

By the Committee on Children and Families; and Senator Carlton

300-1825-00

1 A bill to be entitled
2 An act relating to the exploitation of elderly
3 persons or disabled adults; amending s.
4 825.101, F.S.; defining the term "position of
5 trust and confidence"; amending s. 772.11,
6 F.S.; prescribing civil remedies for theft for
7 certain offenses in which the victim is an
8 elderly person; providing for continuation of
9 such a cause of action on the death of such
10 person; providing an effective date.

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

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14 Section 1. Subsection (11) of section 825.101, Florida
15 Statutes, is amended to read:

16 825.101 Definitions.--As used in this chapter:

17 (11) "Position of trust and confidence" with respect
18 to an elderly person or a disabled adult means the position of
19 a person who:

20 (a) Is a parent, spouse, adult child, or other
21 relative by blood or marriage of the elderly person or
22 disabled adult;

23 (b) Is a joint tenant or tenant in common with the
24 elderly person or disabled adult;

25 (c) Has a legal or fiduciary relationship with the
26 elderly person or disabled adult, including, but not limited
27 to, a court-appointed or voluntary guardian, trustee,
28 attorney, or conservator; ~~or~~

29 (d) Is a caregiver of the elderly person or disabled
30 adult;or

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1 (e) Is any other person who has been entrusted with or
2 has assumed responsibility for the use or management of the
3 elderly person's or disabled adult's funds, assets, or
4 property.

5 Section 2. Section 772.11, Florida Statutes, is
6 amended to read:

7 772.11 Civil remedy for theft.--

8 (1) Any person who proves by clear and convincing
9 evidence that he or she has been injured in any fashion by
10 reason of any violation of the provisions of ss.
11 812.012-812.037 or s. 825.103(1) has a cause of action for
12 threefold the actual damages sustained and, in any such
13 action, is entitled to minimum damages in the amount of \$200,
14 and reasonable attorney's fees and court costs in the trial
15 and appellate courts. Before filing an action for damages
16 under this section, the person claiming injury must make a
17 written demand for \$200 or the treble damage amount of the
18 person liable for damages under this section. If the person to
19 whom a written demand is made complies with such demand within
20 30 days after receipt of the demand, that person shall be
21 given a written release from further civil liability for the
22 specific act of theft by the person making the written demand.
23 Any person who has a cause of action under this section may
24 recover the damages allowed under this section from the
25 parents or legal guardian of any unemancipated minor who lives
26 with his or her parents or legal guardian and who is liable
27 for damages under this section. In no event shall punitive
28 damages be awarded under this section. The defendant shall be
29 entitled to recover reasonable attorney's fees and court costs
30 in the trial and appellate courts upon a finding that the
31 claimant raised a claim which was without substantial fact or

1 legal support. In awarding attorney's fees and costs under
2 this section, the court shall not consider the ability of the
3 opposing party to pay such fees and costs. Nothing under this
4 section shall be interpreted as limiting any right to recover
5 attorney's fees or costs provided under other provisions of
6 law.

7 (2) For purposes of the causes of action arising from
8 this section, the term "property" does not include patients'
9 or residents' rights or claims for violations of such rights.

10 (3) This section does not impose civil liability
11 regarding the provision of health care, residential care,
12 long-term care, or custodial care at licensed facilities or
13 care provided by appropriately licensed personnel in any
14 setting in which such personnel are authorized to practice.

15 (4) The death of an elderly person or disabled adult
16 does not cause the court to lose jurisdiction of any claim for
17 relief for theft when the victim of the theft is an elderly
18 person or disabled adult.

19 (5) Upon petition, after the death of an elderly
20 person or disabled adult, the right of the decedent to
21 maintain an action shall be transferred to the personal
22 representative of the decedent or, if there is no personal
23 representative, to the person or persons entitled to succeed
24 to the decedent's estate.

25 (6) In a civil action under this section in which an
26 elderly person or disabled adult is a party, the elderly
27 person or disabled adult may move the court to advance the
28 trial on the docket. The presiding judge, after consideration
29 of the age and health of the party, may advance the trial on
30 the docket. The motion may be filed and served with the civil
31 complaint or at any time thereafter.

