

STORAGE NAME: h0137.elt.doc
DATE: December 26, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER & LONG TERM CARE
ANALYSIS**

BILL #: HB 137
RELATING TO: Elderly Persons and Disabled Adults
SPONSOR(S): Representative(s) Hogan & others
TIED BILL(S):

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

- (1) ELDER & LONG TERM CARE
 - (2) JUDICIAL OVERSIGHT
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

HB 137 relates to the rights and protection of elderly persons and disabled adults as they relate to individuals in positions of trust or confidence or in a caregiver capacity. This bill further prescribes civil remedies for theft and exploitation when the victims are elderly persons or disabled adults as defined in chapter 825. It provides that violations of patient's rights are not subject to action under this act.

The bill creates a civil remedy for theft or exploitation. The death of an elderly person or disabled adult does not cause the court to lose jurisdiction.

The bill requires professional guardians to register with the Statewide Public Guardianship Office. It provides that unclaimed funds deposited with the State Treasurer be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used solely for the benefit of the public guardianship. The bill directs the public guardian to maintain a staff and specifies minimum qualifications.

The bill provides authority for the creation of a "direct-support-organization" to conduct programs, activities, raise funds, seek grants and gifts, and otherwise work for the benefit of the Statewide Public Guardianship Office. The bill revises the monetary amounts that guardians and "natural guardians" can handle on behalf of their minor children without bond, appointment, or authority from \$5,000 to \$15,000. In certain cases where the settlement of a claim exceeds \$15,000, raised from \$10,000, the court may appoint a guardian ad litem.

II. 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:

The bill creates 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 dysfunction, 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 the person making the written demand must give person a written release from further civil liability for the specific act of theft. 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. This bill also amends s. 772.11, F.S., to provide that:

- 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 regarding the provision of health care in institutions or for care provided by appropriately licensed personnel in any setting in which they are authorized to practice;
- the court does not lose jurisdiction upon the death of the elderly or disabled person;
- the elderly person or disabled adult may move the court to advance the trial on the docket; and, 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.

Unclaimed funds that are deposited with the State Treasurer not claimed within five years shall be deposited into the Department of Elderly Affairs Administrative Trust Fund to be used solely for the benefit of public guardianship as determined by the Statewide Public Guardianship Office.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 makes technical changes to clarify the definition of “position of trust and confidence” in chapter 825, F.S.

Section 2 adds “exploitation” to the current section related to a civil remedy for theft in section 772.11, F.S. This section clarifies that for a cause of action arising under this section the term “property” does not include the rights of a patient or resident. Specifically states that this section does not impose civil liability in long term care settings or for care provided by licensed personnel. The death of an elderly or disabled adult does not cause the court to lose jurisdiction. The elderly or disabled adult may move the court to advance trial on the docket.

Section 3 provides for registration of professional guardians.

Section 4 provides that the unclaimed funds held by the guardian that are deposited with the State Treasurer not claimed within five years shall be deposited into the Department of Elderly Affairs Administrative Trust Fund to be used solely for the benefit of public guardianship as determined by the Statewide Public Guardianship Office.

Section 5 directs that the public guardian shall maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions. A public guardian that is a nonprofit corporate guardian under s. 744.309(5) must have a tax-exempt status from the Internal Revenue Service.

Section 6 creates section 744.7082 related to direct-support organizations. Direct support organizations under this section are not-for-profit corporations organized and operated to provide direct or indirect benefit to the Statewide Public Guardianship Office or individual offices of public guardians. The purposes and objectives of these organizations must be consistent with those of the Statewide Public Guardianship Office and in the best interests of the state. The Statewide Public Guardianship Office is permitted to allow these organizations to use state property and facilities without charge for activities in keeping with the approved purpose of the organizations. Annual post-audit of its financial accounts and that report and a management letter shall be sent to the Auditor General and the Statewide Public Guardianship Office.

Section 7 amends section 744.387 related to settlement of claims to revise from \$5,000 to \$15,000 the amount of a claim by or on behalf of a minor without a bond. A legal guardianship is required if the net settlement to the ward exceeds \$15,000 raised from the existing \$5,000. When the net settlement to a ward or judgment is greater than \$15,000, raised from the current \$5,000, and no guardian has been appointed, the court must require the appointment of a guardian for the property.

Section 8 amends section 744.301 related to natural guardians to raise to \$15,000 from \$5,000 the amount of money natural guardians can handle on behalf of their minor children without appointment, authority, or bond. Subsection (4)(a) revises from \$10,000 to \$15,000 the benchmark for the appointment of a guardian ad litem to protect the minor’s interest in cases where the minor has a claim for personal injury, property damage, or wrongful death.

Section 9 provides that this bill shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

It provides that unclaimed funds deposited with the State Treasurer be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used solely for the benefit of the public guardianship. The bill directs the public guardian to maintain a staff and specifies minimum qualifications.

2. Expenditures:

No expenditures are directed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

No rule making authority is provided.

C. OTHER COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

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