

768-112AX-08

Bill No. CS/HB 793

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1  
2  
3  
4  
5  
6  
7  
8  
9

10

11 Representative(s) Hogan offered the following:

12

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. Subsection (11) of section 825.101, Florida  
18 Statutes, is amended to read:

19 825.101 Definitions.--As used in this chapter:

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

23 (a) Is a parent, spouse, adult child, or other  
24 relative by blood or marriage of the elderly person or  
25 disabled adult;

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

28 (c) Has a legal or fiduciary relationship with the  
29 elderly person or disabled adult, including, but not limited  
30 to, a court-appointed or voluntary guardian, trustee,  
31 attorney, or conservator; ~~or~~

1 (d) Is a caregiver of the elderly person or disabled  
2 adult;or

3 (e) Is any other person who has been entrusted with or  
4 has assumed responsibility for the use or management of the  
5 elderly person's or disabled adult's funds, assets, or  
6 property.

7 Section 2. Section 772.11, Florida Statutes, is  
8 amended to read:

9 772.11 Civil remedy for theft or exploitation.--

10 (1) Any person who proves by clear and convincing  
11 evidence that he or she has been injured in any fashion by  
12 reason of any violation of ~~the provisions of~~ ss.  
13 812.012-812.037 or s. 825.103(1) has a cause of action for  
14 threefold the actual damages sustained and, in any such  
15 action, is entitled to minimum damages in the amount of \$200,  
16 and reasonable attorney's fees and court costs in the trial  
17 and appellate courts. Before filing an action for damages  
18 under this section, the person claiming injury must make a  
19 written demand for \$200 or the treble damage amount of the  
20 person liable for damages under this section. If the person to  
21 whom a written demand is made complies with such demand within  
22 30 days after receipt of the demand, that person shall be  
23 given a written release from further civil liability for the  
24 specific act of theft or exploitation by the person making the  
25 written demand. Any person who has a cause of action under  
26 this section may recover the damages allowed under this  
27 section from the parents or legal guardian of any  
28 unemancipated minor who lives with his or her parents or legal  
29 guardian and who is liable for damages under this section. ~~In~~  
30 ~~no event shall~~ Punitive damages may not be awarded under this  
31 section. The defendant is ~~shall be~~ entitled to recover

1 reasonable attorney's fees and court costs in the trial and  
 2 appellate courts upon a finding that the claimant raised a  
 3 claim that ~~which~~ was without substantial fact or legal  
 4 support. In awarding attorney's fees and costs under this  
 5 section, the court may ~~shall~~ not consider the ability of the  
 6 opposing party to pay such fees and costs. ~~Nothing under~~ This  
 7 section does not limit ~~shall be interpreted as limiting~~ any  
 8 right to recover attorney's fees or costs provided under any  
 9 other ~~provisions of~~ law.

10 (2) For purposes of a cause of action arising under  
 11 this section, the term "property" does not include the rights  
 12 of a patient or a resident or a claim for a violation of such  
 13 rights.

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

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

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

30 Section 3. Section 744.1083, Florida Statutes, is  
 31 created to read:

- 1           744.1083 Professional guardian registration.--  
2           (1) Effective January 1, 2002, a professional guardian  
3 must register with the Statewide Public Guardianship Office  
4 established in part IX of this chapter. The Statewide Public  
5 Guardianship Office may contract with the Florida State  
6 Guardianship Association to perform the administrative  
7 functions associated with registering professional guardians.  
8           (2) Annual registration shall be made on forms  
9 furnished by the Statewide Public Guardianship Office and  
10 accompanied by the applicable registration fee as determined  
11 by rule. Such fee shall not exceed \$25.  
12           (3) Registration must include the following:  
13           (a) If the professional guardian is a natural person,  
14 the name, address, date of birth, and employer identification  
15 number of the professional guardian.  
16           (b) If the professional guardian is a partnership or  
17 association, the name, address, and date of birth of every  
18 member, and the employer identification number of the  
19 partnership or association.  
20           (c) If the professional guardian is a corporation, the  
21 name, address and employer identification number of the  
22 corporation; the name, address, and date of birth of each of  
23 its directors and officers; the name of its resident agent;  
24 and the name, address, and date of birth of each person having  
25 at least a 10-percent interest in the corporation.  
26           (d) The name, address, date of birth, and employer  
27 identification number, if applicable, of each person employed  
28 or under contract with the professional guardian who is  
29 involved in providing financial or personal guardianship  
30 services for wards.  
31           (e) Documentation that the bonding and educational

