

Bill No. SB 1958

Barcode 342746

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Aronberg) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 744.102, Florida Statutes, is amended to read:

744.102 Definitions.--As used in this chapter, the term:

(1) "Attorney for the alleged incapacitated person" means an attorney who represents the alleged incapacitated person. The ~~Such~~ attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar.

(2) "Audit" means a systematic review of financial documents with adherence to generally accepted auditing standards.

~~(3)~~(2) "Clerk" means the clerk or deputy clerk of the court.

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1           ~~(4)(3)~~ "Corporate guardian" means a corporation  
2 authorized to exercise fiduciary or guardianship powers in  
3 this state and includes a nonprofit corporate guardian.

4           ~~(5)(4)~~ "Court" means the circuit court.

5           ~~(6)(5)~~ "Court monitor" means a person appointed by the  
6 court under ~~pursuant to~~ s. 744.107 to provide the court with  
7 information concerning a ward.

8           ~~(7)(6)~~ "Estate" means the property of a ward subject  
9 to administration.

10          ~~(8)(7)~~ "Foreign guardian" means a guardian appointed  
11 in another state or country.

12          ~~(9)(8)~~ "Guardian" means a person who has been  
13 appointed by the court to act on behalf of a ward's person or  
14 property, or both.

15           (a) "Limited guardian" means a guardian who has been  
16 appointed by the court to exercise the legal rights and powers  
17 specifically designated by court order entered after the court  
18 has found that the ward lacks the capacity to do some, but not  
19 all, of the tasks necessary to care for his or her person or  
20 property, or after the person has voluntarily petitioned for  
21 appointment of a limited guardian.

22           (b) "Plenary guardian" means a person who has been  
23 appointed by the court to exercise all delegable legal rights  
24 and powers of the ward after the court has found that the ward  
25 lacks the capacity to perform all of the tasks necessary to  
26 care for his or her person or property.

27          ~~(10)(9)~~ "Guardian ad litem" means a person who is  
28 appointed by the court having jurisdiction of the guardianship  
29 or a court in which a particular legal matter is pending to  
30 represent a ward in that proceeding.

31          ~~(11)(10)~~ "Guardian advocate" means a person appointed

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1 by a written order of the court to represent a person with  
2 developmental disabilities under s. 393.12. As used in this  
3 chapter, the term does not apply to a guardian advocate  
4 appointed for a person determined incompetent to consent to  
5 treatment under s. 394.4598.

6 ~~(12)(11)~~ "Incapacitated person" means a person who has  
7 been judicially determined to lack the capacity to manage at  
8 least some of the property or to meet at least some of the  
9 essential health and safety requirements of the ~~such~~ person.

10 (a) To "manage property" means to take those actions  
11 necessary to obtain, administer, and dispose of real and  
12 personal property, intangible property, business property,  
13 benefits, and income.

14 (b) To "meet essential requirements for health or  
15 safety" means to take those actions necessary to provide the  
16 health care, food, shelter, clothing, personal hygiene, or  
17 other care without which serious and imminent physical injury  
18 or illness is more likely than not to occur.

19 ~~(13)(12)~~ "Minor" means a person under 18 years of age  
20 whose disabilities have not been removed by marriage or  
21 otherwise.

22 ~~(14)(13)~~ "Next of kin" means those persons who would  
23 be heirs at law of the ward or alleged incapacitated person if  
24 the ~~such~~ person were deceased and includes the lineal  
25 descendants of the ~~such~~ ward or alleged incapacitated person.

26 ~~(15)(14)~~ "Nonprofit corporate guardian" means a  
27 nonprofit corporation organized for religious or charitable  
28 purposes and existing under the laws of this state.

29 ~~(16)(15)~~ "Preneed guardian" means a person named in a  
30 written declaration to serve as guardian in the event of the  
31 incapacity of the declarant as provided in s. 744.3045.

