

By Senator Fasano

11-00604-11

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1
2 A bill to be entitled
3 An act relating to elderly persons; prohibiting a
4 court from suspending, deferring, or withholding an
5 adjudication of guilt or imposition of sentence for a
6 person violating certain specified provisions of law;
7 amending s. 400.0083, F.S., relating to interference
8 with the activities of the State Long-Term Care
9 Ombudsman Program; amending ss. 400.464 and 400.474,
10 F.S., relating to the licensing of home health
11 agencies; amending s. 408.8065, F.S., relating to the
12 licensing of home health agencies and home equipment
13 providers; amending s. 429.27, F.S., relating to the
14 property and personal affairs of residents of assisted
15 living facilities; amending s. 812.0145, F.S.,
16 relating to theft from persons 65 years of age or
17 older; amending s. 825.102, F.S., relating to abuse,
18 aggravated abuse, and neglect of an elderly person or
19 disabled adult; amending s. 825.1025, F.S., relating
20 to lewd or lascivious offenses committed upon or in
21 the presence of an elderly person or disabled person;
22 amending s. 825.103, F.S., relating to the
23 exploitation of an elderly person or disabled adult;
24 conforming provisions; providing an effective date.
25

26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Subsection (3) of section 400.0083, Florida
29 Statutes, is amended to read:

11-00604-11

2011422

30 400.0083 Interference; retaliation; penalties.—

31 (3) Any person, long-term care facility, or other entity
32 that violates this section:

33 (a) Shall be liable for damages and equitable relief as
34 determined by law.

35 (b) Commits a misdemeanor of the second degree, punishable
36 as provided in s. 775.083. Notwithstanding s. 948.01, a court
37 may not suspend, defer, or withhold adjudication of guilt or
38 imposition of sentence for any violation of this section.

39 Section 2. Paragraph (e) of subsection (4) of section
40 400.464, Florida Statutes, is amended to read:

41 400.464 Home health agencies to be licensed; expiration of
42 license; exemptions; unlawful acts; penalties.—

43 (4)

44 (e) Any person who owns, operates, or maintains an
45 unlicensed home health agency and who, within 10 working days
46 after receiving notification from the agency, fails to cease
47 operation and apply for a license under this part commits a
48 misdemeanor of the second degree, punishable as provided in s.
49 775.082 or s. 775.083. Each day of continued operation is a
50 separate offense. Notwithstanding s. 948.01, a court may not
51 suspend, defer, or withhold adjudication of guilt or imposition
52 of sentence for any violation of this paragraph.

53 Section 3. Paragraph (a) of subsection (7) of section
54 400.474, Florida Statutes, is amended to read:

55 400.474 Administrative penalties.—

56 (7) (a) In addition to the requirements of s. 408.813, any
57 person, partnership, or corporation that violates s. 408.812 or
58 s. 408.813 and that previously operated a licensed home health

11-00604-11

2011422

59 agency or concurrently operates both a licensed home health
60 agency and an unlicensed home health agency commits a felony of
61 the third degree punishable as provided in s. 775.082, s.
62 775.083, or s. 775.084. Notwithstanding s. 948.01, a court may
63 not suspend, defer, or withhold adjudication of guilt or
64 imposition of sentence for any violation of this paragraph.

65 Section 4. Subsection (3) of section 408.8065, Florida
66 Statutes, is amended to read:

67 408.8065 Additional licensure requirements for home health
68 agencies, home medical equipment providers, and health care
69 clinics.—

70 (3) In addition to the requirements of s. 408.812, any
71 person who offers services that require licensure under part VII
72 or part X of chapter 400, or who offers skilled services that
73 require licensure under part III of chapter 400, without
74 obtaining a valid license; any person who knowingly files a
75 false or misleading license or license renewal application or
76 who submits false or misleading information related to such
77 application, and any person who violates or conspires to violate
78 this section, commits a felony of the third degree, punishable
79 as provided in s. 775.082, s. 775.083, or s. 775.084.
80 Notwithstanding s. 948.01, a court may not suspend, defer, or
81 withhold adjudication of guilt or imposition of sentence for any
82 violation of this subsection.

