

By Senator Forman

32-810-00

1                                   A bill to be entitled  
2           An act relating to guardianship; amending s.  
3           744.702, F.S.; providing legislative intent;  
4           amending s. 744.7021, F.S.; providing that the  
5           head of the Statewide Public Guardianship  
6           Office is the Statewide Public Guardian;  
7           providing for compensation; requiring a  
8           proposed statewide public guardianship plan to  
9           be submitted to the Governor and Legislature;  
10          prescribing the location of the Statewide  
11          Public Guardianship Office; providing for the  
12          appointment by the Statewide Public Guardian of  
13          advisory councils for development of curriculum  
14          and training programs for public guardians;  
15          authorizing a court to appoint the Statewide  
16          Public Guardian to investigate the conduct of  
17          any guardian appointed by the court; providing  
18          for fees to be paid by the guardianship for  
19          such services when ordered by the court;  
20          amending s. 744.703, F.S.; allowing a public  
21          guardian to serve more than one judicial  
22          circuit; requiring a public guardianship office  
23          in each circuit; requiring a nonattorney public  
24          guardian to employ an attorney; amending s.  
25          744.704, F.S.; authorizing a public guardian to  
26          serve as a guardian advocate for a person under  
27          ch. 393 or ch. 394, F.S., under certain  
28          circumstances; amending s. 744.705, F.S.;  
29          authorizing public guardians to recover from  
30          the ward's assets the costs of administering  
31          the guardianship; providing a limitation;

1 providing for deposit of such funds in the  
2 Department of Elderly Affairs Administrative  
3 Trust Fund to the account of the Public  
4 Guardian; amending s. 744.708, F.S.; conforming  
5 provisions; amending s. 744.709, F.S.;  
6 providing for a waiver of the oath requirement  
7 of a public guardian; providing that certain  
8 information held by privately owned nursing  
9 homes, group homes, adult living facilities, or  
10 hospitals relating to their patients or  
11 residents is not subject to force discovery in  
12 an action brought to admit their answers as an  
13 admission against interest; providing an  
14 effective date.

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

17  
18 Section 1. Section 744.702, Florida Statutes, is  
19 amended to read:

20 744.702 Legislative intent.--The Legislature finds  
21 that private guardianship is inadequate where there is no  
22 willing and responsible family member or friend, other person,  
23 bank, or corporation available to serve as guardian for an  
24 incapacitated person, and such person does not have adequate  
25 income or wealth for the compensation of a private guardian.  
26 The Legislature further finds that it is against state policy  
27 to allow a person to be adjudicated incapacitated and fail to  
28 provide that person with a guardian to exercise those rights  
29 that the court finds should be delegated to a guardian. The  
30 Legislature further finds that it is against state policy to  
31 allow a person who is functionally incapable of exercising the

1 rights enumerated in s. 744.3215(1)(a)-(o) and s.  
2 744.3215(3)(a)-(g) to be without the protection of  
3 guardianship because such person does not have adequate income  
4 or wealth for the compensation of a private guardian.The  
5 Legislature intends through this act to establish the  
6 Statewide Public Guardianship Office, and require ~~permit~~ the  
7 establishment of offices of public guardian for the purpose of  
8 providing guardianship services for incapacitated persons when  
9 no private guardian is available. The Legislature finds that  
10 the number of persons in the state in need of guardianship and  
11 financially unable to afford the cost of a private guardian  
12 constitutes a crisis that must be addressed by the Executive  
13 and Legislative branches at the earliest possible date. It is  
14 therefore the intent of the Legislature that by not later than  
15 July 1, 2001, there be an office of public guardian  
16 established in each judicial circuit, staffed to appropriately  
17 manage the demand for public guardianship services in each  
18 judicial circuit.The Legislature further finds that  
19 alternatives to guardianship and less intrusive means of  
20 assistance should always be explored, including, but not  
21 limited to, guardian advocates, before an individual's rights  
22 are removed through an adjudication of incapacity. The purpose  
23 of this legislation is to provide a public guardian only to  
24 those persons whose needs cannot be met through less drastic  
25 means of intervention and to ensure that each person who needs  
26 a guardian and who meets the income and asset limitation as  
27 set forth in s. 744.704, will have access to the court to have  
28 his or her need for a guardian addressed. The Legislature  
29 finds that those persons requiring public guardianship are the  
30 responsibility of the state and that the state should properly  
31 fund public guardianship services. The Legislature further

