

By the Council for Healthy Communities and Representatives  
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1                                   A bill to be entitled  
2           An act relating to persons in a position of  
3           trust and confidence; amending s. 825.101,  
4           F.S.; defining the term "position of trust and  
5           confidence"; amending s. 772.11, F.S.;  
6           prescribing civil remedies for theft and other  
7           offenses in which the victim is an elderly or  
8           disabled person; providing that a violation of  
9           patient rights is not a cause of action under  
10          the act; providing for continuation of a cause  
11          of action upon the death of the elderly or  
12          disabled person; authorizing the court to  
13          advance a trial on the docket which involves a  
14          victim who is an elderly or disabled person;  
15          creating s. 744.1083, F.S.; providing  
16          guidelines for the registration of professional  
17          guardians; authorizing rulemaking; authorizing  
18          certain financial institutions to register;  
19          amending s. 744.309, F.S.; revising  
20          qualifications for trust companies that may be  
21          appointed guardians; amending s. 744.3135,  
22          F.S.; revising credit and background screening  
23          requirements for guardians; providing such  
24          requirements for employees of a professional  
25          guardian who have a fiduciary responsibility to  
26          the ward; amending s. 744.446, F.S.; providing  
27          for court actions to protect the ward in the  
28          event of a breach of fiduciary duty by the  
29          guardian; amending s. 744.534, F.S.; revising  
30          provisions relating to disposition of unclaimed  
31          funds; amending s. 744.703, F.S.; authorizing

1 the establishment of public guardian offices;  
2 providing for the staffing of offices; creating  
3 s. 744.7082, F.S.; defining the term  
4 "direct-support organization"; providing for  
5 the purposes of a direct-support organization;  
6 amending s. 744.387, F.S.; increasing the  
7 amount of a claim that may be settled by a  
8 natural guardian of a minor without the  
9 necessity of appointment of a legal guardian;  
10 amending s. 744.301, F.S.; increasing the  
11 amount of a claim that may be settled by a  
12 natural guardian of a minor without the  
13 necessity of appointment of a guardian ad  
14 litem; amending s. 765.104, F.S.; authorizing a  
15 patient whose legal disability is removed to  
16 amend or revoke the recognition of a medical  
17 proxy and any uncompleted decision made by that  
18 proxy; specifying when the amendment or  
19 revocation takes effect; amending s. 765.401,  
20 F.S.; clarifying provisions relating to medical  
21 proxies for incapacitated persons; providing  
22 priority of a guardian advocate who has been  
23 authorized to consent to medical treatment for  
24 a person with a developmental disability;  
25 providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. Subsection (11) of section 825.101, Florida  
30 Statutes, is amended to read:  
31 825.101 Definitions.--As used in this chapter:

- 1           (11) "Position of trust and confidence" with respect  
2 to an elderly person or a disabled adult means the position of  
3 a person who:
- 4           (a) Is a parent, spouse, adult child, or other  
5 relative by blood or marriage of the elderly person or  
6 disabled adult;
- 7           (b) Is a joint tenant or tenant in common with the  
8 elderly person or disabled adult;
- 9           (c) Has a legal or fiduciary relationship with the  
10 elderly person or disabled adult, including, but not limited  
11 to, a court-appointed or voluntary guardian, trustee,  
12 attorney, or conservator; ~~or~~
- 13           (d) Is a caregiver of the elderly person or disabled  
14 adult; or
- 15           (e) Is any other person who has been entrusted with or  
16 has assumed responsibility for the use or management of the  
17 elderly person's or disabled adult's funds, assets, or  
18 property.

