.Const., provides that the Florida Supreme Court has exclusive jurisdiction over rules of practice and procedure in the courts.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

**Comments by Committee on Judicial Oversight**

In section 2 of the bill, wherever the word "theft" appears, the words "or exploitation" should follow, to clarify that the theft penalty also applies to exploitation.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 27, 2001, the Committee on Elder & Long-Term Care amended the bill to remove a requirement that, when the Department of Children and Family Services petitions for the appointment of a professional guardian under ch. 744, F.S., or refers a case to a professional guardian, the department must select a guardian, on a rotating basis, from a list of professional guardians who have communicated to the department their willingness to serve. The bill was then reported favorably as a committee substitute.

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VI. SIGNATURES:

COMMITTEE ON ELDER AND LONG TERM CARE:

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Quinn Henderson

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Staff Director:

Tom Batchleor, Ph. D.

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AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

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Staff Director:

Lynne Overton, J.D.

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