

By the Committees on Children and Families; Judiciary; and
Senator Rossin

300-1734-01

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; providing an effective date.

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

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14 Section 1. Section 744.387, Florida Statutes, is
15 amended to read:

16 744.387 Settlement of claims.--

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

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

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

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

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

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

26 744.301 Natural guardians.--

27 (2) The natural guardian or guardians are authorized,
28 on behalf of any of their minor children, to settle and
29 consummate a settlement of any claim or cause of action
30 accruing to any of their minor children for damages to the
31 person or property of any of said minor children and to

1 collect, receive, manage, and dispose of the proceeds of any
2 such settlement and of any other real or personal property
3 distributed from an estate or trust or proceeds from a life
4 insurance policy to, or otherwise accruing to the benefit of,
5 the child during minority, when the amount involved in any
6 instance does not exceed \$15,000~~\$5,000~~, without appointment,
7 authority, or bond.

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

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

30 Section 3. This act shall take effect July 1, 2001.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 1016

Removes the provision that restricts a guardian's authority to withhold or withdraw life-prolonging procedures on behalf of a ward without first obtaining specific court authority through a separate evidentiary hearing to determine the ward's incapacity and the ward's best interests.