

By Senator Carlton

24-289-02

1 A bill to be entitled
2 An act relating to elderly persons and disabled
3 adults; amending s. 825.101, F.S.; defining the
4 term "position of trust and confidence";
5 amending s. 772.11, F.S.; prescribing civil
6 remedies for theft and other offenses in which
7 the victim is an elderly person or disabled
8 adult; providing that a violation of patient
9 rights is not a cause of action under the act;
10 providing for continuation of a cause of action
11 upon the death of an elderly person or disabled
12 adult; authorizing the court to advance a trial
13 on the docket which involves a victim who is an
14 elderly person or disabled adult; creating s.
15 744.1083, F.S.; providing guidelines for the
16 registration of public guardians; authorizing
17 rulemaking; authorizing certain financial
18 institutions to register; amending s. 744.534,
19 F.S.; revising provisions relating to
20 disposition of unclaimed funds; amending s.
21 744.703, F.S.; authorizing the establishment of
22 public guardian offices; providing for the
23 staffing of offices; creating s. 744.7082,
24 F.S.; defining the term "direct-support
25 organization"; providing for the purposes of a
26 direct-support organization; amending s.
27 744.387, F.S.; raising the amount of a claim
28 that may be settled by a natural guardian of a
29 minor without the necessity of appointment of a
30 legal guardian; amending s. 744.301, F.S.;
31 raising the amount of a claim that may be

1 settled by a natural guardian of a minor
2 without the necessity of appointment of a
3 guardian ad litem; providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

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

9 825.101 Definitions.--As used in this chapter:

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

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

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

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

22 (d) Is a caregiver of the elderly person or disabled
23 adult; or

24 (e) Is any other person who has been entrusted with or
25 has assumed responsibility for the use or management of the
26 elderly person's or disabled adult's funds, assets, or
27 property.

28 Section 2. Section 772.11, Florida Statutes, is
29 amended to read:

30 772.11 Civil remedy for theft or exploitation.--
31

1 (1) Any person who proves by clear and convincing
2 evidence that he or she has been injured in any fashion by
3 reason of any violation of ~~the provisions of~~ ss.
4 812.012-812.037 or s. 825.103(1) has a cause of action for
5 threefold the actual damages sustained and, in any such
6 action, is entitled to minimum damages in the amount of \$200,
7 and reasonable attorney's fees and court costs in the trial
8 and appellate courts. Before filing an action for damages
9 under this section, the person claiming injury must make a
10 written demand for \$200 or the treble damage amount from ~~of~~
11 the person liable for damages under this section. If the
12 person to whom a written demand is made complies with such
13 demand within 30 days after receipt of the demand, that person
14 shall be given a written release from further civil liability
15 for the specific act of theft or exploitation by the person
16 making the written demand. Any person who has a cause of
17 action under this section may recover the damages allowed
18 under this section from the parents or legal guardian of any
19 unemancipated minor who lives with his or her parents or legal
20 guardian and who is liable for damages under this section. ~~In~~
21 ~~no event shall~~ Punitive damages may not be awarded under this
22 section. The defendant is ~~shall be~~ entitled to recover
23 reasonable attorney's fees and court costs in the trial and
24 appellate courts upon a finding that the claimant raised a
25 claim that ~~which~~ was without substantial fact or legal
26 support. In awarding attorney's fees and costs under this
27 section, the court may ~~shall~~ not consider the ability of the
28 opposing party to pay such fees and costs. ~~Nothing under~~ This
29 section does not limit ~~shall be interpreted as limiting~~ any
30 right to recover attorney's fees or costs provided under any
31 other ~~provisions of~~ law.

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

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

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

14 (5) In a civil action under this section in which an
15 elderly person or disabled adult is a party, the elderly
16 person or disabled adult may move the court to advance the
17 trial on the docket. The presiding judge, after consideration
18 of the age and health of the party, may advance the trial on
19 the docket. The motion may be filed and served with the civil
20 complaint or at any time thereafter.

21 Section 3. Section 744.1083, Florida Statutes, is
22 created to read:

23 744.1083 Professional guardian registration.--

24 (1) Effective January 1, 2003, a professional guardian
25 must register with the Statewide Public Guardianship Office
26 established in part IX of this chapter. The Statewide Public
27 Guardianship Office may contract with the Florida State
28 Guardianship Association to perform the administrative
29 functions associated with registering professional guardians.

30 (2) Annual registration shall be made on forms
31 furnished by the Statewide Public Guardianship Office and

1 accompanied by the applicable registration fee as determined
2 by rule. Such fee shall not exceed \$25.

3 (3) Registration must include the following:

4 (a) If the professional guardian is a natural person,
5 the name, address, date of birth, and employer identification
6 number of the professional guardian.

7 (b) If the professional guardian is a partnership or
8 association, the name, address, and date of birth of every
9 member, and the employer identification number of the
10 partnership or association.

11 (c) If the professional guardian is a corporation, the
12 name, address, and employer identification number of the
13 corporation; the name, address, and date of birth of each of
14 its directors and officers; the name of its resident agent;
15 and the name, address, and date of birth of each person having
16 at least a 10-percent interest in the corporation.

17 (d) The name, address, date of birth, and employer
18 identification number, if applicable, of each person employed
19 by or under contract with the professional guardian who is
20 involved in providing financial or personal guardianship
21 services for wards.

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

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

27 (5) A trust company incorporated under the laws of
28 this state, a state banking corporation or state savings
29 association authorized and qualified to exercise fiduciary
30 powers in this state, or a national banking association or
31 federal savings and loan association authorized and qualified

1 to exercise fiduciary powers in this state, may, but shall not
2 be required to, register as a professional guardian under this
3 section.

