

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 268

SPONSOR: Finance and Taxation Committee and Senator Carlton

SUBJECT: Elderly Persons & Disabled Adults

DATE: February 6, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for a number of provisions impacting the welfare of elderly persons and disabled persons and guardians as follows:

- Adds the violation of s. 825.103, F.S., relating to the exploitation of an elderly person or disabled adult, as a basis for another cause of action,
- Requires the establishment of a statewide registry of professional guardians through the Statewide Public Guardianship Office (SPGO) by January 2003, and allows the SPGO to privatize that function through the Florida State Guardianship Association,
- Diminishes the period in which unclaimed guardianship funds will escheat to the state from 10 years to 5 years and specifies that these escheated funds are to be deposited in the Department of Elderly Affairs Trust Fund for distribution to the SPGO,
- Authorizes the SPGO and the public guardian offices to staff offices with specified professionals,
- Provides for the creation of a not-for-profit fundraising organization for the SPGO, and
- Increases from \$5,000 to \$15,000 the maximum amount for which a natural guardian has authority to settle a minor's claim without a formal court process or approval.

This bill substantially amends the following sections of the Florida Statutes: 772.11, 744.301, 744.387, 744.534, 744.703 and 825.101. It also creates ss. 744.1083 and s. 744.7082

II. Present Situation:

• *Financial Exploitation*

According to experts in elder law, the financial exploitation of elderly citizens is a serious growing problem. Perpetrators are most frequently persons in whom elderly citizens place trust and confidence, such as a family member, a long-term business associate or an employed

caretaker, to manage his or her funds, assets, and property. A 4-year national study determined that there were more than 550,000 reported cases of elder abuse, neglect and self-neglect for 1996, many more of which go unreported.¹ The study ranked in order of frequency the types of elder maltreatment: 1) Neglect, 2) Emotional/psychological abuse, 3) Physical Abuse, 4) Financial/material exploitation and 5) Abandonment. The largest category of perpetrators of elder abuse were found to be family members (primarily adult children) at almost 85%. The study also indicated that from 1986 to 1996, there was an 150.4% increase in reported domestic elder abuse.

1. Criminal Prosecution

Florida law contains at least two statutory provisions that allow for criminal prosecution based on the exploitation of an elderly adult or disabled adult. Section 812.014, F.S. is a general criminal theft statute and section 825.103, F.S., is specifically targeted criminal prosecution for financial exploitation as a theft.

<i>Statute</i>	<i>Offense</i>	<i>3d Felony</i>	<i>2d Felony</i>	<i>1st Felony</i>
s.812.014 (general theft statute)	A person knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently deprive <i>the other person</i> of a right to the property or a benefit from the property or appropriates the property to his or her own use.	Property value -	Property value-	Property value
s.825.103 (financial exploitation as theft) ²	A person knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, <i>an elderly person=s or disabled adult=s</i> 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. The exploitation has to have been committed by: 1) a person who is in a position of trust and confidence or has a business relationship with the elderly person or disabled adult, <i>or</i> 2) a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent. For purposes of s. 825.103, F.S., a person who is in a position of trust and confidence may be a parent or relative by blood or marriage, joint tenant or tenant in common, a person in a legal or fiduciary relationship such as a guardian or trustee, a caregiver, or any other person entrusted with responsibility for financial management of the elderly person’s or disabled adult’s property.	(\$300 <x> \$20K)	(\$20K ≤x> \$100K)	≥\$100K

¹ National Center on Elder Abuse. September 1998. *National Elder Abuse Incidence Study: Final Report*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families and Administration on Aging.

² No updated figures were made available by the Florida Department of Law Enforcement regarding the number of criminal prosecutions under s. 825.103, F.S. Available figures for FY 1998-99, show 511 persons were arrested for violation of s. 825.103, F.S. Of the 511 persons arrested, 95 persons (18.6%) were convicted as follows: 76 persons for 3d degree felony, 15 persons for 2d degree felony, and 4 persons for 1st degree felony.