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1           ~~(17)(16)~~ "Professional guardian" means any guardian  
 2 who ~~receives or~~ has at any time ~~received compensation for~~  
 3 ~~services~~ rendered services to three or more ~~than two~~ wards as  
 4 their guardian. A person serving as a guardian for two or more  
 5 relatives as defined in s. 744.309(2) is not considered a  
 6 professional guardian. A public guardian shall be considered a  
 7 professional guardian for purposes of regulation, education,  
 8 and registration.

9           ~~(18)(17)~~ "Property" means both real and personal  
 10 property or any interest in it and anything that may be the  
 11 subject of ownership.

12           ~~(19)(18)~~ "Standby guardian" means a person empowered  
 13 to assume the duties of guardianship upon the death or  
 14 adjudication of incapacity of the last surviving natural or  
 15 appointed guardian.

16           ~~(20)~~ "Surrogate guardian" means a guardian designated  
 17 according to s. 744.442.

18           ~~(21)(19)~~ "Totally incapacitated" means incapable of  
 19 exercising any of the rights enumerated in s. 744.3215(2) and  
 20 (3).

21           ~~(22)(20)~~ "Ward" means a person for whom a guardian has  
 22 been appointed.

23           Section 2. Subsections (5) and (10) of section  
 24 744.1083, Florida Statutes, are amended to read:

25           744.1083 Professional guardian registration.--

26           (5) The executive director of the office may deny  
 27 registration to a professional guardian if the executive  
 28 director determines that the guardian's proposed registration,  
 29 including the guardian's credit or criminal investigations,  
 30 indicates that registering the professional guardian would  
 31 violate any provision of this chapter. If a guardian who is

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1 currently registered with the office violates a provision of  
 2 this chapter, the executive director of the office may suspend  
 3 or revoke the guardian's registration. If the executive  
 4 director denies registration to a professional guardian or  
 5 suspends or revokes a professional guardian's registration,  
 6 the Statewide Public Guardianship Office must send written  
 7 notification of the denial, supervision, or revocation to the  
 8 chief judge of each judicial circuit in which the guardian was  
 9 serving on the day of the office's decision to deny, suspend,  
 10 or revoke the registration.

11 (10) A state college or university or an independent  
 12 college or university described in s. 1009.98(3)(a), may, but  
 13 is not required to, register as a professional guardian under  
 14 this section. If a state college or university or independent  
 15 college or university elects to register as a professional  
 16 guardian under this subsection, the requirements of  
 17 subsections (3) and (4) ~~subsection (3)~~ do not apply and the  
 18 registration must include only the name, address, and employer  
 19 identification number of the registrant.

20 Section 3. Section 744.301, Florida Statutes, is  
 21 amended to read:

22 744.301 Natural guardians.--

23 (1) The mother and father jointly are natural  
 24 guardians of their own children and of their adopted children,  
 25 during minority. If one parent dies, the surviving parent  
 26 remains the sole natural guardian even if he or she ~~the~~  
 27 ~~natural guardianship shall pass to the surviving parent, and~~  
 28 ~~the right shall continue even though the surviving parent~~  
 29 remarries. If the marriage between the parents is dissolved,  
 30 the natural guardianship belongs ~~shall belong~~ to the parent to  
 31 whom ~~the~~ custody of the child is awarded. If the parents are

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1 given joint custody, then both ~~shall~~ continue as natural  
 2 guardians. If the marriage is dissolved and neither the  
 3 father nor the mother is given custody of the child, neither  
 4 shall act as natural guardian of the child. The mother of a  
 5 child born out of wedlock is the natural guardian of the child  
 6 and is entitled to primary residential care and custody of the  
 7 child unless a court of competent jurisdiction enters an order  
 8 stating otherwise.