4 Section 4. Paragraph (c) of subsection (2) of section
5 744.534, Florida Statutes, is amended to read:

6 744.534 Disposition of unclaimed funds held by
7 guardian.--

8 (2)

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

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

25 744.703 Office of public guardian; appointment,
26 notification.--

27 (1) The executive director of the Statewide Public
28 Guardianship Office, after consultation with the chief judge
29 and other circuit judges within the judicial circuit and with
30 appropriate advocacy groups and individuals and organizations
31 who are knowledgeable about the needs of incapacitated

1 persons, may establish, within a county in the judicial
2 circuit or within the judicial circuit, one or more offices ~~an~~
3 ~~office~~ of public guardian and if so established, shall create
4 a list of persons best qualified to serve as the public
5 guardian, who have been investigated ~~and such qualifications~~
6 ~~shall include review~~ pursuant to s. 744.3135. The public
7 guardian must have knowledge of the legal process and
8 knowledge of social services available to meet the needs of
9 incapacitated persons. The public guardian shall maintain a
10 staff or contract with professionally qualified individuals to
11 carry out the guardianship functions, including an attorney
12 who has experience in probate areas and another person who has
13 a master's degree in social work, or a gerontologist,
14 psychologist, registered nurse, or nurse practitioner. A
15 public guardian that is a nonprofit corporate guardian under
16 s. 744.309(5) must obtain tax-exempt status from the United
17 States Internal Revenue Service. ~~A nonprofit corporation under~~
18 ~~s. 744.309(5) may be appointed public guardian only if:~~
19 ~~(a) It has been granted tax-exempt status from the~~
20 ~~United States Internal Revenue Service; and~~
21 ~~(b) It maintains a staff of professionally qualified~~
22 ~~individuals to carry out the guardianship functions, including~~
23 ~~a staff attorney who has experience in probate areas and~~
24 ~~another person who has a master's degree in social work, or a~~
25 ~~gerontologist, psychologist, registered nurse, or nurse~~
26 ~~practitioner.~~
27 Section 6. Section 744.7082, Florida Statutes, is
28 created to read:
29 744.7082 Direct-support organization.--
30 (1) As used in this section, the term "direct-support
31 organization" means a not-for-profit corporation incorporated

1 under chapter 617 and organized and operated to conduct
2 programs and activities; initiate developmental projects;
3 raise funds; request and receive grants, gifts, and bequests
4 of moneys; acquire, receive, hold, invest, and administer, in
5 its own name, securities, funds, objects of value, or other
6 property, real or personal; and make expenditures to or for
7 the direct or indirect benefit of the Statewide Public
8 Guardianship Office or individual offices of public guardians.

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

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

19 (4) The direct-support organization shall provide for
20 an annual postaudit of its financial accounts to be conducted
21 by an independent certified public accountant. The annual
22 audit report shall include a management letter and shall be
23 submitted to the Auditor General and the Statewide Public
24 Guardianship Office for review. The Statewide Public
25 Guardianship Office and the Auditor General have the authority
26 to require and receive from the organization or from its
27 independent auditor any detail or supplemental data relative
28 to the operation of the organization.

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

31 744.387 Settlement of claims.--

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

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

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

25 (b) In the event of settlement or judgment in favor of
26 the ward or minor, the court may authorize the natural
27 guardians or guardian, or a guardian of the property appointed
28 by a court of competent jurisdiction, to collect the amount of
29 the settlement or judgment and to execute a release or
30 satisfaction. When the amount of net settlement to the ward
31 or judgment exceeds \$15,000~~\$5,000~~ and no guardian has been

1 appointed, the court shall require the appointment of a
2 guardian for the property.

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

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

10 744.301 Natural guardians.--

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

23 (4)(a) In any case where a minor has a claim for
24 personal injury, property damage, or wrongful death in which
25 the gross settlement for the claim of the minor ~~equals or~~
26 exceeds \$15,000~~\$10,000~~, the court may, prior to the approval
27 of the settlement of the minor's claim, appoint a guardian ad
28 litem to represent the minor's interests. In any case in
29 which the gross settlement involving a minor equals or exceeds
30 \$25,000, the court shall, prior to the approval of the
31 settlement of the minor's claim, appoint a guardian ad litem

1 to represent the minor's interests. The appointment of the
2 guardian ad litem must be without the necessity of bond or a
3 notice. The duty of the guardian ad litem is to protect the
4 minor's interests. The procedure for carrying out that duty
5 is as prescribed in the Florida Probate Rules. If a legal
6 guardian of the minor has previously been appointed and has no
7 potential adverse interest to the minor, the court may not
8 appoint a guardian ad litem to represent the minor's
9 interests, unless the court determines that the appointment is
10 otherwise necessary.

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

14 Section 9. This act shall take effect upon becoming a
15 law.

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18 LEGISLATIVE SUMMARY

19 Defines the term "position of trust and confidence" with
20 respect to an elderly person or disabled adult.
21 Prescribes civil remedies for theft and certain other
22 offenses in which the victim is an elderly person or
23 disabled adult and provides for continuation of a cause
24 of action upon the death of the elderly person or
25 disabled adult.

26 Provides guidelines for the registration of public
27 guardians and authorizes the establishment of public
28 guardian offices. Defines the term "direct-support
29 organization." Increases the amount of a claim that may
30 be settled by a natural guardian of a minor without the
31 necessity of appointment of a legal guardian or guardian
ad litem. (See bill for details.)