2. *Civil Actions*

At least two statutory provisions provide civil causes of action and remedies for injury or damages arising out of exploitation of an elderly person or disabled adult³:

1. Section 772.11, F.S., allows a civil cause of action to be pursued based on a violation of the underlying criminal theft statutes in ss. 812.012-812.037, F.S. Since the definition for theft encompasses the definition for exploitation, a victim could seek the remedy of treble damages and attorneys' fees and costs under this statute. No punitive damages are available. First, the victim must make (and file) a pre-suit demand for \$200 up to treble damages. If the person against whom the demand is made complies within 30 days, a written release from further liability would have to be executed. The burden of proof is clear and convincing evidence. The defendant can also recover attorney's fees and costs from the trial and appellate courts if it is found that the claim was without legal support.
2. Section 415.1111, F.S., also provides a civil cause of action based on abuse, neglect or exploitation⁴ of a vulnerable adult⁵ against any perpetrator. An alleged perpetrator is defined as one who has been named in a reported call as the person responsible for abusing, neglecting, or exploiting a vulnerable adult.⁶ The suit may be brought by the vulnerable adult, the vulnerable adult's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or that person's guardian, or by the personal representative of the estate of a deceased vulnerable adult (without regard to whether the cause of death resulted from the abuse, neglect, or exploitation). In contrast to s. 772.11, F.S., punitive damages may be recovered under this section in addition to actual damages. The prevailing party is also entitled to recover reasonable attorney's fees and costs of the action. The burden of proof under this section as established by case law is the greater weight of the evidence. The remedies available in s. 415.1111, F.S., are in addition to and cumulative with other legal and administrative remedies available to a disabled adult or an elderly person.

³Under chapter 825, F.S., "elderly person" is defined as 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. A "disabled adult": 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.

⁴Exploitation is defined as an act taken by a person in a position of trust and confidence or a person who knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property. s. 415.102(7), F.S.

⁵ In 2000, the terms "elderly persons and disabled adult" were uniformly replaced by the term "vulnerable adult" in chapter 415, F.S., relating to adult protective service. *See* ch. 2000-349, L.O.F. Vulnerable adult is now defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. *See* s. 415.102(26), F.S.

⁶ Section 415.102(2), F.S.

- **Professional Guardians**

Under Chapter 744, F.S., a guardian may be appointed by the court for a person who has been determined judicially to be incapacitated (i.e. lacks capacity to manage property or meet essential health and safety requirements). A guardian is a person or entity who acts on behalf of either or both of a ward's person or property. A professional guardian is a guardian who receives compensation for services (with the exception of guardians who are relatives) rendered to two or more wards. Professional guardians are regulated under section 744.1085, F.S. Each professional guardian who files a petition for appointment is required to post a blanket fiduciary bond and satisfy minimum training requirements. Additionally, a professional guardian is required to submit to credit and criminal investigation background screening including an investigatory check by the National Crime Information Center and the Florida Crime Information Center systems by means of fingerprint checks by the Department of Law Enforcement and the Federal Bureau of Investigation.⁷ *See s. 744.3135, F.S..*

The clerks of the circuit courts are designated as the officials authorized to obtain fingerprint cards from the Federal Bureau of Investigation and to make these cards available to all guardians. Any guardian who is either requested or required to undergo a criminal background check must have his or her fingerprints taken and must submit the appropriate processing fee to the Florida Department of Law Enforcement. However, only professional guardians are required to pay a \$5 fee to the clerk of the circuit court, in the judicial circuit in which they are applying to serve as a guardian, for the handling and processing of their files. The respective clerks of the circuit courts are also designated as the recipients of fingerprint check results and are required to make the results available to their respective courts.

According to the Department of Elderly Affairs, elders, family members, and the general public, consistently inquire and complain about abuse, neglect and exploitation by professional guardians. Those complaints are referred to the respective judicial circuits in which the inquirer resides or the professional guardian is serving a ward. Currently, it is unknown how many professional guardians are operating in the state.⁸ There is no centralized registration of professional guardians. There is no statewide uniform oversight of professional guardians. There is also no mechanism for addressing problems that may span a professional guardian's entire caseload.

- **Statewide Public Guardianship Office (SPGO)**

In 1999, the Legislature created the Statewide Public Guardianship Office (SPGO) within the executive branch to replace the various public guardianship programs in operation within the judicial branch. *See Chapter 99-277, Laws of Florida.* The SPGO's primary purposes are to assume the regulatory oversight of the delivery system of guardianship services to indigent persons adjudicated incapacitated and to expand that system statewide. Although the SPGO is housed in the Department of Elderly Affairs but for administrative support purposes only; it is not subject to the control, supervision, or direction of the department. An executive director

⁷ In 1999, this authority was expanded to include credit and criminal investigations of public guardians. The exemption from credit and criminal investigatory checks previously granted to spouses and children petitioning for guardianship of a relative was eliminated.