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

21           (3) All instruments executed by a natural guardian for  
 22 the benefit of the ward under the powers specified ~~provided~~  
 23 ~~for~~ in subsection (2) shall be binding on the ward. The  
 24 natural guardian may not, without a court order, use the  
 25 property of the ward for the guardian's benefit or to satisfy  
 26 the guardian's support obligation to the ward.

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

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

15 ~~(b) Unless waived, the court shall award reasonable~~  
16 ~~fees and costs to the guardian ad litem to be paid out of the~~  
17 ~~gross proceeds of the settlement.~~

18 Section 4. Section 744.3025, Florida Statutes, is  
19 created to read:

20 744.3025 Claims of minors.--

21 (1)(a) The court may appoint a guardian ad litem to  
22 represent the minor's interest, before approving a settlement  
23 of the minor's portion of the claim, in any case in which a  
24 minor has a claim for personal injury, property damage,  
25 wrongful death, or other cause of action in which the gross  
26 settlement of the claim exceeds \$15,000.

27 (b) The court shall appoint a guardian ad litem to  
28 represent the minor's interest before approving a settlement  
29 of the minor's claim, in any case in which the gross  
30 settlement involving a minor equals or exceeds \$50,000.

31 (c) The appointment of the guardian ad litem must be

1 without the necessity of bond or notice.

2 (d) The duty of the guardian ad litem is to protect  
3 the minor's interests as described in the Florida Probate  
4 Rules.

5 (e) A court need not appoint a guardian ad litem for  
6 the child if a guardian of the minor has previously been  
7 appointed and that guardian has no potential adverse interest  
8 to the minor. A court may appoint a guardian ad litem if the  
9 court believes a guardian ad litem is necessary to protect the  
10 interests of the minor.

11 (2) 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 5. Subsection (3) of section 744.3031, Florida  
15 Statutes, is amended, and subsection (8) is added to that  
16 section, to read:

17 744.3031 Emergency temporary guardianship.--

18 (3) The authority of an emergency temporary guardian  
19 expires 90 ~~60~~ days after the date of appointment or when a  
20 guardian is appointed, whichever occurs first. The authority  
21 of the emergency temporary guardian may be extended for an  
22 additional 90 ~~30~~ days upon a showing that the emergency  
23 conditions still exist.

24 (8)(a) An emergency temporary guardian shall file a  
25 final report no later than 30 days after the expiration of the  
26 emergency temporary guardianship.

27 (b) An emergency temporary guardianship is a guardian  
28 for the property. The final report must consist of a verified  
29 inventory of the property, as provided in s. 744.365, as of  
30 the date the letters of emergency temporary guardianship were  
31 issued, a final accounting that gives a full and correct

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1 account of the receipts and disbursements of all the property  
 2 of the ward over which the guardian had control, and a  
 3 statement of the property of the ward on hand at the end of  
 4 the emergency temporary guardianship. If the emergency  
 5 temporary guardian becomes the successor guardian of the  
 6 property, the final report must satisfy the requirements of  
 7 the initial guardianship report for the guardian of the  
 8 property as provided in s. 744.362.

9       (c) If the emergency temporary guardian is a guardian  
 10 of the person, the final report must summarize the activities  
 11 of the temporary guardian with regard to residential  
 12 placement, medical condition, mental health and rehabilitative  
 13 services, and the social condition of the ward to the extent  
 14 of the authority granted to the temporary guardian in the  
 15 letters of guardianship. If the emergency temporary guardian  
 16 becomes the successor guardian of the person, the report must  
 17 satisfy the requirements of the initial report for a guardian  
 18 of the person as stated in s. 744.362.

19       (d) A copy of the final report of the emergency  
 20 temporary guardianship shall be served on the successor  
 21 guardian and the ward.

