

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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11 Representative(s) Kottkamp offered the following:

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13 **Amendment (with title amendment)**

14 Remove from the bill: Everything after the enacting clause

15

16 and insert in lieu thereof:

17 Section 1. This act shall be known as the "Terri
18 Schiavo Act".

19 Section 2. Section 744.387, Florida Statutes, is
20 amended to read:

21 744.387 Settlement of claims.--

22 (1) When a settlement of any claim by or against the
23 guardian, whether arising as a result of personal injury or
24 otherwise, and whether arising before or after appointment of
25 a guardian, is proposed, but before an action to enforce it is
26 begun, on petition by the guardian of the property stating the
27 facts of the claim, question, or dispute and the proposed
28 settlement, and on any evidence that is introduced, the court
29 may enter an order authorizing the settlement if satisfied
30 that the settlement will be for the best interest of the ward.
31 The order shall relieve the guardian from any further

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1 responsibility in connection with the claim or dispute when
2 the settlement has been made in accordance with the order.
3 The order authorizing the settlement may also determine
4 whether an additional bond is required and, if so, shall fix
5 the amount of it.

6 (2) In the same manner as provided in subsection (1)
7 or as authorized by s. 744.301, the natural guardians or
8 guardian of a minor may settle any claim by or on behalf of a
9 minor that does not exceed \$15,000~~\$5,000~~ without bond. A
10 legal guardianship shall be required when the amount of the
11 net settlement to the ward exceeds \$15,000~~\$5,000~~.

12 (3)(a) No settlement after an action has been
13 commenced by or on behalf of a ward shall be effective unless
14 approved by the court having jurisdiction of the action.

15 (b) In the event of settlement or judgment in favor of
16 the ward or minor, the court may authorize the natural
17 guardians or guardian, or a guardian of the property appointed
18 by a court of competent jurisdiction, to collect the amount of
19 the settlement or judgment and to execute a release or
20 satisfaction. When the amount of net settlement to the ward
21 or judgment exceeds \$15,000~~\$5,000~~ and no guardian has been
22 appointed, the court shall require the appointment of a
23 guardian for the property.

24 (4) In making a settlement under court order as
25 provided in this section, the guardian is authorized to
26 execute any instrument that may be necessary to effect the
27 settlement. When executed, the instrument shall be a complete
28 release of the person making the settlement.

29 Section 3. Subsections (2) and (4) of section 744.301,
30 Florida Statutes, are amended to read:

31 744.301 Natural guardians.--

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1 (2) The natural guardian or guardians are authorized,
2 on behalf of any of their minor children, to settle and
3 consummate a settlement of any claim or cause of action
4 accruing to any of their minor children for damages to the
5 person or property of any of said minor children and to
6 collect, receive, manage, and dispose of the proceeds of any
7 such settlement and of any other real or personal property
8 distributed from an estate or trust or proceeds from a life
9 insurance policy to, or otherwise accruing to the benefit of,
10 the child during minority, when the amount involved in any
11 instance does not exceed \$15,000~~\$5,000~~, without appointment,
12 authority, or bond.

13 (4)(a) In any case where a minor has a claim for
14 personal injury, property damage, or wrongful death in which
15 the gross settlement for the claim of the minor ~~equals or~~
16 exceeds \$15,000~~\$10,000~~, the court may, prior to the approval
17 of the settlement of the minor's claim, appoint a guardian ad
18 litem to represent the minor's interests. In any case in
19 which the gross settlement involving a minor equals or exceeds
20 \$25,000, the court shall, prior to the approval of the
21 settlement of the minor's claim, appoint a guardian ad litem
22 to represent the minor's interests. The appointment of the
23 guardian ad litem must be without the necessity of bond or a
24 notice. The duty of the guardian ad litem is to protect the
25 minor's interests. The procedure for carrying out that duty
26 is as prescribed in the Florida Probate Rules. If a legal
27 guardian of the minor has previously been appointed and has no
28 potential adverse interest to the minor, the court may not
29 appoint a guardian ad litem to represent the minor's
30 interests, unless the court determines that the appointment is
31 otherwise necessary.

1 (b) Unless waived, the court shall award reasonable
2 fees and costs to the guardian ad litem to be paid out of the
3 gross proceeds of the settlement.