1 finds that the practice of courts requiring or appointing  
2 professional guardians to provide public guardianship services  
3 without remuneration discourages the establishment of private  
4 guardian services by those who cannot afford to operate a  
5 professional guardianship business that is burdened with  
6 non-fee-producing public guardianship services. As such, this  
7 practice creates a crisis in the availability of guardianship  
8 services for all economic levels of wards in the state. The  
9 Legislature finds that there is an increasing need for  
10 guardianship services not only among the elderly, but among  
11 people of all ages including those who are developmentally  
12 disabled. It is the legislative intent that the Statewide  
13 Public Guardianship Office be the provider of support for all  
14 public guardianship services through whatever agency or under  
15 whatever program these services are shall be needed and that  
16 the services of the Statewide Public Guardianship Office are  
17 not to be construed as limited to providing guardian services  
18 to the elderly. The Legislature further finds that the  
19 guardianship profession is largely unregulated and that in the  
20 interest of protecting the public, and in the interest of  
21 raising the standards and accountability of professional  
22 guardians, the law should provide for registration, licensure,  
23 and educational training requirements for professional  
24 guardians. The licensure and regulation of professional  
25 guardians should be through and administered by the Statewide  
26 Public Guardianship Office. The Legislature further finds that  
27 there is no agency available in the state for courts to turn  
28 to as a guardianship ombudsman. There are cases in which  
29 guardians are appointed, often friends or family members, when  
30 the issue is raised either upon suggestion of the court or by  
31 petition of a third party as to the adequacy of the services

1 provided by the guardian, and in which there is reason to  
2 believe that a disinterested agency should evaluate and report  
3 to the court concerning the propriety and appropriateness of  
4 the guardian's services. The Legislature finds that it is in  
5 the best interest of wards that the Statewide Public  
6 Guardianship Office have the authority to investigate and  
7 report to courts when requested.

8 Section 2. Section 744.7021, Florida Statutes, is  
9 amended to read:

10 744.7021 Statewide Public Guardianship Office.--There  
11 is ~~hereby~~ created the Statewide Public Guardianship Office  
12 within the Department of Elderly Affairs. The Department of  
13 Elderly Affairs shall provide administrative support and  
14 service to the office to the extent requested by the Statewide  
15 Public Guardian ~~executive director~~ within the available  
16 resources of the department. The Statewide Public Guardianship  
17 Office may request the assistance of the Inspector General of  
18 the Department of Elderly Affairs in providing auditing  
19 services, and the Office of General Counsel of the department  
20 may provide assistance in rulemaking and other matters as  
21 needed to assist the Statewide Public Guardianship Office. The  
22 Statewide Public Guardianship Office shall not be subject to  
23 control, supervision, or direction by the Department of  
24 Elderly Affairs in the performance of its duties.

25 (1) The head of the Statewide Public Guardianship  
26 Office is the Statewide Public Guardian ~~executive director~~,  
27 who shall be appointed by the Governor. The Statewide Public  
28 Guardian ~~executive director~~ must be a licensed attorney who  
29 has ~~with~~ a background in guardianship law and knowledge of  
30 social services available to meet the needs of incapacitated  
31 persons, shall serve on a full-time basis, and shall

1 personally, or through representatives of the office, carry  
2 out the purposes and functions of the Statewide Public  
3 Guardianship Office in accordance with state and federal law.  
4 The Statewide Public Guardian ~~executive director~~ shall serve  
5 at the pleasure of and report to the Governor and shall be  
6 compensated at the same annual salary set by law for the  
7 public defender in each judicial circuit.

