

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

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

ORIGINAL STAMP BELOW

Representative(s) Crow and Green offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

Section 1. Subsection (11) of section 825.101, Florida Statutes, is amended to read:

825.101 Definitions.--As used in this chapter:

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

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

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

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

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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~~7~~
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 from ~~of~~
20 the person liable for damages under this section. If the
21 person to whom a written demand is made complies with such
22 demand within 30 days after receipt of the demand, that person
23 shall be given a written release from further civil liability
24 for the specific act of theft or exploitation by the person
25 making the written demand. Any person who has a cause of
26 action under this section may recover the damages allowed
27 under this 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

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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:

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- 1 744.1083 Professional guardian registration.--
2 (1) Effective January 1, 2003, 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 by 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

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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, a state banking corporation or
6 state savings association authorized and qualified to exercise
7 fiduciary powers in this state, or a national banking
8 association or federal savings and loan association authorized
9 and qualified to exercise fiduciary powers in this state, may,
10 but shall not be required to, register as a professional
11 guardian under this section. If a trust company, state banking
12 corporation, state savings association, national banking
13 association, or federal savings and loan association described
14 in this subsection elects to register as a professional
15 guardian under this subsection, the requirements of subsection
16 (3) shall not apply and the registration shall include only
17 the name, address, and employer identification number of the
18 registrant, the name and address of its registered agent, if
19 any, and the documentation described in paragraph (3)(e).

20 Section 4. Subsection (4) of section 744.309, Florida
21 Statutes, is amended to read:

22 744.309 Who may be appointed guardian of a resident
23 ward.--

24 (4) TRUST COMPANY, STATE BANK OR SAVINGS ASSOCIATION,
25 OR NATIONAL BANK OR FEDERAL SAVINGS AND LOAN ASSOCIATION.--A
26 trust company ~~incorporated under the laws of this state,~~ a
27 state banking corporation or state savings association
28 authorized and qualified to exercise fiduciary powers in this
29 state, or a national banking association or federal savings
30 and loan association authorized and qualified to exercise
31 fiduciary powers in this state may act as guardian of the

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1 property of the ward.

2 Section 5. Paragraph (c) of subsection (2) of section
3 744.534, Florida Statutes, is amended to read:

4 744.534 Disposition of unclaimed funds held by
5 guardian.--

6 (2)

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

21 Section 6. 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~~

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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 obtain 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 7. Section 744.7082, Florida Statutes, is
26 created to read:

27 744.7082 Direct-support organization.--

28 (1) As used in this section, the term "direct-support
29 organization" means a not-for-profit corporation incorporated
30 under chapter 617 and organized and operated to conduct
31 programs and activities; initiate developmental projects;

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1 raise funds; request and receive grants, gifts, and bequests
2 of moneys; acquire, receive, hold, invest, and administer, in
3 its own name, securities, funds, objects of value, or other
4 property, real or personal; and make expenditures to or for
5 the direct or indirect benefit of the Statewide Public
6 Guardianship Office or individual offices of public guardians.

7 (2) The purposes and objectives of the direct-support
8 organization must be consistent with the priority issues and
9 objectives of the Statewide Public Guardianship Office and
10 must be in the best interest of the state.

11 (3) The Statewide Public Guardianship Office may
12 permit, without charge, the appropriate use of property and
13 facilities of the state by the direct-support organization
14 subject to the provisions of this section. Such use must be
15 directly in keeping with the approved purpose of the
16 direct-support organization.

17 (4) The direct-support organization shall provide for
18 an annual financial audit in accordance with s. 215.981.

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

21 744.387 Settlement of claims.--

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

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

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

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

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

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

29 Section 9. Subsections (2) and (4) of section 744.301,
30 Florida Statutes, are amended to read:

31 744.301 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.

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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 10. This act shall take effect upon becoming a
5 law.

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7

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 remove: the entire title

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12 and insert:

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A bill to be entitled

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An act relating to persons in a position of
trust and confidence; amending s. 825.101,
F.S.; defining the term "position of trust and
confidence"; amending s. 772.11, F.S.;
prescribing civil remedies for theft and other
offenses in which the victim is an elderly
person or disabled adult; providing that a
violation of patient rights is not a cause of
action under the act; providing for
continuation of a cause of action upon the
death of an elderly person or disabled adult;
authorizing the court to advance a trial on the
docket which involves a victim who is an
elderly person or disabled adult; creating s.
744.1083, F.S.; providing guidelines for the
registration of professional guardians;
authorizing rulemaking; authorizing certain
financial institutions to register; amending s.

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1 744.309, F.S.; revising qualifications for
2 trust companies that may be appointed
3 guardians; amending s. 744.534, F.S.; revising
4 provisions relating to disposition of unclaimed
5 funds; amending s. 744.703, F.S.; authorizing
6 the establishment of public guardian offices;
7 providing for the staffing of offices; creating
8 s. 744.7082, F.S.; defining the term
9 "direct-support organization"; providing for
10 use of state properties and facilities;
11 providing for annual financial audit of a
12 direct-support organization; amending s.
13 744.387, F.S.; increasing the amount of a claim
14 that may be settled by a natural guardian of a
15 minor without the necessity of appointment of a
16 legal guardian; amending s. 744.301, F.S.;
17 increasing the amount of a claim that may be
18 settled by a natural guardian of a minor
19 without the necessity of appointment of a
20 guardian ad litem; providing an effective date.

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