4 Section 4. Subsection (4) is added to section
5 744.1085, Florida Statutes, to read:

6 744.1085 Regulation of professional guardians;
7 application; bond required; educational requirements;
8 registration requirements.--

9 (4) Effective January 1, 2002, a professional guardian
10 must register with the Statewide Public Guardianship Office
11 established in part IX of this chapter.

12 (a) The Statewide Public Guardianship Office may
13 contract with the Florida State Guardianship Association to
14 perform the administrative functions associated with
15 registering professional guardians.

16 (b) Annual registration shall be made on forms
17 furnished by the Statewide Public Guardianship Office and
18 accompanied by the applicable registration fee, not to exceed
19 \$25.00, as determined by rule. Such fee may not exceed the
20 administrative costs of registering the professional guardian.
21 A copy of the certificate of registration of a professional
22 guardian shall be made available to a court upon request and
23 without charge.

24 (c) Registration shall include the following:

25 1. If the professional guardian is a natural person,
26 the name, address, date of birth, and employer identification
27 number of the professional guardian.

28 2. If the professional guardian is a partnership or
29 association, the name, address, and date of birth of every
30 member, and the employer identification number of the
31 partnership or association.

1 3. If the professional guardian is a corporation or
2 other business entity, the name, address, and employer
3 identification number of the corporation; the name, address,
4 and date of birth of each of its directors and officers; the
5 name of its resident agent; and the name, address, and date of
6 birth of each person having at least a 10 percent interest in
7 the corporation.

8 4. The name, address, date of birth, and employer
9 identification number, if applicable, of each person employed
10 or under contract with the professional guardian who is
11 involved in providing financial or personal guardianship
12 services for wards.

13 5. Documentation that the bonding and educational
14 requirements of this section have been met, and that
15 background screening has been conducted pursuant to s.
16 744.3135.

17 (d) The Statewide Public Guardianship Office may adopt
18 rules to carry out the provisions of this section.

19 (e) A trust company incorporated under the laws of
20 this state, a state banking corporation or state savings
21 association authorized and qualified to exercise fiduciary
22 powers in this state, or a national banking association or
23 federal savings and loan association authorized and qualified
24 to exercise fiduciary powers in this state, may, but shall not
25 be required to, register as a professional guardian under this
26 subsection.

27 Section 5. Effective July 1, 2001, paragraph (c) of
28 subsection (2) of section 744.534, Florida Statutes, is
29 amended to read:

30 744.534 Disposition of unclaimed funds held by
31 guardian.--

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1 (2)
2 (c) Within 5 ~~10~~ years from the date of deposit with
3 the State Treasurer, on written petition to the court that
4 directed the deposit of the funds and informal notice to the
5 Department of Legal Affairs, and after proof of his or her
6 right to them, any person entitled to the funds, before or
7 after payment to the State Treasurer and deposit as provided
8 for in paragraph (a), may obtain a court order directing the
9 payment of the funds to him or her. All funds deposited with
10 the State Treasurer and not claimed within 5 ~~10~~ years from the
11 date of deposit shall escheat to the state to be deposited in
12 the Operations and Maintenance Trust Fund and credited to the
13 account of the Statewide Public Guardianship Office of the
14 Department of Elderly Affairs, to be used solely for the
15 benefit of public guardianship as determined by the Statewide
16 Public Guardianship Office established in part IX of this
17 chapter.

18 Section 6. Subsection (1) of section 744.703, Florida
19 Statutes, is amended to read:

20 744.703 Office of public guardian; appointment,
21 notification.--

22 (1) The executive director of the Statewide Public
23 Guardianship Office, after consultation with the chief judge
24 and other circuit judges within the judicial circuit and with
25 appropriate advocacy groups and individuals and organizations
26 who are knowledgeable about the needs of incapacitated
27 persons, may establish, within a county in the judicial
28 circuit or within the judicial circuit, one or more offices ~~an~~
29 ~~office~~ of public guardian and, if so established, shall create
30 a list of persons best qualified to serve as the public
31 guardian, who have been investigated ~~and such qualifications~~