⁸ The Florida Guardianship Association, a voluntary professional organization, estimates that the number of professional guardians is 1,000.

serves as the administrator of the SPGO. The SPGO operates through branch offices with the state circuit court structure, and is authorized to perform a number of duties.

- **Unclaimed Funds Held by Guardians**

Under current law, unclaimed funds held by a guardian (for which no wards estate can be found after diligent search) must be deposited in a court registry after the guardian deducts his or her final costs of administration. *See* s. 744.534, F.S. The clerk then either posts or publishes notice of the unclaimed funds. After 6 months, any remaining unclaimed funds are transferred to the State Treasurer who deposits them to the credit of public guardianship. All interests and income accrue to the unclaimed funds. At any time during the subsequent 10 years, the State Treasurer is required to pay claims from those unclaimed funds upon court order to those persons entitled to such funds. After 10 years, the unclaimed funds revert or escheat to the state for the benefit of public guardianship. However, there is no established statutory mechanism for requesting and distributing those funds for the benefit of the public guardianship. In practice, according to the Department of Banking and Finance, the State Treasurer has defaulted to provisions in s. 717.123, F.S., relating to the disposition of unclaimed funds. That provision allows the State Treasurer to retain \$3 million of all unclaimed funds and property from all sources to pay out claims, and to transfer and deposit all excess into the State School Fund.

- **Settlement Authority of Natural Guardians**

One of two statutory provisions may govern when a natural guardian can settle a legal claim on behalf of a minor. Under section 744.387(2), F.S., a natural guardian of a minor can settle a claim by or on behalf of a minor ward without a bond or prior court approval if the amount of the settlement does not exceed \$5,000. However, if the net settlement exceeds \$5,000, a legal guardian has to be appointed for the minor ward before the natural guardian can settle the minor's claim. The natural parent may be appointed as a legal guardian. If the proposed settlement exceeds \$5,000, the guardian must petition the court and state the facts of the claim, the question or dispute and the proposed settlement terms. If the court determines that the settlement is in the minor ward's best interest after review of the petition and any evidence, the court must issue an order authorizing the settlement. The order may also require additional bond. The court's approval of the settlement relieves the guardian from any further responsibility in connection with the claim. A settlement reached after an action has been filed on behalf of a ward is not effective, unless approved by the court. *See* s. 744.387(3), F.S.

Section 744.301, F.S., provides a similar statutory scheme for settlement of claims or a cause of action for personal injury, property damage, or wrongful death by a natural guardian on behalf of a minor under specified circumstances. This section is distinguishable from s. 744.387, F.S., in that it pertains to the appointment of a guardian ad litem in lieu of the appointment of a legal guardian. It establishes a three-tiered scheme based on threshold settlement amounts which determine if and when a guardian ad litem may or needs to be appointed by the court. As in section 744.387, F.S., a natural guardian can settle a minor's claim without court authority or bond if the settlement amount is for \$5,000 or less. If the gross settlement amount equals or exceeds \$10,000, the court *may* appoint a guardian ad litem to represent the minor's interests. If the gross settlement amount equals or exceeds \$25,000, the court *must* appoint a guardian ad litem. However, if a legal guardian has been previously appointed and no potential adverse interest exists, a guardian ad litem may not be appointed unless the court determines that it is

necessary. Threshold amounts in sections 744.301 and 744.387, F.S., have not been changed since at least 1979.

III. Effect of Proposed Changes:

Section 1 amends s. 825.101, F.S., relating to definitions for criminal offenses of exploitation of elderly persons and disabled adults, to make grammatical changes to the definition for “position of trust and confidence.”

Section 2 amends s.772.11, F.S., to create a specific civil cause of action based on the underlying violation of the criminal exploitation of a disabled adult or elderly person as defined in the criminal statute s. 825.103(1), F.S. Therefore, a disabled person or an elderly person who proves by clear and convincing evidence that he or she has been injured in any way because of exploitation may seek a minimum \$200 in damages or a maximum of treble damages. The person may also recover reasonable attorney’s fees and court costs in the trial and appellate courts. As with other underlying theft violations under this section, a presuit demand for satisfaction of the claim must be made first.

