

1
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; providing applicability; amending s.
27 744.446, F.S.; providing for court actions to
28 protect the ward in the event of a breach of
29 fiduciary duty by the guardian; amending s.
30 744.534, F.S.; revising provisions relating to
31 disposition of unclaimed funds; amending s.

1 744.703, F.S.; authorizing the establishment of
2 public guardian offices; providing for the
3 staffing of offices; creating s. 744.7082,
4 F.S.; defining the term "direct-support
5 organization"; providing for the purposes of a
6 direct-support organization; amending s.
7 744.387, F.S.; increasing the amount of a claim
8 that may be settled by a natural guardian of a
9 minor without the necessity of appointment of a
10 legal guardian; amending s. 744.301, F.S.;
11 increasing the amount of a claim that may be
12 settled by a natural guardian of a minor
13 without the necessity of appointment of a
14 guardian ad litem; amending s. 765.104, F.S.;
15 authorizing a patient whose legal disability is
16 removed to amend or revoke the recognition of a
17 medical proxy and any uncompleted decision made
18 by that 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
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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
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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. This section shall
18 not apply to a professional guardian, or to the employees of a
19 professional guardian, that is a trust company, a state
20 banking corporation or state savings association authorized
21 and qualified to exercise fiduciary powers in this state, or a
22 national banking association or federal savings and loan
23 association authorized and qualified to exercise fiduciary
24 powers in this state.

25 Section 6. Section 744.446, Florida Statutes, is
26 amended to read:

27 744.446 Conflicts of interest; prohibited activities;
28 court approval; breach of fiduciary duty.--

29 (1) It is essential to the proper conduct and
30 management of a guardianship that the guardian be independent
31 and impartial. The fiduciary relationship which exists

1 between the guardian and the ward may not be used for the
2 private gain of the guardian other than the remuneration for
3 fees and expenses provided by law. The guardian may not incur
4 any obligation on behalf of the guardianship which conflicts
5 with the proper discharge of the guardian's duties.

6 (2) Unless prior approval is obtained by court order,
7 or unless such relationship existed prior to appointment of
8 the guardian and is disclosed to the court in the petition for
9 appointment of guardian, a guardian may not:

10 (a) Have any interest, financial or otherwise, direct
11 or indirect, in any business transaction or activity with the
12 guardianship;

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

15 (c) Be designated as a beneficiary on any life
16 insurance policy, pension, or benefit plan of the ward unless
17 such designation was validly made by the ward prior to
18 adjudication of incapacity of the ward; and

19 (d) Directly or indirectly purchase, rent, lease, or
20 sell any property or services from or to any business entity
21 of which the guardian or the guardian's spouse or any of the
22 guardian's lineal descendants, or collateral kindred, is an
23 officer, partner, director, shareholder, or proprietor, or has
24 any financial interest.

25 (3) Any activity prohibited by this section is
26 voidable during the term of the guardianship or by the
27 personal representative of the ward's estate, and the guardian
28 is subject to removal and to imposition of personal liability
29 through a proceeding for surcharge, in addition to any other
30 remedies otherwise available.

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

4 Section 7. 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 8. 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 receive 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 9. 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 financial audit in accordance with s. 215.981.

21 Section 10. Section 744.387, Florida Statutes, is
22 amended to read:

23 744.387 Settlement of claims.--

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

1 that the settlement will be for the best interest of the ward.
2 The order shall relieve the guardian from any further
3 responsibility in connection with the claim or dispute when
4 the settlement has been made in accordance with the order.
5 The order authorizing the settlement may also determine
6 whether an additional bond is required and, if so, shall fix
7 the amount of it.

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

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

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

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

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

3 744.301 Natural guardians.--

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

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

1 appoint a guardian ad litem to represent the minor's
2 interests, unless the court determines that the appointment is
3 otherwise necessary.

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

7 Section 12. Subsection (4) is added to section
8 765.104, Florida Statutes, to read:

9 765.104 Amendment or revocation.--

10 (4) Any patient for whom a medical proxy has been
11 recognized under s. 765.401 and for whom any previous legal
12 disability that precluded the patient's ability to consent is
13 removed may amend or revoke the recognition of the medical
14 proxy and any uncompleted decision made by that proxy. The
15 amendment or revocation takes effect when it is communicated
16 to the proxy, the health care provider, or the health care
17 facility in writing or, if communicated orally, in the
18 presence of a third person.

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

21 765.401 The proxy.--

22 (1) If an incapacitated or developmentally disabled
23 ~~the~~ patient has not executed an advance directive, or
24 designated a surrogate to execute an advance directive, or the
25 designated or alternate surrogate is no longer available to
26 make health care decisions, health care decisions may be made
27 for the patient by any of the following individuals, in the
28 following order of priority, if no individual in a prior class
29 is reasonably available, willing, or competent to act:

30 (a) The judicially appointed guardian of the patient
31 or the guardian advocate of the person having a developmental

- 1 disability as defined in s. 393.063, who has been authorized
2 to consent to medical treatment, if such guardian has
3 previously been appointed; however, this paragraph shall not
4 be construed to require such appointment before a treatment
5 decision can be made under this subsection;
- 6 (b) The patient's spouse;
- 7 (c) An adult child of the patient, or if the patient
8 has more than one adult child, a majority of the adult
9 children who are reasonably available for consultation;
- 10 (d) A parent of the patient;
- 11 (e) The adult sibling of the patient or, if the
12 patient has more than one sibling, a majority of the adult
13 siblings who are reasonably available for consultation;
14 (f) An adult relative of the patient who has exhibited
15 special care and concern for the patient and who has
16 maintained regular contact with the patient and who is
17 familiar with the patient's activities, health, and religious
18 or moral beliefs; or
- 19 (g) A close friend of the patient.

20 Section 14. This act shall take effect upon becoming a
21 law.

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