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1 ~~shall include review~~ pursuant to s. 744.3135. The public
2 guardian must have knowledge of the legal process and
3 knowledge of social services available to meet the needs of
4 incapacitated persons. The public guardian shall maintain a
5 staff or contract with professionally qualified individuals to
6 carry out the guardianship functions, including an attorney
7 who has experience in probate areas and another person who has
8 a master's degree in social work, or a gerontologist,
9 psychologist, registered nurse, or nurse practitioner. A
10 public guardian that is a nonprofit corporate guardian under
11 s. 744.309(5) must receive tax-exempt status from the United
12 States Internal Revenue Service. A nonprofit corporation under
13 s. 744.309(5) may be appointed public guardian only if:

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

16 ~~(b) It maintains a staff of professionally qualified~~
17 ~~individuals to carry out the guardianship functions, including~~
18 ~~a staff attorney who has experience in probate areas and~~
19 ~~another person who has a master's degree in social work, or a~~
20 ~~gerontologist, psychologist, registered nurse, or nurse~~
21 ~~practitioner.~~

22 Section 7. Section 744.7082, Florida Statutes, is
23 created to read:

24 744.7082 Direct-support organization.--

25 (1) The Statewide Public Guardianship Office may
26 permit, without charge, the appropriate use of property and
27 facilities of the state by a direct-support organization
28 subject to the provisions of this section. Such use must be
29 directly in keeping with the approved purpose of the
30 direct-support organization.

31 (2) The purpose and objectives of the direct-support

1 organization must be consistent with the priority issues and
2 objectives of the Statewide Public Guardianship Office and
3 must be in the best interest of the state.

4 (3) The direct-support organization shall provide for
5 an annual postaudit of its financial accounts to be conducted
6 by an independent certified public accountant. The annual
7 audit report shall include a management letter and shall be
8 submitted to the Auditor General and the Statewide Public
9 Guardianship Office for review. The Statewide Public
10 Guardianship Office and the Auditor General have the authority
11 to require and receive from the organization or from its
12 independent auditor any detail or supplemental data relative
13 to the operation of the organization.

14 (4) For the purpose of this section, "direct-support
15 organization" means a not-for-profit corporation incorporated
16 under the provisions of chapter 617 and organized and operated
17 to conduct programs and activities; initiate developmental
18 projects; raise funds; request and receive grants, gifts, and
19 bequests of moneys; acquire, receive, hold, invest, and
20 administer, in its own name, securities, funds, objects of
21 value, or other property, real or personal; and make
22 expenditures to or for the direct or indirect benefit of the
23 Statewide Public Guardianship Office or individual offices of
24 public guardians.

25 Section 8. Subsection (3) of section 765.401, Florida
26 Statutes, is amended to read:

27 765.401 The proxy.--

28 (3) Before exercising the incapacitated patient's
29 rights to select or decline health care, the proxy must comply
30 with the provisions of ss. 765.205 and 765.305; ~~7~~except that a
31 proxy's decision to withhold or withdraw life-prolonging

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1 procedures must be supported by clear and convincing evidence
2 that the decision would have been the one the patient would
3 have chosen had the patient been competent, and a guardian ad
4 litem not related to the patient must be appointed to
5 represent the patient's interests.

6 Section 9. Paragraph (f) is added to subsection (4) of
7 section 744.3215, Florida Statutes, to read:

8 (f) Consent to or otherwise direct on behalf of the
9 ward to withdraw or withhold life-prolonging procedures. Any
10 authority exercised under this paragraph must comply with
11 chapter 765.

12 Section 10. Subsection (11) of section 825.101,
13 Florida Statutes, is amended to read:

14 825.101 Definitions.--As used in this chapter:

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

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

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

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

27 (d) Is a caregiver of the elderly person or disabled
28 adult; or

29 (e) Is any other person who has been entrusted with or
30 has assumed responsibility for the use or management of the
31 elderly person's or disabled adult's funds, assets, or

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1 property.