Subsections (2) and (3) deal with the limitation of the term “property” as the underlying basis for a civil cause of action under this section. A person can not use this section to sue for a violation of his or her patient’s or resident’s rights. In addition, subsection (3) expressly states that section 772.11, F.S., does not give rise to civil liability as may relate to the provision of health care, residential care, long-term care, or custodial care at licensed facilities or care provided by appropriately licensed personnel in any setting in which the personnel are authorized to practice.

Subsection (4) provides that a civil cause of action under s. 772.11, F.S. (whether arising out of the violations of theft provisions in chapter 812, F.S., or violations of exploitation under s. 825.103, F.S.) survives the death of an elderly person or disabled adult. These provisions are somewhat duplicative in that current law already provides that a cause of action survives the death of a party. *See* s. 46.021, F.S.

Under subsection (6), an elderly person or disabled adult may petition the court to expedite the matter on the docket which the court may do after it considers the person’s age and health. This provision is similar to existing provisions which already allow for speedy trial requests in a civil cause of action or a criminal proceeding involving an elderly person or disabled adult. *See* s. 415.1115, F.S., and s. 825.106, F.S..

Section 3 creates s. 744.1083, F.S. to require the Statewide Public Guardianship Office (SPGO) to establish a statewide registry of professional guardians. The SPGO may contract with the Florida State Guardianship Association, Inc., to administer the registry, including the issuance of the certificate of registration. It provides a phase-in registration period until January 1, 2003. The SPGO is authorized to establish by rule the applicable registration fee which may not exceed \$25. The SPGO is also given broad authority to adopt other rules to implement this new section. The following information must be provided if the professional guardian is:

- A natural person: name, address, date of birth and employer identification;
- A partnership or association: name, address, date of birth of every member, and the employer identification number of the partnership or association;

- A corporation: name, address and employer identification number of the corporation, the name, address and date of birth of each of its directors and officers; the name of its resident agent; and the name, address, and date of birth of each person having at least a 10-percent interest in the corporation.

Each registration of a professional guardian must also include: 1) the name, address, date of birth, and employer identification number, if applicable of each person employed or under contract with the professional guardian who is involved in providing financial or personal guardianship services for wards, and 2) documentation that the statutory bonding, educational and background screening requirements have been satisfied. If the registered professional guardian is a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association, it need only provide the name, address, and employer identification of the registrant, the name and address of its registered agent, if any, and documentation that the statutory bonding, educational and background screening requirements have been satisfied.

Section 4 amends s. 744.534, F.S., to shorten the period from 10 years to 5 years before unclaimed guardianship funds escheat to the state. The funds are to be deposited into the Department of Elderly Affairs Trust Fund. In lieu of generally stating that those escheated funds are for the “benefit of public guardianship,” it expressly designates the SPGO as the recipient of those escheated funds.

Section 5 amends s. 744.703, F.S., to clarify provisions relating to the organization of local offices of public guardian. It allows for more than one office of the public guardian in each county or judicial circuit. It also clarifies that the public guardian of an office of public guardian must maintain or contract for professional services staff. A nonprofit corporate guardian must receive tax-exempt status from the Internal Revenue Service in order to be a public guardian.

Section 6 creates s. 744.7082, F.S., to give the Statewide Public Guardianship Office authority to set up a funding support organization. The SPGO may affiliate with a non-profit direct-support organization for the indirect or direct benefit of the SPGO or its local offices. It also defines a “direct-support organization.” The organization must provide for an annual financial audit, pursuant to the statutorily established auditing procedure.

Section 7 amends s. 744.387(2), F.S., to increase the threshold settlement amount by which a natural guardian can settle a minor’s legal claim without a bond or court approval. The threshold is raised from \$5,000 to an amount not to exceed \$15,000. Consequently, a legal guardianship or court approval (unless an action has been initiated) would not be required for a minor until the proposed settlement amount exceeded \$15,000.

Section 8 amends s. 744.301, F.S., to increase the threshold settlement amount by which a natural guardian can settle a minor’s legal claim without a bond or court approval. The threshold is raised from \$5,000 to \$15,000. Consequently, a guardian ad litem need not be appointed in cases involving settlements of \$15,000 or less. Otherwise, the existing three-tiered statutory threshold scheme remains relatively the same. That is, in cases involving settlements of more than \$15,000, the court has the discretion to appoint a legal guardian. If there is a potential

adverse interest or if the case involves a settlement equaling or exceeding \$25,000, the court is required to appoint a legal guardian..

