

By the Committees on Judiciary; Children and Families; and
Senators Carlton and Peadar

308-1938-01

1 A bill to be entitled

2 An act relating to elderly persons and disabled

3 adults; amending s. 825.101, F.S.; defining the

4 term "position of trust and confidence";

5 amending s. 772.11, F.S.; prescribing civil

6 remedies for theft and other offenses in which

7 the victim is an elderly person or disabled

8 adult; providing that a violation of patient

9 rights is not a cause of action under the act;

10 providing for continuation of a cause of action

11 upon the death of the elderly person or

12 disabled adult; authorizing the court to

13 advance a trial on the docket which involves a

14 victim who is an elderly person or disabled

15 adult; creating s. 744.1083, F.S.; providing

16 guidelines for the registration of public

17 guardians; authorizing rulemaking; amending s.

18 744.534, F.S.; revising provisions relating to

19 disposition of unclaimed funds; amending s.

20 744.703, F.S.; authorizing the establishment of

21 public guardian offices; providing for the

22 staffing of offices; creating s. 744.7082,

23 F.S.; defining the term "direct-support

24 organization"; providing for the purposes of a

25 direct-support organization; providing an

26 effective date.

27

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

29

30 Section 1. Subsection (11) of section 825.101, Florida

31 Statutes, is amended to read:

1 825.101 Definitions.--As used in this chapter:
2 (11) "Position of trust and confidence" with respect
3 to an elderly person or a disabled adult means the position of
4 a person who:
5 (a) Is a parent, spouse, adult child, or other
6 relative by blood or marriage of the elderly person or
7 disabled adult;
8 (b) Is a joint tenant or tenant in common with the
9 elderly person or disabled adult;
10 (c) Has a legal or fiduciary relationship with the
11 elderly person or disabled adult, including, but not limited
12 to, a court-appointed or voluntary guardian, trustee,
13 attorney, or conservator; ~~or~~
14 (d) Is a caregiver of the elderly person or disabled
15 adult; or
16 (e) Is any other person who has been entrusted with or
17 has assumed responsibility for the use or management of the
18 elderly person's or disabled adult's funds, assets, or
19 property.
20 Section 2. Section 772.11, Florida Statutes, is
21 amended to read:
22 772.11 Civil remedy for theft or exploitation.--
23 (1) Any person who proves by clear and convincing
24 evidence that he or she has been injured in any fashion by
25 reason of any violation of ~~the provisions of ss.~~
26 ~~812.012-812.037~~ or s. 825.103(1) has a cause of action for
27 threefold the actual damages sustained and, in any such
28 action, is entitled to minimum damages in the amount of \$200,
29 and reasonable attorney's fees and court costs in the trial
30 and appellate courts. Before filing an action for damages
31 under this section, the person claiming injury must make a

1 written demand for \$200 or the treble damage amount of the
2 person liable for damages under this section. If the person to
3 whom a written demand is made complies with such demand within
4 30 days after receipt of the demand, that person shall be
5 given a written release from further civil liability for the
6 specific act of theft or exploitation by the person making the
7 written demand. Any person who has a cause of action under
8 this section may recover the damages allowed under this
9 section from the parents or legal guardian of any
10 unemancipated minor who lives with his or her parents or legal
11 guardian and who is liable for damages under this section. ~~In~~
12 ~~no event shall~~ Punitive damages may not be awarded under this
13 section. The defendant is ~~shall be~~ entitled to recover
14 reasonable attorney's fees and court costs in the trial and
15 appellate courts upon a finding that the claimant raised a
16 claim that ~~which~~ was without substantial fact or legal
17 support. In awarding attorney's fees and costs under this
18 section, the court may ~~shall~~ not consider the ability of the
19 opposing party to pay such fees and costs. ~~Nothing under~~ This
20 section does not limit ~~shall be interpreted as limiting~~ any
21 right to recover attorney's fees or costs provided under any
22 other ~~provisions of~~ law.

23 (2) For purposes of a cause of action arising under
24 this section, the term "property" does not include the rights
25 of a patient or a resident or a claim for a violation of such
26 rights.

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

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

5 (5) In a civil action under this section in which an
6 elderly person or disabled adult is a party, the elderly
7 person or disabled adult may move the court to advance the
8 trial on the docket. The presiding judge, after consideration
9 of the age and health of the party, may advance the trial on
10 the docket. The motion may be filed and served with the civil
11 complaint or at any time thereafter.

12 Section 3. Section 744.1083, Florida Statutes, is
13 created to read:

14 744.1083 Professional guardian registration.--

15 (1) Effective January 1, 2002, a professional guardian
16 must register with the Statewide Public Guardianship Office
17 established in part IX of this chapter. The Statewide Public
18 Guardianship Office may contract with the Florida State
19 Guardianship Association to perform the administrative
20 functions associated with registering professional guardians.

