

By the Committee on Finance and Taxation; and Senator Carlton

314-1875-02

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
8 person or disabled adult; providing that a
9 violation of patient rights is not a cause of
10 action under the act; providing for
11 continuation of a cause of action upon the
12 death of an elderly person or disabled adult;
13 authorizing the court to advance a trial on the
14 docket which involves a victim who is an
15 elderly person or disabled adult; creating s.
16 744.1083, F.S.; providing guidelines for the
17 registration of public guardians; authorizing
18 rulemaking; authorizing certain financial
19 institutions to register; amending s. 744.309,
20 F.S.; revising qualifications for trust
21 companies that may be appointed guardians;
22 amending s. 744.534, F.S.; revising provisions
23 relating to disposition of unclaimed funds;
24 amending s. 744.703, F.S.; authorizing the
25 establishment of public guardian offices;
26 providing for the staffing of offices; creating
27 s. 744.7082, F.S.; defining the term
28 "direct-support organization"; providing for a
29 financial audit of a direct-support
30 organization; amending s. 744.387, 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 legal
3 guardian; amending s. 744.301, F.S.; raising
4 the amount of a claim that may be settled by a
5 natural guardian of a minor without the
6 necessity of appointment of a guardian ad
7 litem; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (11) of section 825.101, Florida
12 Statutes, is amended to read:

13 825.101 Definitions.--As used in this chapter:

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

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

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

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

26 (d) Is a caregiver of the elderly person or disabled
27 adult; or

28 (e) Is any other person who has been entrusted with or
29 has assumed responsibility for the use or management of the
30 elderly person's or disabled adult's funds, assets, or
31 property.

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

3 772.11 Civil remedy for theft or exploitation.--

4 (1) Any person who proves by clear and convincing
5 evidence that he or she has been injured in any fashion by
6 reason of any violation of ~~the provisions of~~ ss.

7 812.012-812.037 or s. 825.103(1) has a cause of action for
8 threefold the actual damages sustained and, in any such
9 action, is entitled to minimum damages in the amount of \$200~~7~~

10 and reasonable attorney's fees and court costs in the trial
11 and appellate courts. Before filing an action for damages

12 under this section, the person claiming injury must make a
13 written demand for \$200 or the treble damage amount from ~~of~~

14 the person liable for damages under this section. If the
15 person to whom a written demand is made complies with such

16 demand within 30 days after receipt of the demand, that person
17 shall be given a written release from further civil liability

18 for the specific act of theft or exploitation by the person
19 making the written demand. Any person who has a cause of

20 action under this section may recover the damages allowed
21 under this section from the parents or legal guardian of any

22 unemancipated minor who lives with his or her parents or legal
23 guardian and who is liable for damages under this section. ~~In~~

24 ~~no event shall~~ Punitive damages may not be awarded under this
25 section. The defendant is ~~shall be~~ entitled to recover

26 reasonable attorney's fees and court costs in the trial and
27 appellate courts upon a finding that the claimant raised a

28 claim that ~~which~~ was without substantial fact or legal
29 support. In awarding attorney's fees and costs under this

30 section, the court may ~~shall~~ not consider the ability of the
31 opposing party to pay such fees and costs. ~~Nothing under~~ This

1 section does not limit ~~shall be interpreted as limiting~~ any
2 right to recover attorney's fees or costs provided under any
3 other ~~provisions of~~ law.

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

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

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

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

24 Section 3. Section 744.1083, Florida Statutes, is
25 created to read:

26 744.1083 Professional guardian registration.--

27 (1) Effective January 1, 2003, a professional guardian
28 must register with the Statewide Public Guardianship Office
29 established in part IX of this chapter. The Statewide Public
30 Guardianship Office may contract with the Florida State

31

1 Guardianship Association to perform the administrative
2 functions associated with registering professional guardians.

3 (2) Annual registration shall be made on forms
4 furnished by the Statewide Public Guardianship Office and
5 accompanied by the applicable registration fee as determined
6 by rule. Such fee shall not exceed \$25.

7 (3) Registration must include the following:

8 (a) If the professional guardian is a natural person,
9 the name, address, date of birth, and employer identification
10 number of the professional guardian.