Section 9 provides an effective date of the bill upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There is some concern that the bill violates the provisions of section 6 of article III of the Florida Constitution which provides that “[E]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” This bill pertains to multiple issues including criminal prosecution and civil actions for elderly persons based on financial exploitation, guardianship matters and the Statewide Public Guardianship Office. The single-subject requirement requires a logical or natural connection between the various portions of a legislative enactment and this is satisfied if there is a reasonable explanation as to why the legislature joined multiple subjects within the same legislative act. *See Grant v. State*, 770 So.2d 655, 657 (Fla. 2000). Arguably, there is a logical or natural connection between the multiple issues in this bill, i.e., they relate to persons in position of trust and confidence. A proposed title amendment would better reflect that there is that connection between the provisions.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill requires professional guardians to pay a registration fee to be set by the Statewide Public Guardianship Office that is sufficient to cover the administrative costs of registration.

B. Private Sector Impact:

To the extent this bill provides another cause of action, victims of exploitation or surviving family members of victims have another avenue to recover damages arising from exploitation and for recovery of attorney’s fees.

Persons or entities who wish to qualify as professional guardians will incur the attendant costs associated with the new registration and annual registration requirements. This bill will have a fiscal impact resulting from the registration process. Since it is not known at this time how many professional guardians there are and how many will apply for registration, it is not possible to calculate the cost of such regulation at this time.

Potential owners of unclaimed funds held by guardians will have a shorter period of time in which to claim the funds before the funds escheat to the state. According to the Department of Banking and Finance, approximately \$9,900 are claimed annually out of the funds remitted by the county courts. It is anticipated that shortening the period will result in \$49,500 being returned annually to the rightful owners.

Natural guardians will have greater authority to settle larger claims (\$15,000 or less) behalf of minors without formal court processes and without costly guardianship appointment expenditure.

C. Government Sector Impact:

The Office of the State Courts Administrator reported that the provisions relating to the civil cause of action for civil theft and exploitation may result in increased workload in the judicial system. According to the office, the average proceeding for a tort case (for automobile or for other negligence cases) requires 101 minutes of judicial time and the new cause of action may require a comparable amount of judicial time. The actual impact to the judicial system cannot be determined because the number of cases filed is not known. The fiscal impact of the provision relating to the expediting these types of cases is expected to be minimal as existing statutory provisions already require civil cases involving persons over 65 to be expedited.

As to settlement claims on behalf of minors, the Office of State Courts Administrator anticipates that there may be some workload reduction on the court and the guardian ad litem program based on a decreased number of required petitions for settlement of claims falling below the statutory threshold of \$15,000. There may be a reduction, albeit insignificant, in revenue from filing fees.

Whereas previously, escheated unclaimed funds held by guardians had been placed in the State School Trust Fund by default and used for schools, these funds will now be used to benefit public guardianship as originally statutorily intended. That is, it is now specified in statute that these funds are to be deposited into Department of Elderly Affairs Trust Fund to benefit the Statewide Public Guardianship Office. According to the Department of Banking and Insurance, the following amounts of accumulated funds will be not be deposited into the State School Trust Fund but deposited into the Department of Elderly Affairs Administrative Trust Fund:

	FY 02-03	FY 03-04	FY 04-05
Non-recurring effect	\$381.3K (represents 7 years of accumulated funds)		
Recurring Effect	\$381.3K	\$143.7K	\$197.8K

The annual amounts available to the Statewide Public Guardianship Office will be dependent on the amount of funds remitted by the courts five years previously less the amount claimed by the rightful owner. Since 1992, the annual balance of unclaimed guardianship funds held by the Treasurer has varied from \$34,218.06 to \$223,999.92.