21 (2) Annual registration shall be made on forms
22 furnished by the Statewide Public Guardianship Office and
23 accompanied by the applicable registration fee as determined
24 by rule. Such fee shall not exceed \$25.

25 (3) Registration must include the following:

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

29 (b) If the professional guardian is a partnership or
30 association, the name, address, and date of birth of every
31

1 member, and the employer identification number of the
2 partnership or association.

3 (c) If the professional guardian is a corporation, the
4 name, address and employer identification number of the
5 corporation; the name, address, and date of birth of each of
6 its directors and officers; the name of its resident agent;
7 and the name, address, and date of birth of each person having
8 at least a 10-percent interest in the corporation.

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

14 (e) Documentation that the bonding and educational
15 requirements of s. 744.1085 have been met, and that background
16 screening has been conducted pursuant to s. 744.3135.

17 (4) The Statewide Public Guardianship Office may adopt
18 rules necessary to administer this section.

19 Section 4. Paragraph (c) of subsection (2) of section
20 744.534, Florida Statutes, is amended to read:

21 744.534 Disposition of unclaimed funds held by
22 guardian.--

23 (2)

24 (c) Within 5 ~~10~~ years from the date of deposit with
25 the State Treasurer, on written petition to the court that
26 directed the deposit of the funds and informal notice to the
27 Department of Legal Affairs, and after proof of his or her
28 right to them, any person entitled to the funds, before or
29 after payment to the State Treasurer and deposit as provided
30 for in paragraph (a), may obtain a court order directing the
31 payment of the funds to him or her. All funds deposited with

1 the State Treasurer and not claimed within 5 ~~10~~ years from the
2 date of deposit shall escheat to the state to be deposited in
3 the Department of Elderly Affairs Trust Fund to be used solely
4 for the benefit of public guardianship as determined by the
5 Statewide Public Guardianship Office established in part IX of
6 this chapter.

7 Section 5. Subsection (1) of section 744.703, Florida
8 Statutes, is amended to read:

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

11 (1) The executive director of the Statewide Public
12 Guardianship Office, after consultation with the chief judge
13 and other circuit judges within the judicial circuit and with
14 appropriate advocacy groups and individuals and organizations
15 who are knowledgeable about the needs of incapacitated
16 persons, may establish, within a county in the judicial
17 circuit or within the judicial circuit, one or more offices ~~an~~
18 ~~office~~ of public guardian and if so established, shall create
19 a list of persons best qualified to serve as the public
20 guardian, who have been investigated ~~and such qualifications~~
21 ~~shall include review~~ pursuant to s. 744.3135. The public
22 guardian must have knowledge of the legal process and
23 knowledge of social services available to meet the needs of
24 incapacitated persons. The public guardian shall maintain a
25 staff or contract with professionally qualified individuals to
26 carry out the guardianship functions, including an attorney
27 who has experience in probate areas and another person who has
28 a master's degree in social work, or a gerontologist,
29 psychologist, registered nurse, or nurse practitioner. A
30 public guardian that is a nonprofit corporate guardian under
31 s. 744.309(5) must receive tax-exempt status from the United

1 States Internal Revenue Service. ~~A nonprofit corporation under~~
2 ~~s. 744.309(5) may be appointed public guardian only if:~~

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

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

11 Section 6. Section 744.7082, Florida Statutes, is
12 created to read:

13 744.7082 Direct-support organization.--

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

24 (2) The purposes and objectives of the direct-support
25 organization must be consistent with the priority issues and
26 objectives of the Statewide Public Guardianship Office and
27 must be in the best interest of the state.

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

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

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

13 Section 7. This act shall take effect upon becoming a
14 law.

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 CS/SB 374

19 Revises the effective date of the bill from July 1, 2001, to
20 an effective date upon becoming law.

21 Removes conflicting provisions relating to parties eligible to
represent a decedent's suit.

22 Adds provisions from SB 2278 as follows:

23 -- Provides a procedure for the establishment of a
24 statewide registry of professional guardians through the
Statewide Public Guardianship Office (SPGO) and allows
25 the SPGO to privatize that function through the Florida
State Guardianship Association,

26 -- Reduces the period from 10 to 5 years in which unclaimed
27 funds held by a guardian escheat to the state and
requires that these escheated funds be deposited in the
28 Department of Elderly Affairs Trust Fund for
distribution to the SPGO,

29 -- Authorizes the SPGO and the public guardian offices to
30 staff offices with specified professionals, and

31 -- Provides for the creation of a not-for-profit
fundraising organization for the SPGO.