22       Section 6. Section 744.304, Florida Statutes, is  
 23 amended to read:

24       744.304 Standby guardianship.--

25       (1) Upon a petition by the natural guardians or a  
 26 guardian appointed under s. 744.3021, the court may appoint a  
 27 standby guardian of the person or property of a minor ~~or~~  
 28 ~~consent of both parents, natural or adoptive, if living, or of~~  
 29 ~~the surviving parent, a standby guardian of the person or~~  
 30 ~~property of a minor may be appointed by the court. The court~~  
 31 may also appoint an alternate to the guardian to act if the

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1 standby guardian does not serve or ceases to serve after  
 2 appointment. Notice of a hearing on the petition must be  
 3 served on the parents, natural or adoptive, and on any  
 4 guardian currently serving unless the notice is waived in  
 5 writing by them or waived by the court for good cause shown  
 6 ~~shall renounce, die, or become incapacitated after the death~~  
 7 ~~of the last surviving parent of the minor.~~

8 (2) Upon petition of a currently serving guardian, a  
 9 standby guardian of the person or property of an incapacitated  
 10 person may be appointed by the court. Notice of the hearing  
 11 shall be served on the ward's next of kin.

12 (3) The standby guardian or alternate shall be  
 13 empowered to assume the duties of guardianship ~~his or her~~  
 14 ~~office~~ immediately on the death, removal, or resignation of  
 15 the guardian of a minor, or on the death or adjudication of  
 16 incapacity of the last surviving natural guardian ~~or adoptive~~  
 17 ~~parent~~ of a minor, or upon the death, removal, or resignation  
 18 of the guardian for an adult. ~~The; however, such a~~ guardian of  
 19 the ward's property may not be empowered to deal with the  
 20 ward's property, other than to safeguard it, before ~~prior to~~  
 21 issuance of letters of guardianship. If the ward  
 22 ~~incapacitated person~~ is over the age of 18 years, the court  
 23 shall conduct a hearing as provided in s. 744.331 before  
 24 confirming the appointment of the standby guardian, unless the  
 25 ward has previously been found to be incapacitated.

26 (4) Within 20 days after assumption of duties as  
 27 guardian, a standby guardian shall petition for confirmation  
 28 of appointment. If the court finds the standby guardian to be  
 29 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309  
 30 and 744.312, appointment of the guardian must be confirmed.  
 31 Each guardian so confirmed shall file an oath in accordance

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1 with s. 744.347, ~~and~~ shall file a bond and submit to a credit  
2 and criminal investigation as set forth in s. 744.3135, if  
3 required. Letters of guardianship must then be issued in the  
4 manner provided in s. 744.345.

5 (5) After the assumption of duties by a standby  
6 guardian, the court shall have jurisdiction over the guardian  
7 and the ward.

8 Section 7. Section 744.3115, Florida Statutes, is  
9 amended to read:

10 744.3115 Advance directives for health care.--In each  
11 proceeding in which a guardian is appointed under this  
12 chapter, the court shall determine whether the ward, prior to  
13 incapacity, has executed any valid advance directive under  
14 ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists,  
15 the court shall specify in its order and letters of  
16 guardianship what authority, if any, the guardian shall  
17 exercise over the surrogate. Pursuant to the grounds listed in  
18 s. 765.105, the court, upon its own motion, may, with notice  
19 to the surrogate and any other appropriate parties, modify or  
20 revoke the authority of the surrogate to make health care  
21 decisions for the ward. For purposes of this section, the term  
22 "health care decision" has the same meaning as in s. 765.101.

23 Section 8. Section 744.3135, Florida Statutes, is  
24 amended to read:

25 744.3135 Credit and criminal investigation.--

26 (1) The court may require a nonprofessional guardian  
27 and shall require a professional or public guardian, and all  
28 employees of a professional guardian who have a fiduciary  
29 responsibility to a ward, to submit, at their own expense, to  
30 an investigation of the guardian's credit history and to  
31 undergo level 2 background screening as required under s.