8 (2) The Statewide Public Guardianship Office shall  
9 ~~within available resources,~~ have oversight responsibilities  
10 for all public guardians.

11 (a) The office shall review the current public  
12 guardian programs in Florida and other states.

13 (b) The office, in consultation with local  
14 guardianship offices, shall develop statewide performance  
15 measures and standards.

16 (c) The office shall review the various methods of  
17 funding guardianship programs, the kinds of services being  
18 provided by such programs, and the demographics of the wards.  
19 In addition, the office shall review and make recommendations  
20 regarding the feasibility of recovering a portion or all of  
21 the costs of providing public guardianship services from the  
22 assets or income of the wards.

23 (d) ~~No later than October 1, 2000, the office shall~~  
24 ~~submit to the Governor, the President of the Senate, the~~  
25 ~~Speaker of the House of Representatives, and the Chief Justice~~  
26 ~~of the Supreme Court an interim report describing the progress~~  
27 ~~of the office in meeting the goals as described in this~~  
28 ~~section.~~ No later than January 1, 2001 ~~October 1, 2001~~, the  
29 office shall submit to the Governor, the President of the  
30 Senate, the Speaker of the House of Representatives, and the  
31 Chief Justice of the Supreme Court a proposed public

1 guardianship plan including alternatives for meeting the  
2 state's guardianship needs. This plan shall ~~may~~ include  
3 recommendations for ~~less than the entire state, may include a~~  
4 ~~phase-in system,~~ and shall include estimates of the cost of  
5 each of the alternatives. Each year thereafter, the office  
6 shall provide a status report and provide further  
7 recommendations to address the need for public guardianship  
8 services and related issues.

9 (e) The office may provide assistance to local  
10 governments or entities in pursuing grant opportunities. The  
11 office shall review and make recommendations in the annual  
12 report on the availability and efficacy of seeking Medicaid  
13 matching funds. The office shall diligently seek ways to use  
14 existing programs and services to meet the needs of public  
15 wards.

16 (f) The office shall develop a guardianship training  
17 program. The training program may be offered to all guardians  
18 whether public or private. The office shall establish a  
19 curriculum committee to develop the training program specified  
20 in this part. The curriculum committee shall include, but not  
21 be limited to, probate judges. A fee may be charged to private  
22 guardians in order to defray the cost of providing the  
23 training. In addition, a fee may be charged to any training  
24 provider for up to the actual cost of the review and approval  
25 of their curriculum. Any fees collected pursuant to this  
26 paragraph shall be deposited in the Department of Elderly  
27 Affairs Administrative Trust Fund to be used for the  
28 guardianship training program. In order to facilitate  
29 development of guardianship training programs and the  
30 establishment of curriculum and in order to have the  
31 assistance of academicians in the area of mental health, the

1 Statewide Public Guardianship Office shall be housed at the  
2 Louis de la Parte Florida Mental Health Institute on the  
3 campus of the University of South Florida. The institute shall  
4 provide adequate office space and support services as  
5 necessary for the Statewide Public Guardianship Office. This  
6 does not preclude the establishment of a second office in the  
7 Department of Elderly Affairs in Tallahassee.

8 (3) The office may conduct or contract for  
9 demonstration projects, within funds appropriated or through  
10 gifts, grants, or contributions for such purposes, to  
11 determine the feasibility or desirability of new concepts of  
12 organization, administration, financing, or service delivery  
13 designed to preserve the civil and constitutional rights of  
14 persons of marginal or diminished capacity. Any gifts, grants,  
15 or contributions for such purposes shall be deposited in the  
16 Department of Elderly Affairs Administrative Trust Fund.

