

**STORAGE NAME:** h0793s1.elt.doc  
**DATE:** March 30, 2001

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

**BILL #:** CS/HB 0793  
**RELATING TO:** Elderly Persons and Disabled Adults  
**SPONSOR(S):** Representative(s) Hogan  
**TIED BILL(S):**

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

- (1) ELDER & LONG TERM CARE YEAS 10 NAYS 0
  - (2) JUDICIAL OVERSIGHT
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

CS/HB 793 requires the Department of Children and Family Services (DCFS) to select professional guardians on a rotating basis from a list maintained by the department. The guardians must agree to accept at least one indigent for every three assigned cases.

The bill amends the section 825.101 definition of "Position of trust and confidence" so that caregivers are a separate category of those presumed to hold a position of trust and confidence.

The bill amends s. 772.11, Civil Remedy for Theft, to include violations under s. 825.103, Exploitation of Elderly Person or Disabled Adult. This section allows an award of threefold the actual damages sustained, sets a minimum amount of \$200 in damages, and provides for reasonable attorney's fees and court costs. It requires the claimant to make a written demand for the amount claimed, from \$200 to the threefold amount before filing suit. If the person receiving the written claim complies with the demand within 30 days, the claimant releases them from civil liability for the theft.

Claimants are allowed to recover the authorized damages from the parents or guardians of a liable unemancipated minor, but punitive damages are prohibited. Defendants can recover reasonable attorney's fees and costs if the claim is found to be frivolous.

For the purpose of a cause of action brought under s. 772.11, the term "property" does not include the resident's rights.

The bill states, under s. 772.11, there is no civil liability for the quality of care given by licensed facilities or individuals when operating in an authorized setting.

Upon the death of a claimant, the right to maintain the action is transferred to the personal representative or person entitled to succeed the decedent's estate.

The bill also allows an elderly or disabled claimant to request that the court expedite the trial.

The bill takes effect July 1, 2001.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

Currently, a petitioner recommends a guardian to the court for its approval. The Department of Children and Family Services, like any other petitioner, is allowed to recommend any person it chooses.

Under the definition in section 825.101, "Position of trust" extends to relatives by blood or marriage, joint tenants or tenants in common, those with a legal or fiduciary relationship, and caregivers or others entrusted with the responsibility for an elderly or disabled person's property.

Section 772.11, Civil Remedy for Theft, allows those who prove violations of sections 812.012 – 812.037 by clear and convincing evidence to bring a civil cause of action. The claimant may be awarded damages ranging from a minimum of \$200 up to threefold the actual damages incurred, but is first required to submit a written demand specifying the requested damages to the violator. If the demand is accepted within 30 days of receiving the notice, the claimant releases the violator from civil liability.

Liability extends to the parents or guardians of unemancipated minors and no punitive damages are authorized. Defendants are authorized to recover reasonable attorney's fees and costs in response to a suit found to lack substantial fact or legal support.

C. EFFECT OF PROPOSED CHANGES:

DCFS would be required to maintain a list of guardians to be used on a rotating basis. To be on the DCFS list, the guardian would have to agree to accept one indigent for every three assigned cases.

Under s. 825.101, caregivers are made into a separate category of those presumed to have the status of being in a "position of trust and confidence". The change confers the responsibility inherent to being in a "position of trust and confidence", as used throughout ch. 825, without requiring any other criteria beyond the title of caregiver.

The bill extends s. 772.11, Civil Remedy for Theft, to cover violations under s. 825.103, Exploitation of Elderly Person or Disabled Adult. Additionally, the bill specifies that the term "property", for the purposes of bringing a cause of action under this section, does not include resident or patient rights.

This narrows the cause of action behind a claim under s. 772.11, because a person's property rights do not include their rights as a resident or patient.

The bill preserves a court's jurisdiction after the death of the claimant and allows a personal representative or the decedent's successor to maintain the decedent's court action. Additionally, when an elderly or disabled person is a party to the action, that party is allowed to request from the court an expedited trial.

D. SECTION-BY-SECTION ANALYSIS:

N/A

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Statewide Public Guardianship Office, the required acceptance of indigent cases may bring a negative effect on the professional guardian industry. The number of pro bono cases assigned to a guardian may compound other non-fee paying cases and drive the guardian out of business.

D. FISCAL COMMENTS:

N/A

III. 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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to the Statewide Public Guardianship Office, this could have a detrimental effect on the professional guardianship industry. Periodically, a guardian's cases end up becoming pro bono because the person they represent loses their resources. By requiring a proportion of their cases to be for indigents, there is the strong potential that a professional guardian would have multiple cases that end up as pro bono and result in no income for that guardian.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment # 1 deleted all provisions concerning the Department of Children and Family Services and requirements for guardianship.

VI. SIGNATURES:

COMMITTEE ON ELDER AND LONG TERM CARE:

Prepared by:

Staff Director:

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Quinn Henderson

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Tom Batchleor, Ph. D.