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1 435.04. If a credit or criminal investigation is required, the  
2 court must consider the results of any investigation before  
3 appointing a guardian. At any time, the court may require a  
4 guardian or its employees to submit to an investigation of the  
5 person's credit history and complete a level 1 background  
6 screening as set forth in s. 435.03. The court shall consider  
7 the results of any investigation when reappointing a guardian.  
8 The clerk of the court shall maintain a file on each guardian  
9 appointed by the court and retain documentation of the result  
10 of any investigation conducted under this section in the file.  
11 A professional guardian must pay the clerk of the court a fee  
12 of up to \$7.50 for handling and processing professional  
13 guardian files.

14 (2) The court and the Statewide Public Guardianship  
15 Office shall accept the satisfactory completion of a criminal  
16 background investigation by any method described in this  
17 subsection. A guardian satisfies the requirements of this  
18 section by undergoing:

19 (a) An inkless electronic fingerprint criminal  
20 background investigation. A guardian may use any inkless  
21 electronic fingerprinting equipment used for criminal  
22 background investigations of public employees. The guardian  
23 shall pay the actual costs incurred by the Federal Bureau of  
24 Investigation or the Department of Law Enforcement for the  
25 criminal background investigation. The agency that operates  
26 the equipment used by the guardian may charge the guardian an  
27 additional fee, not to exceed \$10, for the use of the  
28 equipment. The agency completing the investigation must  
29 immediately send the results of the criminal background  
30 investigation to the clerk of the court and the Statewide  
31 Public Guardianship Office. The clerk of the court shall

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1 maintain the results in the guardian's file and shall make the  
2 results available to the court; or

3 (b) A criminal background investigation using a  
4 fingerprint card. The clerk of the court shall obtain  
5 fingerprint cards from the Federal Bureau of Investigation and  
6 make them available to guardians. Any guardian who is so  
7 required shall have his or her fingerprints taken and forward  
8 the proper fingerprint card along with the necessary fee to  
9 the Florida Department of Law Enforcement for processing. ~~The~~  
10 ~~professional guardian shall pay to the clerk of the court a~~  
11 ~~fee of up to \$7.50 for handling and processing professional~~  
12 ~~guardian files.~~ The results of the fingerprint card background  
13 investigations ~~checks~~ shall be forwarded to the clerk of the  
14 court who shall maintain the results in the guardian's a  
15 guardian file and ~~shall~~ make the results available to the  
16 court and the Statewide Public Guardianship Office. ~~If credit~~  
17 ~~or criminal investigations are required, the court must~~  
18 ~~consider the results of the investigations before appointing a~~  
19 ~~guardian. Professional guardians and all employees of a~~  
20 ~~professional guardian who have a fiduciary responsibility to a~~  
21 ~~ward, so appointed, must resubmit, at their own expense, to an~~  
22 ~~investigation of credit history, and undergo level 1~~  
23 ~~background screening as required under s. 435.03, at least~~  
24 ~~every 2 years after the date of their appointment. At any~~  
25 ~~time, the court may require guardians or their employees to~~  
26 ~~submit to an investigation of credit history and undergo level~~  
27 ~~1 background screening as required under s. 435.03. The court~~  
28 ~~must consider the results of these investigations in~~  
29 ~~reappointing a guardian.~~

30 (3)(a) A professional guardian, and each employee of a  
31 professional guardian who has a fiduciary responsibility to a

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1 ward, must complete, at his or her own expense, a level 2  
 2 background screening as set forth in s. 435.04, before and at  
 3 least once every 5 years after the date the guardian is  
 4 appointed. A professional guardian, and each employee of a  
 5 professional guardian who has a fiduciary responsibility to a  
 6 ward, must complete, at his or her own expense, a level 1  
 7 background screening as set forth in s. 435.03, at least once  
 8 every 2 years after the date the guardian is appointed.  
 9 However, a person is not required to resubmit fingerprints for  
 10 a criminal background investigation if he or she has been  
 11 screened using inkless electronic fingerprinting equipment  
 12 that is capable of notifying the clerk of the court of any  
 13 crime charged against the person in the State of Florida or  
 14 elsewhere as appropriate.

