

Amendment No. 1 (for drafter's use only)

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

11 The Committee on Fiscal Policy & Resources offered the
12 following:

14 **Amendment (with title amendment)**

15 Remove from the bill: Everything after the enacting clause
16
17 and insert in lieu thereof:

18 Section 1. Subsection (4) is added to section
19 744.1085, Florida Statutes, to read:

20 744.1085 Regulation of professional guardians;
21 application; bond required; educational requirements.--

22 (4) A professional guardian must register with the
23 Statewide Public Guardianship Office established in part IX of
24 this chapter.

25 (a) The Statewide Public Guardianship Office may
26 contract with the Florida State Guardianship Association to
27 perform the administrative functions associated with
28 registering professional guardians.

29 (b) Registration shall be made on forms furnished by
30 the Statewide Public Guardianship Office and accompanied by
31 the applicable registration fee as determined by rule. Such

Amendment No. 1 (for drafter's use only)

1 fee may not exceed the administrative costs of registering the
2 professional guardian. A copy of the certificate of
3 registration of a professional guardian shall be made
4 available to a court upon request and without charge.

5 (c) Registration shall include the following:

6 1. If the professional guardian is a natural person,
7 the name, address, date of birth, and employer identification
8 number of the professional guardian.

9 2. If the professional guardian is a partnership or
10 association, the name, address, and date of birth of every
11 member, and the employer identification number of the
12 partnership or association.

13 3. If the professional guardian is a corporation or
14 other business entity, the name, address, and employer
15 identification number of the corporation; the name, address,
16 and date of birth of each of its directors and officers; the
17 name of its resident agent; and the name, address, and date of
18 birth of each person having at least a 10 percent interest in
19 the corporation.

20 4. The name, address, date of birth, and employer
21 identification number, if applicable, of each person employed
22 or under contract with the professional guardian who is
23 involved in providing financial or personal guardianship
24 services for wards.

25 5. Documentation that the bonding and educational
26 requirements of this section have been met, and that
27 background screening has been conducted pursuant to s.
28 744.3135.

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

31 Section 2. Paragraph (c) of subsection (2) of section

Amendment No. 1 (for drafter's use only)

1 744.534, Florida Statutes, is amended to read:

2 744.534 Disposition of unclaimed funds held by
3 guardian.--

4 (2)

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

21 Section 3. Subsection (1) of section 744.703, Florida
22 Statutes, is amended to read:

23 744.703 Office of public guardian; appointment,
24 notification.--

25 (1) The executive director of the Statewide Public
26 Guardianship Office, after consultation with the chief judge
27 and other circuit judges within the judicial circuit and with
28 appropriate advocacy groups and individuals and organizations
29 who are knowledgeable about the needs of incapacitated
30 persons, may establish, within a county in the judicial
31 circuit or within the judicial circuit, one or more offices ~~an~~

Amendment No. 1 (for drafter's use only)

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

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

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

25 Section 4. Section 744.7082, Florida Statutes, is
26 created to read:

27 744.7082 Direct-support organization.--

28 (1) The Statewide Public Guardianship Office may
29 permit, without charge, the appropriate use of property and
30 facilities of the state by a direct-support organization
31 subject to the provisions of this section. Such use must be

Amendment No. 1 (for drafter's use only)

1 directly in keeping with the approved purpose of the
2 direct-support organization.

3 (2) The purpose and objectives of the direct-support
4 organization must be consistent with the priority issues and
5 objectives of the Statewide Public Guardianship Office and
6 must be in the best interest of the state.

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

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

28 Section 5. Section 744.387, Florida Statutes, is
29 amended to read:

30 744.387 Settlement of claims.--

31 (1) When a settlement of any claim by or against the

Amendment No. 1 (for drafter's use only)

1 guardian, whether arising as a result of personal injury or
2 otherwise, and whether arising before or after appointment of
3 a guardian, is proposed, but before an action to enforce it is
4 begun, on petition by the guardian of the property stating the
5 facts of the claim, question, or dispute and the proposed
6 settlement, and on any evidence that is introduced, the court
7 may enter an order authorizing the settlement if satisfied
8 that the settlement will be for the best interest of the ward.
9 The order shall relieve the guardian from any further
10 responsibility in connection with the claim or dispute when
11 the settlement has been made in accordance with the order.
12 The order authorizing the settlement may also determine
13 whether an additional bond is required and, if so, shall fix
14 the amount of it.

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

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

24 (b) In the event of settlement or judgment in favor of
25 the ward or minor, the court may authorize the natural
26 guardians or guardian, or a guardian of the property appointed
27 by a court of competent jurisdiction, to collect the amount of
28 the settlement or judgment and to execute a release or
29 satisfaction. When the amount of net settlement to the ward
30 or judgment exceeds \$15,000~~\$5,000~~ and no guardian has been
31 appointed, the court shall require the appointment of a

Amendment No. 1 (for drafter's use only)

1 guardian for the property.

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

7 Section 6. Subsections (2) and (4) of section 744.301,
8 Florida Statutes, are amended to read:

9 744.301 Natural guardians.--

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

22 (4)(a) In any case where a minor has a claim for
23 personal injury, property damage, or wrongful death in which
24 the gross settlement for the claim of the minor ~~equals or~~
25 exceeds \$15,000~~\$10,000~~, the court may, prior to the approval
26 of the settlement of the minor's claim, appoint a guardian ad
27 litem to represent the minor's interests. In any case in
28 which the gross settlement involving a minor equals or exceeds
29 \$25,000, the court shall, prior to the approval of the
30 settlement of the minor's claim, appoint a guardian ad litem
31 to represent the minor's interests. The appointment of the

Amendment No. 1 (for drafter's use only)

1 guardian ad litem must be without the necessity of bond or a
2 notice. The duty of the guardian ad litem is to protect the
3 minor's interests. The procedure for carrying out that duty
4 is as prescribed in the Florida Probate Rules. If a legal
5 guardian of the minor has previously been appointed and has no
6 potential adverse interest to the minor, the court may not
7 appoint a guardian ad litem to represent the minor's
8 interests, unless the court determines that the appointment is
9 otherwise necessary.

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

13 Section 7. Subsection (3) of section 765.401, Florida
14 Statutes, is amended to read:

15 765.401 The proxy.--

16 (3) Before exercising the incapacitated patient's
17 rights to select or decline health care, the proxy must comply
18 with the provisions of ss. 765.205 and 765.305; ~~except that a~~
19 ~~proxy's decision to withhold or withdraw life-prolonging~~
20 ~~procedures must be supported by clear and convincing evidence~~
21 ~~that the decision would have been the one the patient would~~
22 ~~have chosen had the patient been competent, and must be agreed~~
23 ~~to by the patient's parent or parents, if the parent or~~
24 ~~parents are then living and have not been adjudicated~~
25 ~~incompetent.~~

26 Section 8. This act shall take effect July 1, 2001.

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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

Amendment No. 1 (for drafter's use only)

1 and insert in lieu thereof:

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

Amendment No. 1 (for drafter's use only)

1 that the parent or parents of an incapacitated
2 person must consent to the decision of a proxy
3 to withhold or withdraw life-prolonging
4 procedures; providing an effective date.
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