1 requirements of s. 744.1085 have been met, and that background  
2 screening has been conducted pursuant to s. 744.3135.

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

5 (5) A trust company incorporated under the laws of  
6 this state, a state banking corporation or state savings  
7 association authorized and qualified to exercise fiduciary  
8 powers in this state, or a national banking association or  
9 federal savings and loan association authorized and qualified  
10 to exercise fiduciary powers in this state, may, but shall not  
11 be required to, register as a professional guardian under this  
12 section.

13 Section 4. Paragraph (c) of subsection (2) of section  
14 744.534, Florida Statutes, is amended to read:

15 744.534 Disposition of unclaimed funds held by  
16 guardian.--

17 (2)

18 (c) Within 5 ~~10~~ years from the date of deposit with  
19 the State Treasurer, on written petition to the court that  
20 directed the deposit of the funds and informal notice to the  
21 Department of Legal Affairs, and after proof of his or her  
22 right to them, any person entitled to the funds, before or  
23 after payment to the State Treasurer and deposit as provided  
24 for in paragraph (a), may obtain a court order directing the  
25 payment of the funds to him or her. All funds deposited with  
26 the State Treasurer and not claimed within 5 ~~10~~ years from the  
27 date of deposit shall escheat to the state to be deposited in  
28 the Department of Elderly Affairs Trust Fund to be used solely  
29 for the benefit of public guardianship as determined by the  
30 Statewide Public Guardianship Office established in part IX of  
31 this chapter.

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

3 744.703 Office of public guardian; appointment,  
4 notification.--

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

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

30 (b) ~~It maintains a staff of professionally qualified~~  
31 ~~individuals to carry out the guardianship functions, including~~

~~1 a staff attorney who has experience in probate areas and  
2 another person who has a master's degree in social work, or a  
3 gerontologist, psychologist, registered nurse, or nurse  
4 practitioner.~~

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

7 744.7082 Direct-support organization.--

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

18 (2) The purposes and objectives of the direct-support  
19 organization must be consistent with the priority issues and  
20 objectives of the Statewide Public Guardianship Office and  
21 must be in the best interest of the state.

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

28 (4) The direct-support organization shall provide for  
29 an annual post audit of its financial accounts to be conducted  
30 by an independent certified public accountant. The annual  
31 audit report shall include a management letter and shall be

1 submitted to the Auditor General and the Statewide Public  
 2 Guardianship Office for review. The Statewide Public  
 3 Guardianship Office and the Auditor General have the authority  
 4 to require and receive from the organization or from its  
 5 independent auditor any detail or supplemental data relative  
 6 to the operation of the organization.

7 Section 7. Section 744.387, Florida Statutes, is  
 8 amended to read:

9 744.387 Settlement of claims.--

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

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

31 (3)(a) No settlement after an action has been



1 commenced by or on behalf of a ward shall be effective unless  
2 approved by the court having jurisdiction of the action.

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

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

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

19 744.301 Natural guardians.--

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

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

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

23           Section 9. This act shall take effect upon becoming a  
24 law.

25  
26  
27 ===== T I T L E   A M E N D M E N T =====

28 And the title is amended as follows:  
29 remove from the title of the bill: the entire title  
30  
31 and insert in lieu thereof:



768-112AX-08

Bill No. CS/HB 793

Amendment No. \_\_\_\_ (for drafter's use only)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

that may be settled by a natural guardian of a  
minor without the necessity of appointment of a  
guardian ad litem; providing an effective date.