15 (b) Effective December 15, 2005, all fingerprints  
 16 electronically submitted to the Department of Law Enforcement  
 17 under this section shall be retained by the Department of Law  
 18 Enforcement in a manner provided by rule and entered in the  
 19 statewide automated fingerprint identification system  
 20 authorized by s. 943.05(2)(b). The fingerprints shall  
 21 thereafter be available for all purposes and uses authorized  
 22 for arrest fingerprint cards entered in the statewide  
 23 automated fingerprint identification system under s. 943.051.

24 (c) Effective December 15, 2005, the Department of Law  
 25 Enforcement shall search all arrest fingerprint cards received  
 26 under s. 943.051 against the fingerprints retained in the  
 27 statewide automated fingerprint identification system under  
 28 paragraph (b). Any arrest record that is identified with the  
 29 fingerprints of a person described in this paragraph must be  
 30 reported as soon as possible to the clerk of court. The clerk  
 31 of court must forward any arrest record received for a

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1 professional guardian to the Statewide Public Guardianship  
2 Office within 5 days. Each guardian who elects to undergo an  
3 inkless electronic background investigation shall participate  
4 in this search process by paying an annual fee to the clerk of  
5 court and by informing the clerk of court of any change in the  
6 status of his or her guardianship appointment. The amount of  
7 the annual fee to be imposed upon each clerk of court for  
8 performing these searches and the procedures for the retention  
9 of guardian fingerprints and the dissemination of search  
10 results shall be established by rule of the Department of Law  
11 Enforcement. The fee may be borne by the clerk of court or the  
12 guardian, but may not exceed \$10.

13 (4)(a) A professional guardian, and each employee of a  
14 professional guardian who has a fiduciary responsibility to a  
15 ward, must complete, at the person's own expense, an  
16 investigation of the credit history of the person before and  
17 at least once every 2 years after the date of the guardian's  
18 appointment.

19 (b) The Statewide Public Guardianship Office shall  
20 adopt a rule detailing the acceptable methods for completing a  
21 credit investigation under this section. If appropriate, the  
22 Statewide Public Guardianship Office may administer credit  
23 investigations. If the office chooses to administer the credit  
24 investigation, the office may adopt a rule setting a fee, not  
25 to exceed \$25, to reimburse the costs associated with the  
26 administration of a credit investigation.

27 (5) The Statewide Public Guardianship Office may  
28 inspect at any time the results of any credit or criminal  
29 investigation of a public or professional guardian conducted  
30 under this section. The office shall maintain copies of the  
31 credit or criminal results in the guardian's registration

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1 file. If the results of a credit or criminal investigation of  
 2 a public or professional guardian have not been forwarded to  
 3 the Statewide Public Guardianship Office by the investigating  
 4 agency, the clerk of the court shall forward copies of the  
 5 results of the investigations to the office upon receiving  
 6 them.

7 ~~(1) Upon receiving the results of a credit or criminal~~  
 8 ~~investigation of any public or professional guardian, the~~  
 9 ~~clerk of the court shall forward copies of the results to the~~  
 10 ~~Statewide Public Guardianship Office in order that the results~~  
 11 ~~may be maintained in the guardian's registration file.~~

12 ~~(6)(2)~~ The requirements of this section do does not  
 13 apply to a professional guardian, or to the employees of a  
 14 professional guardian, which is a trust company, a state  
 15 banking corporation or state savings association authorized  
 16 and qualified to exercise fiduciary powers in this state, or a  
 17 national banking association or federal savings and loan  
 18 association authorized and qualified to exercise fiduciary  
 19 powers in this state.