19           Section 2. Section 772.11, Florida Statutes, is  
20 amended to read:

21           772.11 Civil remedy for theft or exploitation.--

22           (1) Any person who proves by clear and convincing  
23 evidence that he or she has been injured in any fashion by  
24 reason of any violation of ~~the provisions of ss.~~  
25 812.012-812.037 or s. 825.103(1) has a cause of action for  
26 threefold the actual damages sustained and, in any such  
27 action, is entitled to minimum damages in the amount of \$200,  
28 and reasonable attorney's fees and court costs in the trial  
29 and appellate courts. Before filing an action for damages  
30 under this section, the person claiming injury must make a  
31 written demand for \$200 or the treble damage amount of the

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

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

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

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1       (4) The death of an elderly or disabled person does  
2 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 or disabled person.

5       (5) In a civil action under this section in which an  
6 elderly or disabled person is a party, the elderly or disabled  
7 person may move the court to advance the trial on the docket.  
8 The presiding judge, after consideration of the age and health  
9 of the party, may advance the trial on the docket. The motion  
10 may be filed and served with the civil complaint or at any  
11 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, 2003, 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 clerk of the court  
19 in each county to perform the administrative functions  
20 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 or social security 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 providing  
11 guardian-delegated financial or personal guardianship services  
12 for wards.  
13 (e) Documentation that the bonding and educational  
14 requirements of s. 744.1085 have been met, and that background  
15 screening has been conducted pursuant to s. 744.3135.  
16 (4) The Statewide Public Guardianship Office may adopt  
17 rules necessary to administer this section.  
18 (5) A trust company, a state banking corporation or  
19 state savings association authorized and qualified to exercise  
20 fiduciary powers in this state, or a national banking  
21 association or federal savings and loan association authorized  
22 and qualified to exercise fiduciary powers in this state, may,  
23 but shall not be required to, register as a professional  
24 guardian under this section. If a trust company, state banking  
25 corporation, state savings association, national banking  
26 association, or federal savings and loan association described  
27 in this subsection elects to register as a professional  
28 guardian under this subsection, the requirements of subsection  
29 (3) shall not apply and the registration shall include only  
30 the name, address, and employer identification number of the  
31

1 registrant, the name and address of its registered agent, if  
2 any, and the documentation described in paragraph (3)(e).

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

5 744.309 Who may be appointed guardian of a resident  
6 ward.--

7 (4) TRUST COMPANY, STATE BANK OR SAVINGS ASSOCIATION,  
8 OR NATIONAL BANK OR FEDERAL SAVINGS AND LOAN ASSOCIATION.--A  
9 trust company ~~incorporated under the laws of this state~~, a  
10 state banking corporation or state savings association  
11 authorized and qualified to exercise fiduciary powers in this  
12 state, or a national banking association or federal savings  
13 and loan association authorized and qualified to exercise  
14 fiduciary powers in this state may act as guardian of the  
15 property of the ward.

16 Section 5. Section 744.3135, Florida Statutes, is  
17 amended to read:

18 744.3135 Credit and criminal investigation.--The court  
19 may require a nonprofessional guardian and shall require a  
20 professional or public guardian, and all employees of a  
21 professional guardian who have a fiduciary responsibility to a  
22 ward, to submit, at their his or her own expense, to an  
23 investigation of the guardian's credit history and to undergo  
24 level 2 background screening as required under s. 435.04 an  
25 ~~investigatory check by the National Crime Information Center~~  
26 ~~and the Florida Crime Information Center systems by means of~~  
27 ~~fingerprint checks by the Department of Law Enforcement and~~  
28 ~~the Federal Bureau of Investigation.~~ The clerk of the court  
29 shall obtain fingerprint cards from the Federal Bureau of  
30 Investigation and make them available to guardians. Any  
31 guardian who is so required shall have his or her fingerprints

1 taken and forward the proper fingerprint card along with the  
2 necessary fee to the Florida Department of Law Enforcement for  
3 processing. The professional guardian shall pay to the clerk  
4 of the court a fee of \$5 for handling and processing  
5 professional guardian files. The results of the fingerprint  
6 checks shall be forwarded to the clerk of court who shall  
7 maintain the results in a guardian file and shall make the  
8 results available to the court. If credit or criminal  
9 investigations are required, the court must consider the  
10 results of the investigations in appointing a guardian.  
11 Guardians and all employees of a professional guardian who  
12 have a fiduciary responsibility to a ward, so appointed, must  
13 resubmit, at their own expense, to an investigation of credit  
14 history, and undergo level 1 background screening as required  
15 under s. 435.03, every 2 years after the date of their  
16 appointment. The court must consider the results of these  
17 investigations in reappointing a guardian.

