

By Representative Hogan

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.