

By the Committee on Judiciary and Senator Rossin

308-1565-01

1                                   A bill to be entitled  
2           An act relating to guardianship; amending s.  
3           744.387, F.S.; raising the amount of a claim  
4           that may be settled by a natural guardian of a  
5           minor without the necessity of appointment of a  
6           legal guardian; amending s. 744.301, F.S.;  
7           raising the amount of a claim that may be  
8           settled by a natural guardian of a minor  
9           without the necessity of appointment of a  
10          guardian ad litem; amending s. 744.3215, F.S.;  
11          restricting authority of guardian to withdraw  
12          or withhold life-prolonging procedures without  
13          prior specific court authority; providing an  
14          effective date.

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

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18           Section 1. Section 744.387, Florida Statutes, is  
19 amended to read:

20           744.387 Settlement of claims.--

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

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

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

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

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

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

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

30 744.301 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 3. Subsection (4) of section 744.3215, Florida  
5 Statutes, is amended to read:

6 744.3215 Rights of persons determined incapacitated.--

7 (4) Without first obtaining specific authority from  
8 the court, as described in s. 744.3725, a guardian may not:

9 (a) Commit the ward to a facility, institution, or  
10 licensed service provider without formal placement proceeding,  
11 pursuant to chapter 393, chapter 394, or chapter 397.

12 (b) Consent on behalf of the ward to the performance  
13 on the ward of any experimental biomedical or behavioral  
14 procedure or to the participation by the ward in any  
15 biomedical or behavioral experiment. The court may permit  
16 such performance or participation only if:

17 1. It is of direct benefit to, and is intended to  
18 preserve the life of or prevent serious impairment to the  
19 mental or physical health of the ward; or

20 2. It is intended to assist the ward to develop or  
21 regain his or her abilities.

22 (c) Initiate a petition for dissolution of marriage  
23 for the ward.

24 (d) Consent on behalf of the ward to termination of  
25 the ward's parental rights.

26 (e) Consent on behalf of the ward to the performance  
27 of a sterilization or abortion procedure on the ward.

28 (f) Consent to or otherwise direct on behalf of the  
29 ward to withdraw or withhold life-prolonging procedures. Any  
30 authority exercised under this paragraph must comply with  
31 chapter 765.

1           Section 4. This act shall take effect July 1, 2001.

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3                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
4                                   COMMITTEE SUBSTITUTE FOR  
5   SB 1016

6

7 Amends s. 744.301, F.S., relating to the authority of natural  
8 guardians to settle claims or suits on behalf of a minor for  
9 specified threshold amounts without court appointment of a  
10 guardian ad litem, to conform with the increase in the  
11 threshold amount from \$5,000 to \$15,000 in s. 744.387, F.S.,  
12 as amended by the bill.

13 Amends s. 744.3215, F.S., to restrict the authority of  
14 guardians to consent to or otherwise withhold or withdraw  
15 life-prolonging procedures without prior court approval.

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