18 Section 6. Subsection (4) is added to section 744.446,  
19 Florida Statutes, to read:

20 744.446 Conflicts of interest; prohibited activities;  
21 court approval; breach of fiduciary duty.--

22 (4) In the event of a breach by the guardian of the  
23 guardian's fiduciary duty, the court shall take those  
24 necessary actions to protect the ward and the ward's assets.

25 Section 7. Paragraph (c) of subsection (2) of section  
26 744.534, Florida Statutes, is amended to read:

27 744.534 Disposition of unclaimed funds held by  
28 guardian.--

29 (2)

30 (c) Within 5 ~~10~~ years from the date of deposit with  
31 the State Treasurer, on written petition to the court that



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

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

15 744.703 Office of public guardian; appointment,  
16 notification.--

17 (1) The executive director of the Statewide Public  
18 Guardianship Office, after consultation with the chief judge  
19 and other circuit judges within the judicial circuit and with  
20 appropriate advocacy groups and individuals and organizations  
21 who are knowledgeable about the needs of incapacitated  
22 persons, may establish, within a county in the judicial  
23 circuit or within the judicial circuit, one or more offices ~~an~~  
24 ~~office~~ of public guardian and if so established, shall create  
25 a list of persons best qualified to serve as the public  
26 guardian, who have been investigated ~~and such qualifications~~  
27 ~~shall include review~~ pursuant to s. 744.3135. The public  
28 guardian must have knowledge of the legal process and  
29 knowledge of social services available to meet the needs of  
30 incapacitated persons. The public guardian shall maintain a  
31 staff or contract with professionally qualified individuals to

1 carry out the guardianship functions, including an attorney  
2 who has experience in probate areas and another person who has  
3 a master's degree in social work, or a gerontologist,  
4 psychologist, registered nurse, or nurse practitioner. A  
5 public guardian that is a nonprofit corporate guardian under  
6 s. 744.309(5) must receive tax-exempt status from the United  
7 States Internal Revenue Service.~~A nonprofit corporation under~~  
8 ~~s. 744.309(5) may be appointed public guardian only if:~~  
9       ~~(a) It has been granted tax-exempt status from the~~  
10 ~~United States Internal Revenue Service; and~~  
11       ~~(b) It maintains a staff of professionally qualified~~  
12 ~~individuals to carry out the guardianship functions, including~~  
13 ~~a staff attorney who has experience in probate areas and~~  
14 ~~another person who has a master's degree in social work, or a~~  
15 ~~gerontologist, psychologist, registered nurse, or nurse~~  
16 ~~practitioner.~~  
17       Section 9. Section 744.7082, Florida Statutes, is  
18 created to read:  
19       744.7082 Direct-support organization.--  
20       (1) As used in this section, the term "direct-support  
21 organization" means a not-for-profit corporation incorporated  
22 under chapter 617 and organized and operated to conduct  
23 programs and activities; initiate developmental projects;  
24 raise funds; request and receive grants, gifts, and bequests  
25 of moneys; acquire, receive, hold, invest, and administer, in  
26 its own name, securities, funds, objects of value, or other  
27 property, real or personal; and make expenditures to or for  
28 the direct or indirect benefit of the Statewide Public  
29 Guardianship Office or individual offices of public guardians.  
30       (2) The purposes and objectives of the direct-support  
31 organization must be consistent with the priority issues and

1 objectives of the Statewide Public Guardianship Office and  
2 must be in the best interest of the state.