11 (b) If the professional guardian is a partnership or
12 association, the name, address, and date of birth of every
13 member, and the employer identification number of the
14 partnership or association.

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

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

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

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

31

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

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

18 744.309 Who may be appointed guardian of a resident
19 ward.--

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

29 Section 5. Paragraph (c) of subsection (2) of section
30 744.534, Florida Statutes, is amended to read:

31

1 744.534 Disposition of unclaimed funds held by
2 guardian.--

3 (2)

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

18 Section 6. Subsection (1) of section 744.703, Florida
19 Statutes, is amended to read:

20 744.703 Office of public guardian; appointment,
21 notification.--

22 (1) The executive director of the Statewide Public
23 Guardianship Office, after consultation with the chief judge
24 and other circuit judges within the judicial circuit and with
25 appropriate advocacy groups and individuals and organizations
26 who are knowledgeable about the needs of incapacitated
27 persons, may establish, within a county in the judicial
28 circuit or within the judicial circuit, one or more offices ~~an~~
29 ~~office~~ of public guardian and if so established, shall create
30 a list of persons best qualified to serve as the public
31 guardian, who have been investigated ~~and such qualifications~~

1 ~~shall include review~~ pursuant to s. 744.3135. The public
2 guardian must have knowledge of the legal process and
3 knowledge of social services available to meet the needs of
4 incapacitated persons. The public guardian shall maintain a
5 staff or contract with professionally qualified individuals to
6 carry out the guardianship functions, including an attorney
7 who has experience in probate areas and another person who has
8 a master's degree in social work, or a gerontologist,
9 psychologist, registered nurse, or nurse practitioner. A
10 public guardian that is a nonprofit corporate guardian under
11 s. 744.309(5) must obtain tax-exempt status from the United
12 States Internal Revenue Service. ~~A nonprofit corporation under~~
13 ~~s. 744.309(5) may be appointed public guardian only if:~~
14 ~~(a) It has been granted tax-exempt status from the~~
15 ~~United States Internal Revenue Service; and~~
16 ~~(b) It maintains a staff of professionally qualified~~
17 ~~individuals to carry out the guardianship functions, including~~
18 ~~a staff attorney who has experience in probate areas and~~
19 ~~another person who has a master's degree in social work, or a~~
20 ~~gerontologist, psychologist, registered nurse, or nurse~~
21 ~~practitioner.~~

22 Section 7. Section 744.7082, Florida Statutes, is
23 created to read:

24 744.7082 Direct-support organization.--

25 (1) As used in this section, the term "direct-support
26 organization" means a not-for-profit corporation incorporated
27 under chapter 617 and organized and operated to conduct
28 programs and activities; initiate developmental projects;
29 raise funds; request and receive grants, gifts, and bequests
30 of moneys; acquire, receive, hold, invest, and administer, in
31 its own name, securities, funds, objects of value, or other

1 property, real or personal; and make expenditures to or for
2 the direct or indirect benefit of the Statewide Public
3 Guardianship Office or individual offices of public guardians.

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

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

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

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

18 744.387 Settlement of claims.--

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

1 whether an additional bond is required and, if so, shall fix
2 the amount of it.

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

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

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

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

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

28 744.301 Natural guardians.--

29 (2) The natural guardian or guardians are authorized,
30 on behalf of any of their minor children, to settle and
31 consummate a settlement of any claim or cause of action

1 accruing to any of their minor children for damages to the
2 person or property of any of said minor children and to
3 collect, receive, manage, and dispose of the proceeds of any
4 such settlement and of any other real or personal property
5 distributed from an estate or trust or proceeds from a life
6 insurance policy to, or otherwise accruing to the benefit of,
7 the child during minority, when the amount involved in any
8 instance does not exceed \$15,000~~\$5,000~~, without appointment,
9 authority, or bond.

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

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

1 Section 10. This act shall take effect upon becoming a
2 law.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 SB 268

7 This committee substitute amends the title to make it clear
8 that the act relates to persons in guardianship positions, and
9 provides that a trust company need not be incorporated in
10 Florida to register as a professional guardian. It also
11 modifies the reporting requirements for a trust company, state
12 banking corporation, state savings association, national
13 banking association, or federal savings and loan association
14 that registers as a professional guardian.
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