2 Section 11. Section 772.11, Florida Statutes, is
3 amended to read:

4 772.11 Civil remedy for theft or exploitation.--

5 (1) Any person who proves by clear and convincing
6 evidence that he or she has been injured in any fashion by
7 reason of any violation of ~~the provisions of~~ ss.
8 812.012-812.037 or s. 825.103(1) has a cause of action for
9 threefold the actual damages sustained and, in any such
10 action, is entitled to minimum damages in the amount of \$200,
11 and reasonable attorney's fees and court costs in the trial
12 and appellate courts. Before filing an action for damages
13 under this section, the person claiming injury must make a
14 written demand for \$200 or the treble damage amount of the
15 person liable for damages under this section. If the person to
16 whom a written demand is made complies with such demand within
17 30 days after receipt of the demand, that person shall be
18 given a written release from further civil liability for the
19 specific act of theft or exploitation by the person making the
20 written demand. Any person who has a cause of action under
21 this section may recover the damages allowed under this
22 section from the parents or legal guardian of any
23 unemancipated minor who lives with his or her parents or legal
24 guardian and who is liable for damages under this section. ~~In~~
25 ~~no event shall~~ Punitive damages may not be awarded under this
26 section. The defendant is ~~shall be~~ entitled to recover
27 reasonable attorney's fees and court costs in the trial and
28 appellate courts upon a finding that the claimant raised a
29 claim that ~~which~~ was without substantial fact or legal
30 support. In awarding attorney's fees and costs under this
31 section, the court may ~~shall~~ not consider the ability of the

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1 opposing party to pay such fees and costs. ~~Nothing under This~~
2 section does not limit ~~shall be interpreted as limiting~~ any
3 right to recover attorney's fees or costs provided under any
4 other ~~provisions of law.~~

5 (2) For purposes of a cause of action arising under
6 this section, the term "property" does not include the rights
7 of a patient or a resident or a claim for a violation of such
8 rights.

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

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

18 (5) In a civil action under this section in which an
19 elderly person or disabled adult is a party, the elderly
20 person or disabled adult may move the court to advance the
21 trial on the docket. The presiding judge, after consideration
22 of the age and health of the party, may advance the trial on
23 the docket. The motion may be filed and served with the civil
24 complaint or at any time thereafter.

25 Section 12. Except as otherwise provided, this act
26 shall take effect upon becoming law.
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29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:
31 remove from the title of the bill: the entire title

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1 and insert in lieu thereof:

2 A bill to be entitled

3 An act relating to disabled persons; amending
4 s. 744.387, F.S.; raising the amount of a claim
5 that may be settled by a natural guardian of a
6 minor without the necessity of appointment of a
7 legal guardian; amending s. 744.301, F.S.;
8 raising the amount of a claim that may be
9 settled by a natural guardian of a minor
10 without the necessity of appointment of a
11 guardian ad litem; amending s. 744.1085, F.S.;
12 requiring professional guardians to register
13 with the Statewide Public Guardianship Office;
14 providing a fee; providing for rulemaking;
15 providing an exemption; amending s. 744.534,
16 F.S.; reducing the holding period of unclaimed
17 funds held by a guardian from 10 years to 5
18 years for escheat; requiring that escheat funds
19 from guardianships be used solely to fund the
20 Statewide Public Guardianship Office; amending
21 s. 744.703, F.S.; allowing more than one office
22 of the public guardian to be established in a
23 county or judicial circuit; requiring all
24 offices of public guardian to maintain a staff
25 or contract for certain professional services;
26 creating s. 744.7082, F.S.; providing that the
27 Statewide Public Guardianship Office may
28 affiliate with a direct-support organization;
29 providing for audit of a direct-support
30 organization; defining a direct-support
31 organization; amending s. 765.401, F.S.;

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1 requiring appointment of a guardian ad litem
2 when a proxy seeks to withhold or withdraw
3 life-prolonging procedures; amending s.
4 744.3215, F.S.; providing that a guardian must
5 seek court approval to withdraw or withhold
6 life-prolonging procedures; amending s.
7 825.101, F.S.; defining the term "position of
8 trust and confidence"; amending s. 772.11,
9 F.S.; prescribing civil remedies for theft and
10 other offenses in which the victim is an
11 elderly person or disabled adult; providing
12 that a violation of patient rights is not a
13 cause of action under the act; providing for
14 continuation of a cause of action upon the
15 death of the elderly person or disabled adult;
16 authorizing the court to advance a trial on the
17 docket which involves a victim who is an
18 elderly person or disabled adult; providing an
19 effective date.

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