17 (4) The Statewide Public Guardian may appoint advisory  
18 councils to facilitate the collection of expertise for the  
19 development of curriculum and training programs as well as the  
20 proposed public guardianship plan. Council members shall serve  
21 without compensation other than reimbursement for reasonably  
22 incurred expenses.

23 (5) The Statewide Public Guardian may be appointed by  
24 any court in the state to investigate and report to the court  
25 as to the propriety of the conduct of any guardian appointed  
26 by the court. Upon completion of the investigation as ordered  
27 by the court, the Statewide Public Guardian may petition the  
28 guardianship for fees, and when there are sufficient assets,  
29 such fees must be deposited with the Department of Elderly  
30 Affairs Administrative Trust Fund to the account of the  
31 Statewide Public Guardian and shall be made available to the



1 Statewide Public Guardian to supplement the budgets of the  
2 several public guardians and to underwrite the costs of the  
3 Statewide Public Guardian in conducting such investigations.

4 (6)(4) The office has authority to adopt rules  
5 pursuant to ss. 120.536(1) and 120.54 to carry out the  
6 provisions of this section.

7 Section 3. Section 744.703, Florida Statutes, is  
8 amended to read:

9 744.703 Office of public guardian; appointment,  
10 notification.--

11 (1) The Statewide Public Guardian ~~executive director~~  
12 ~~of the Statewide Public Guardianship Office~~, after  
13 consultation with the chief judge and other circuit judges  
14 within a ~~the~~ judicial circuit and with appropriate advocacy  
15 groups and individuals and organizations who are knowledgeable  
16 about the needs of incapacitated persons, shall ~~may~~ establish,  
17 ~~within a county in the judicial circuit or within the judicial~~  
18 ~~circuit,~~an office of public guardian and ~~if so established,~~  
19 shall create a list of persons best qualified to serve as the  
20 public guardian, and such qualifications shall include review  
21 pursuant to s. 744.3135. The public guardian must have  
22 knowledge of the legal process and knowledge of social  
23 services available to meet the needs of incapacitated persons.  
24 A public guardian appointed under this section may serve more  
25 than one circuit; however, there must be an open and  
26 adequately staffed office providing public guardianship  
27 services within each judicial circuit, notwithstanding the  
28 fact that a particular public guardian may serve one or more  
29 circuits, and all of the circuits must be served and a circuit  
30 may not be divided among several public guardians. A public  
31 guardian who is not an attorney must have a staff attorney or

1 contract with an attorney to perform the legal functions of  
2 the wards.A nonprofit corporation under s. 744.309(5) may be  
3 appointed public guardian only if:

4 (a) It has been granted tax-exempt status from the  
5 United States Internal Revenue Service; and

6 (b) It maintains a staff of professionally qualified  
7 individuals to carry out the guardianship functions, including  
8 a staff attorney who has experience in probate areas and  
9 another person who has a master's degree in social work, or a  
10 gerontologist, psychologist, registered nurse, or nurse  
11 practitioner.

12 (2) The Statewide Public Guardian ~~executive director~~  
13 shall appoint or contract with a public guardian from the list  
14 of candidates described in subsection (1). A public guardian  
15 must meet the qualifications for a guardian as prescribed in  
16 s. 744.309(1)(a). Upon appointment of a ~~the~~ public guardian,  
17 the Statewide Public Guardian ~~executive director~~ shall notify  
18 the chief judge of the judicial circuit and the Chief Justice  
19 of the Supreme Court of Florida, in writing, of the  
20 appointment.

21 (3) If the needs of the county or circuit do not  
22 require a full-time public guardian, a part-time public  
23 guardian may be appointed at reduced compensation.

24 (4) A public guardian, whether full-time or part-time,  
25 may not hold any position that would create a conflict of  
26 interest.

