

Bill No. CS for SB 268

Amendment No. Barcode 843768

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Carlton moved the following amendment:

Senate Amendment (with title amendment)

Delete 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,
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

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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 or disabled person does
20 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 or disabled person.

23 (5) In a civil action under this section in which an
24 elderly or disabled person is a party, the elderly or disabled
25 person may move the court to advance the trial on the docket.
26 The presiding judge, after consideration of the age and health
27 of the party, may advance the trial on the docket. The motion
28 may be filed and served with the civil complaint or at any
29 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 clerk of the court
6 in each county to perform the administrative functions
7 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 or social security 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 providing
28 guardian-delegated financial or personal guardianship services
29 for wards.
30 (e) Documentation that the bonding and educational
31 requirements of s. 744.1085 have been met, and that background

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1 screening has been conducted pursuant to s. 744.3135.

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

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

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

21 744.309 Who may be appointed guardian of a resident
22 ward.--

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

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1 Section 5. Section 744.3135, Florida Statutes, is
2 amended to read:

3 744.3135 Credit and criminal investigation.--The court
4 may require a nonprofessional guardian and shall require a
5 professional or public guardian, and all employees of a
6 professional guardian who have a fiduciary responsibility to a
7 ward, to submit, at their ~~his or her~~ own expense, to an
8 investigation of the guardian's credit history and to undergo
9 level 2 background screening as required under s. 435.04 ~~an~~
10 investigatory check by the National Crime Information Center
11 and the Florida Crime Information Center systems by means of
12 fingerprint checks by the Department of Law Enforcement and
13 the Federal Bureau of Investigation. The clerk of the court
14 shall obtain fingerprint cards from the Federal Bureau of
15 Investigation and make them available to guardians. Any
16 guardian who is so required shall have his or her fingerprints
17 taken and forward the proper fingerprint card along with the
18 necessary fee to the Florida Department of Law Enforcement for
19 processing. The professional guardian shall pay to the clerk
20 of the court a fee of \$5 for handling and processing
21 professional guardian files. The results of the fingerprint
22 checks shall be forwarded to the clerk of court who shall
23 maintain the results in a guardian file and shall make the
24 results available to the court. If credit or criminal
25 investigations are required, the court must consider the
26 results of the investigations in appointing a guardian.
27 Guardians and all employees of a professional guardian who
28 have a fiduciary responsibility to a ward, so appointed, must
29 resubmit, at their own expense, to an investigation of credit
30 history, and undergo level 1 background screening as required
31 under s. 435.03, every 2 years after the date of their

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1 appointment. The court must consider the results of these
 2 investigations in reappointing a guardian. This section shall
 3 not apply to a professional guardian, or to the employees of a
 4 professional guardian, that is a trust company, a state
 5 banking corporation or state savings association authorized
 6 and qualified to exercise fiduciary powers in this state, or a
 7 national banking association or federal savings and loan
 8 association authorized and qualified to exercise fiduciary
 9 powers in this state.

10 Section 6. Section 744.446, Florida Statutes, is
 11 amended to read:

12 744.446 Conflicts of interest; prohibited activities;
 13 court approval; breach of fiduciary duty.--

14 (1) It is essential to the proper conduct and
 15 management of a guardianship that the guardian be independent
 16 and impartial. The fiduciary relationship which exists
 17 between the guardian and the ward may not be used for the
 18 private gain of the guardian other than the remuneration for
 19 fees and expenses provided by law. The guardian may not incur
 20 any obligation on behalf of the guardianship which conflicts
 21 with the proper discharge of the guardian's duties.

22 (2) Unless prior approval is obtained by court order,
 23 or unless such relationship existed prior to appointment of
 24 the guardian and is disclosed to the court in the petition for
 25 appointment of guardian, a guardian may not:

26 (a) Have any interest, financial or otherwise, direct
 27 or indirect, in any business transaction or activity with the
 28 guardianship;

29 (b) Acquire an ownership, possessory, security, or
 30 other pecuniary interest adverse to the ward;

31 (c) Be designated as a beneficiary on any life

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1 insurance policy, pension, or benefit plan of the ward unless
2 such designation was validly made by the ward prior to
3 adjudication of incapacity of the ward; and

4 (d) Directly or indirectly purchase, rent, lease, or
5 sell any property or services from or to any business entity
6 of which the guardian or the guardian's spouse or any of the
7 guardian's lineal descendants, or collateral kindred, is an
8 officer, partner, director, shareholder, or proprietor, or has
9 any financial interest.