3 (3) The Statewide Public Guardianship Office may  
4 permit, without charge, the appropriate use of property and  
5 facilities of the state by the direct-support organization  
6 subject to the provisions of this section. Such use must be  
7 directly in keeping with the approved purpose of the  
8 direct-support organization.

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

11 Section 10. Section 744.387, Florida Statutes, is  
12 amended to read:

13 744.387 Settlement of claims.--

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

29 (2) In the same manner as provided in subsection (1)  
30 or as authorized by s. 744.301, the natural guardians or  
31 guardian of a minor may settle any claim by or on behalf of a

1 minor that does not exceed \$15,000~~\$5,000~~ without bond. A  
2 legal guardianship shall be required when the amount of the  
3 net settlement to the ward exceeds \$15,000~~\$5,000~~.

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

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

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

21 Section 11. Subsections (2) and (4) of section  
22 744.301, Florida Statutes, are amended to read:

23 744.301 Natural guardians.--

24 (2) The natural guardian or guardians are authorized,  
25 on behalf of any of their minor children, to settle and  
26 consummate a settlement of any claim or cause of action  
27 accruing to any of their minor children for damages to the  
28 person or property of any of said minor children and to  
29 collect, receive, manage, and dispose of the proceeds of any  
30 such settlement and of any other real or personal property  
31 distributed from an estate or trust or proceeds from a life

1 insurance policy to, or otherwise accruing to the benefit of,  
2 the child during minority, when the amount involved in any  
3 instance does not exceed \$15,000~~\$5,000~~, without appointment,  
4 authority, or bond.

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

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

27 Section 12. Subsection (4) is added to section  
28 765.104, Florida Statutes, to read:

29 765.104 Amendment or revocation.--

30 (4) Any patient for whom a medical proxy has been  
31 recognized under s. 765.401 and for whom any previous legal

1 disability that precluded the patient's ability to consent is  
2 removed may amend or revoke the recognition of the medical  
3 proxy and any uncompleted decision made by that proxy. The  
4 amendment or revocation takes effect when it is communicated  
5 to the proxy, the health care provider, or the health care  
6 facility in writing or, if communicated orally, in the  
7 presence of a third person.

8 Section 13. Subsection (1) of section 765.401, Florida  
9 Statutes, is amended to read:

10 765.401 The proxy.--

11 (1) If an incapacitated or developmentally disabled  
12 ~~the~~ patient has not executed an advance directive, or  
13 designated a surrogate to execute an advance directive, or the  
14 designated or alternate surrogate is no longer available to  
15 make health care decisions, health care decisions may be made  
16 for the patient by any of the following individuals, in the  
17 following order of priority, if no individual in a prior class  
18 is reasonably available, willing, or competent to act:

19 (a) The judicially appointed guardian of the patient  
20 or the guardian advocate of the person having a developmental  
21 disability as defined in s. 393.063, who has been authorized  
22 to consent to medical treatment, if such guardian has  
23 previously been appointed; however, this paragraph shall not  
24 be construed to require such appointment before a treatment  
25 decision can be made under this subsection;

26 (b) The patient's spouse;

27 (c) An adult child of the patient, or if the patient  
28 has more than one adult child, a majority of the adult  
29 children who are reasonably available for consultation;

30 (d) A parent of the patient;

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1           (e) The adult sibling of the patient or, if the  
2 patient has more than one sibling, a majority of the adult  
3 siblings who are reasonably available for consultation;-  
4           (f) An adult relative of the patient who has exhibited  
5 special care and concern for the patient and who has  
6 maintained regular contact with the patient and who is  
7 familiar with the patient's activities, health, and religious  
8 or moral beliefs; or  
9           (g) A close friend of the patient.  
10           Section 14. This act shall take effect upon becoming a  
11 law.  
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