27 (5) The public guardian is to be appointed for a term  
28 of 4 years, after which her or his appointment must be  
29 reviewed by the Statewide Public Guardian ~~executive director~~,  
30 and may be reappointed for a term of up to 4 years. The  
31 Statewide Public Guardian ~~executive director~~ may suspend a

1 public guardian with or without the request of the chief  
2 judge. If a public guardian is suspended, the Statewide Public  
3 Guardian ~~executive director~~ shall appoint an acting public  
4 guardian as soon as possible to serve until such time as a  
5 permanent replacement is selected. A public guardian may be  
6 removed from office during the term of office only by the  
7 Statewide Public Guardian, ~~executive director~~ who must consult  
8 with the chief judge prior to said removal. A recommendation  
9 of removal made by the chief judge must be considered by the  
10 Statewide Public Guardian ~~executive director~~.

11 (6) Public guardians who have been previously  
12 appointed by a chief judge prior to the effective date of this  
13 act pursuant to this section may continue in their positions  
14 until the expiration of their term pursuant to their  
15 agreement. However, oversight of all public guardians shall  
16 transfer to the Statewide Public Guardianship Office upon the  
17 effective date of this act. The ~~executive director of the~~  
18 Statewide Public Guardian Guardianship Office shall be  
19 responsible for all future appointments of public guardians  
20 pursuant to this act.

21 Section 4. Subsection (1) of section 744.704, Florida  
22 Statutes, is amended and subsection (10) is added to that  
23 section to read:

24 744.704 Powers and duties.--

25 (1) A public guardian may serve as a guardian of a  
26 person adjudicated incapacitated under this chapter, as a  
27 guardian advocate for a person adjudicated under chapter 393,  
28 or as a guardian advocate for a person under chapter 394:

29 (a) If there is no family member or friend, other  
30 person, bank, or corporation willing and qualified to serve as  
31 guardian; and

1 (b) If the assets of the ward do not exceed the asset  
2 level for Medicaid eligibility, plus \$2,000 exclusive of  
3 homestead and exempt property as defined in s. 4, Art. X of  
4 the State Constitution, and the ward's income, from all  
5 sources, is less than ~~\$6,000~~\$4,000 per year. Income from  
6 public welfare programs, supplemental security income,  
7 optional state supplement, a disability pension, or a social  
8 security pension shall be excluded in such computation.  
9 However, a ward whose total income, counting excludable  
10 income, exceeds \$30,000 a year may not be served.

11 (10) A public guardian may not be compelled to serve  
12 as a guardian advocate for a person under chapter 394 if the  
13 public guardian finds that he or she does not have sufficient  
14 staff to do so.

15 Section 5. Section 744.705, Florida Statutes, is  
16 amended to read:

17 744.705 Costs of public guardian.--

18 (1) ~~All~~ Costs of administration, including filing  
19 fees, shall be paid from the budget of the office of public  
20 guardian. No costs of administration, including filing fees,  
21 shall be recovered from the assets or the income of the ward  
22 except as provided in this section.

23 (2) In any proceeding for appointment of a public  
24 guardian, or in any proceeding involving the estate of a ward  
25 for whom a public guardian has been appointed guardian, the  
26 court may waive any court costs or filing fees.

27 (3) At the time of filing and simultaneously with the  
28 filing of a ward's annual accounting, report, and plan, or at  
29 such time as the ward's assets exceed or can be expected to  
30 exceed the Medicaid asset limitation, the public guardian may  
31 file a petition to recover all or some of the costs

1 attributable to the administration of the guardianship. The  
2 petition must be itemized and show the method of charges for  
3 direct case management and charges for purely administrative  
4 functions. The petition must be verified and must  
5 affirmatively show that all competing needs of the ward have  
6 been met and can reasonably be expected to be met in the  
7 coming reporting year. At no time may an award of recovery of  
8 costs for the year exceed the average annual cost per award of  
9 providing guardianship services to all persons served by the  
10 public guardian. Any award collected for cost recovery must be  
11 deposited in the Department of Elderly Affairs Administrative  
12 Trust Fund to the account of Public Guardian and must be made  
13 available to the Statewide Public Guardian to supplement the  
14 budgets of the several public guardians.