The Statewide Public Guardianship Office estimates that professional guardianship registration fees will generate in \$13,800 (based on a registration fee of \$15.00, and a projection of less than 1,000 professional guardians in the state). According to SPGO this would cover a little more than the expenditures needed to provide the registry either through contract or through SPGO staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- This bill creates a cause of action for exploitation under s. 772.11, F.S. The civil causes of action under sections 772.11 and 415.111, F.S., are now very similar but for the continuing reference to the term “perpetrator” in s. 415.111, F.S.:

Civil cause of action	s. 772.11, F.S., as amended by this bill	s. 415.1111, F.S.
<i>Basis of action</i>	Violations of theft provisions in ss. 812.012-812.37, F.S. Violation of exploitation as defined in s. 825.103(1), F.S.	Abuse, neglect and exploitation as defined in chapter 415, F.S.
<i>Who may sue while victim is alive</i>	Elderly person or disabled adult or guardian (as may be authorized under chapter 744, F.S.)	Vulnerable adult; guardian; or person or organization acting on behalf of the vulnerable adult with the vulnerable adult’s consent or consent of that adult’s guardian
<i>Who may sue on behalf of the victim after the victim’s death</i>	Personal representative or person entitled to succeed to the decedent’s estate	Personal representative of the estate of the deceased victim regardless of whether or not the death is attributable to the abuse, neglect or exploitation
<i>Presuit requisites</i>	Demand for settlement of claim and if satisfied, written release of liability	None
<i>Damages</i>	\$200 < x > treble actual damages	Actual and punitive damages
<i>Attorney’s Fees and Costs</i>	Recoverable	Recoverable
<i>Burden of proof</i>	Clear and convincing evidence	Greater weight of evidence
<i>Speedy Trial</i>	Elderly persons and disabled adults	Elderly persons over 65 years of age.

Notably, section 415.1111, F.S. was substantially revised in 2000. *See* ch. 2000-349, L.O.F.⁹ The revision removed the requirement that the cause of action be based on an underlying confirmed report of abuse, neglect, or exploitation by the Department of Children and Family Services under chapter 415, F.S., but it did not make the conforming change to remove reference to the “perpetrator.” Consequently, it is argued that causes of action under s.

⁹ Provisions imposing civil monetary penalties for abuse, neglect, and exploitation were also removed.

415.1111, F.S., are still limited to those based on underlying confirmed reports of abuse, neglect, or exploitation committed by “perpetrators.”

- There is also some concern regarding certain amendments to s. 772.11, F.S. First, although a civil cause of action under subsection (1) of s. 772.11, F.S., may now be based on violations of provisions in chapter 812, F.S. (theft), or chapter 825, F.S., (abuse and neglect of elder and disabled adults), the bill expressly excludes patient’s rights or resident’s rights from the definition of property such that no cause of action may arise under this section for violation of those rights. Under existing law in chapters 812, F.S., and 825, F.S., a violation of the respective provisions relating to theft and financial exploitation can include theft or financial exploitation of *property* as defined which includes “rights, privileges, interests, and claims.” Consequently, it is unknown whether this new amendatory language is intended or would preclude a cause of action for actions such as staff thefts that may occur at these facilities, including theft of a patient’s or resident’s benefits as may arise from improper billing of Medicaid or other benefits. Second, this section is amended to preclude the imposition of any civil liability as may relate to the provision of health care or other care provided by a licensed personnel or at a licensed facility (which are undefined). This may unintentionally interfere with other causes of action or right an elderly person or disabled adult already has under existing law.

The Agency for Health Care Administration which voiced similar concerns has suggested the following language (borrowed from chapter 415, F.S.) be substituted:

The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to an elderly adult or disabled adult. Notwithstanding the foregoing, any civil action for damages against any licensee or entity or entity who establishes, controls, conducts, manages, or operates a facility licensed under part II of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.023 or against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part III of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.429. Such licensee or entity shall not be vicariously liable for the acts or omissions of its employees or agents or any other third party in an action brought under this section.

- Under the bill, the SPGO may contract with the Florida State Guardianship Association, Inc. to administer the registration process of professional guardians. The Association is not defined in statute. According to the Association’s website (www.floridaguardians.com), the Association is a non-profit organization founded in 1983, governed by a Board of Directors representing five geographical regions of the state and registered with the Department of State since 1991. Its membership consists of 10 major areas of practitioners including professional guardians, geriatric and care-managers, court personnel, and family guardians.

VIII. Amendments:

#1 by Judiciary:

Amends the title of the bill to better reflect the logical or natural connection underlying the multiple issues included in this bill which relates to persons in position of trust and confidence,

and their activities, duties and responsibilities, and consequences of their actions on all persons regardless of age or capacity.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