10 (3) Any activity prohibited by this section is
11 voidable during the term of the guardianship or by the
12 personal representative of the ward's estate, and the guardian
13 is subject to removal and to imposition of personal liability
14 through a proceeding for surcharge, in addition to any other
15 remedies otherwise available.

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

19 Section 7. 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

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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 Administrative Trust Fund to
4 be used solely for the benefit of public guardianship as
5 determined by the Statewide Public Guardianship Office
6 established in part IX of this chapter.

7 Section 8. 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

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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 9. 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

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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 financial audit in accordance with s. 215.981.

5 Section 10. Section 744.387, Florida Statutes, is
6 amended to read:

7 744.387 Settlement of claims.--

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

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

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

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

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

15 Section 11. Subsections (2) and (4) of section
16 744.301, Florida Statutes, are amended to read:

17 744.301 Natural guardians.--

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

30 (4)(a) In any case where a minor has a claim for
31 personal injury, property damage, or wrongful death in which

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

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

21 Section 12. Subsection (4) is added to section
22 765.104, Florida Statutes, to read:

23 765.104 Amendment or revocation.--

24 (4) Any patient for whom a medical proxy has been
25 recognized under s. 765.401 and for whom any previous legal
26 disability that precluded the patient's ability to consent is
27 removed may amend or revoke the recognition of the medical
28 proxy and any uncompleted decision made by that proxy. The
29 amendment or revocation takes effect when it is communicated
30 to the proxy, the health care provider, or the health care
31 facility in writing or, if communicated orally, in the

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1 presence of a third person.

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

4 765.401 The proxy.--

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

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

20 (b) The patient's spouse;

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

24 (d) A parent of the patient;

25 (e) The adult sibling of the patient or, if the
26 patient has more than one sibling, a majority of the adult
27 siblings who are reasonably available for consultation; ~~;~~

28 (f) An adult relative of the patient who has exhibited
29 special care and concern for the patient and who has
30 maintained regular contact with the patient and who is
31 familiar with the patient's activities, health, and religious

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1 or moral beliefs; or
 2 (g) A close friend of the patient.
 3 Section 14. This act shall take effect upon becoming a
 4 law.

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

8 And the title is amended as follows:

9 Delete everything before the enacting clause

10

11 and insert:

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A bill to be entitled

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An act relating to persons in a position of

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trust and confidence; amending s. 825.101,

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F.S.; defining the term "position of trust and

16

confidence"; amending s. 772.11, F.S.;

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prescribing civil remedies for theft and other

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offenses in which the victim is an elderly or

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disabled person; providing that a violation of

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patient rights is not a cause of action under

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the act; providing for continuation of a cause

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of action upon the death of the elderly or

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disabled person; authorizing the court to

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advance a trial on the docket which involves a

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victim who is an elderly or disabled person;

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creating s. 744.1083, F.S.; providing

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guidelines for the registration of professional

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guardians; authorizing rulemaking; authorizing

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certain financial institutions to register;

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amending s. 744.309, F.S.; revising

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qualifications for trust companies that may be

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1 appointed guardians; amending s. 744.3135,
2 F.S.; revising credit and background screening
3 requirements for guardians; providing such
4 requirements for employees of a professional
5 guardian who have a fiduciary responsibility to
6 the ward; providing applicability; amending s.
7 744.446, F.S.; providing for court actions to
8 protect the ward in the event of a breach of
9 fiduciary duty by the guardian; amending s.
10 744.534, F.S.; revising provisions relating to
11 disposition of unclaimed funds; amending s.
12 744.703, F.S.; authorizing the establishment of
13 public guardian offices; providing for the
14 staffing of offices; creating s. 744.7082,
15 F.S.; defining the term "direct-support
16 organization"; providing for the purposes of a
17 direct-support organization; amending s.
18 744.387, F.S.; increasing the amount of a claim
19 that may be settled by a natural guardian of a
20 minor without the necessity of appointment of a
21 legal guardian; amending s. 744.301, F.S.;
22 increasing the amount of a claim that may be
23 settled by a natural guardian of a minor
24 without the necessity of appointment of a
25 guardian ad litem; amending s. 765.104, F.S.;
26 authorizing a patient whose legal disability is
27 removed to amend or revoke the recognition of a
28 medical proxy and any uncompleted decision made
29 by that proxy; specifying when the amendment or
30 revocation takes effect; amending s. 765.401,
31 F.S.; clarifying provisions relating to medical

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1 proxies for incapacitated persons; providing
2 priority of a guardian advocate who has been
3 authorized to consent to medical treatment for
4 a person with a developmental disability;
5 providing an effective date.
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