15 Section 6. Subsections (4) and (8) of section 744.708,  
16 Florida Statutes, are amended to read:

17 744.708 Reports and standards.--

18 (4) Within 6 months of his or her appointment as  
19 guardian of a ward, the public guardian shall submit to the  
20 clerk of the court for placement in the ward's guardianship  
21 file and to the ~~executive director of the~~ Statewide Public  
22 Guardian Guardianship Office a report on his or her efforts to  
23 locate a family member or friend, other person, bank, or  
24 corporation to act as guardian of the ward and a report on the  
25 ward's potential to be restored to capacity.

26 (8) The term "professional," for purposes of this  
27 part, does shall not include the public guardian nor the  
28 ~~executive director of the~~ Statewide Public Guardian  
29 Guardianship Office. The term "professional" is shall be  
30 limited to those persons who exercise direct supervision of  
31 individual wards under the direction of the public guardian.

1           Section 7. Section 744.709, Florida Statutes, is  
2 amended to read:

3           744.709 Surety bond.--Upon taking office, a public  
4 guardian shall file a bond with surety as prescribed in s.  
5 45.011 to be approved by the clerk, unless bond is waived by  
6 the chief judge of the judicial circuit. The bond shall be  
7 payable to the Governor and the Governor's successors in  
8 office, in the penal sum of not less than \$5,000 nor more than  
9 \$25,000, conditioned on the faithful performance of all duties  
10 by the guardian. The amount of the bond shall be fixed by the  
11 majority of the judges within the judicial circuit. In form  
12 the bond shall be joint and several. The bond shall be  
13 purchased from the funds of the local office of public  
14 guardian.

15           Section 8. In responses to surveys by the Statewide  
16 Public Guardian's Office as to whether patients or residents  
17 are unable to give informed consent for medical treatment or  
18 are unable to conduct their affairs, the opinions of any  
19 privately owned nursing home, group home, adult living  
20 facility, or hospital whose patients or residents receive  
21 public funds that contribute to the cost of their care are not  
22 subject to forced discovery in any action brought against them  
23 to admit their answers as an admission against interest.

24           Section 9. This act shall take effect July 1, 2000.  
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SENATE SUMMARY

Substantially amends ch. 744, F.S., relating to public guardianship. Provides legislative intent. Provides that the head of the Statewide Public Guardianship Office is the Statewide Public Guardian. Provides for compensation of the Statewide Public Guardian. Requires the Statewide Public Guardianship Office to submit a proposed statewide public guardianship plan to the Governor and the Legislature. Prescribes the location of the office of the Statewide Public Guardianship Office. Provides for the appointment by the Statewide Public Guardian of advisory councils for development of curriculum and training programs for public guardians. Authorizes a court to appoint the Statewide Public Guardian to investigate the conduct of any guardian appointed by the court. Provides for the recovery of fees from the guardianship for such services when ordered by the court. Allows a public guardian to serve more than one circuit, but requires that a public guardian office be located in each circuit. Mandates that a nonattorney public guardian hire an attorney. Allows a public guardian to serve as a guardian advocate for a person under ch. 393 or ch. 394, F.S., under certain circumstances. Authorizes a public guardian to recover from the ward's assets the costs of administering the guardianship. Provides a limitation on the amount to be recovered. Provides for deposit of funds recovered into the Department of Elderly Affairs Administrative Trust Fund to the account of Public Guardian. Provides for the waiver of the oath of a public guardian upon court order. Provides that certain information provided by privately owned nursing homes, group homes, adult living facilities, or hospitals relating to their patients or residents is not subject to forced discovery in an action brought to admit their answers as an admission against interest.