83 Section 5. Subsection (6) of section 429.27, Florida
84 Statutes, is amended to read:

85 429.27 Property and personal affairs of residents.—

86 (6) (a) In addition to any damages or civil penalties to
87 which a person is subject, any person who:

11-00604-11

2011422

88 1. Intentionally withholds a resident's personal funds,
89 personal property, or personal needs allowance, or who demands,
90 beneficially receives, or contracts for payment of all or any
91 part of a resident's personal property or personal needs
92 allowance in satisfaction of the facility rate for supplies and
93 services; or

94 2. Borrows from or pledges any personal funds of a
95 resident, other than the amount agreed to by written contract
96 under s. 429.24,

97
98 commits a misdemeanor of the first degree, punishable as
99 provided in s. 775.082 or s. 775.083.

100 (b) Any facility owner, administrator, or staff, or
101 representative thereof, who is granted power of attorney for any
102 resident of the facility and who misuses or misappropriates
103 funds obtained through this power commits a felony of the third
104 degree, punishable as provided in s. 775.082, s. 775.083, or s.
105 775.084.

106 (c) Notwithstanding s. 948.01, a court may not suspend,
107 defer, or withhold adjudication of guilt or imposition of
108 sentence for any violation of paragraph (a) or paragraph (b).

109 Section 6. Subsection (2) of section 812.0145, Florida
110 Statutes, is amended to read:

111 812.0145 Theft from persons 65 years of age or older;
112 reclassification of offenses.—

113 (2) Whenever a person is charged with committing theft from
114 a person 65 years of age or older, when he or she knows or has
115 reason to believe that the victim was 65 years of age or older,
116 the offense for which the person is charged shall be

11-00604-11

2011422__

117 reclassified as follows:

118 (a) If the funds, assets, or property involved in the theft
119 from a person 65 years of age or older is valued at \$50,000 or
120 more, the offender commits a felony of the first degree,
121 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

122 (b) If the funds, assets, or property involved in the theft
123 from a person 65 years of age or older is valued at \$10,000 or
124 more, but less than \$50,000, the offender commits a felony of
125 the second degree, punishable as provided in s. 775.082, s.
126 775.083, or s. 775.084.

127 (c) If the funds, assets, or property involved in the theft
128 from a person 65 years of age or older is valued at \$300 or
129 more, but less than \$10,000, the offender commits a felony of
130 the third degree, punishable as provided in s. 775.082, s.
131 775.083, or s. 775.084.

132

133 Notwithstanding s. 948.01, a court may not suspend, defer, or
134 withhold adjudication of guilt or imposition of sentence for any
135 violation of paragraph (a), paragraph (b), or paragraph (c).

136 Section 7. Subsection (4) is added to section 825.102,
137 Florida Statutes, to read:

138 825.102 Abuse, aggravated abuse, and neglect of an elderly
139 person or disabled adult; penalties.—

140 (4) Notwithstanding s. 948.01, a court may not suspend,
141 defer, or withhold adjudication of guilt or imposition of
142 sentence for any violation of paragraph (3)(b) or (c).

143 Section 8. Subsection (5) is added to section 825.1025,
144 Florida Statutes, to read:

145 825.1025 Lewd or lascivious offenses committed upon or in

11-00604-11

2011422__

146 the presence of an elderly person or disabled person.-

147 (5) Notwithstanding s. 948.01, a court may not suspend,
148 defer, or withhold adjudication of guilt or imposition of
149 sentence for any violation of paragraph (2) (b), paragraph
150 (3) (b), or paragraph (4) (b).

151 Section 9. Subsection (3) is added to section 825.103,
152 Florida Statutes, to read:

153 825.103 Exploitation of an elderly person or disabled
154 adult; penalties.-

155 (3) Notwithstanding s. 948.01, a court may not suspend,
156 defer, or withhold adjudication of guilt or imposition of
157 sentence for any violation of paragraph (2) (a), (b), or (c).

158 Section 10. This act shall take effect October 1, 2011.