20 Section 9. Subsection (4) of section 744.3145, Florida  
 21 Statutes, is amended to read:

22 744.3145 Guardian education requirements.--

23 (4) Each person appointed by the court to be a  
 24 guardian must complete the required number of hours of  
 25 instruction and education within 4 months ~~1 year~~ after his or  
 26 her appointment as guardian. The instruction and education  
 27 must be completed through a course approved by the chief judge  
 28 of the circuit court and taught by a court-approved  
 29 organization. Court-approved organizations may include, but  
 30 are not limited to, community or junior colleges, guardianship  
 31 organizations, and the local bar association or The Florida

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1 Bar.

2 Section 10. Paragraph (i) of subsection (1) and  
3 subsection (2) of section 744.3215, Florida Statutes, are  
4 amended to read:

5 744.3215 Rights of persons determined incapacitated.--

6 (1) A person who has been determined to be  
7 incapacitated retains the right:

8 (i) To receive necessary services and rehabilitation  
9 necessary to maximize the quality of life.

10 (2) Rights that may be removed from a person by an  
11 order determining incapacity but not delegated to a guardian  
12 include the right:

13 (a) To marry. If the right to enter into a contract  
14 has been removed, the right to marry is subject to court  
15 approval.

16 (b) To vote.

17 (c) To personally apply for government benefits.

18 (d) To have a driver's license.

19 (e) To travel.

20 (f) To seek or retain employment.

21 Section 11. Subsections (2), (3), and (7) of section  
22 744.331, Florida Statutes, are amended to read:

23 744.331 Procedures to determine incapacity.--

24 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

25 (a) When a court appoints an attorney for an alleged  
26 incapacitated person, the court must appoint an attorney who  
27 is included in the attorney registry compiled by the circuit's  
28 Article V indigent services committee. Appointments must be  
29 made on a rotating basis, taking into consideration conflicts  
30 arising under this chapter.

31 (b)~~(a)~~ The court shall appoint an attorney for each

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1 person alleged to be incapacitated in all cases involving a  
2 petition for adjudication of incapacity. The alleged  
3 incapacitated person may substitute her or his own attorney  
4 for the attorney appointed by the court, subject to court  
5 approval.

6 ~~(c)(b)~~ Any attorney representing an alleged  
7 incapacitated person may not serve as guardian of the alleged  
8 incapacitated person or as counsel for the guardian of the  
9 alleged incapacitated person or the petitioner.

10 (d) Effective January 1, 2006, an attorney seeking to  
11 be appointed by a court for incapacity and guardianship  
12 proceedings must have completed a minimum of 8 hours of  
13 education in guardianship. A court may waive the initial  
14 training requirement for an attorney who has served as a  
15 court-appointed attorney in incapacity proceedings or as an  
16 attorney of record for guardians for not less than 3 years.

17 (3) EXAMINING COMMITTEE.--

18 (a) Within 5 days after a petition for determination  
19 of incapacity has been filed, the court shall appoint an  
20 examining committee consisting of three members. One member  
21 must be a psychiatrist or other physician. The remaining  
22 members must be either a psychologist, gerontologist, another  
23 psychiatrist, or other physician, a registered nurse, nurse  
24 practitioner, licensed social worker, a person with an  
25 advanced degree in gerontology from an accredited institution  
26 of higher education, or other person who by knowledge, skill,  
27 experience, training, or education may, in the court's  
28 discretion, advise the court in the form of an expert opinion,  
29 including a professional guardian. One of three members of the  
30 committee must have knowledge of the type of incapacity  
31 alleged in the petition. Unless good cause is shown, the

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1 attending or family physician may not be appointed to the  
2 committee. If the attending or family physician is available  
3 for consultation, the committee must consult with the  
4 physician. Members of the examining committee may not be  
5 related to or associated with one another, ~~or~~ with the  
6 petitioner, with counsel for the petitioner or the proposed  
7 guardian, or the person alleged to be totally or partially  
8 incapacitated. A member may not be employed by any private or  
9 governmental agency that has custody of, or furnishes,  
10 services or subsidies, directly or indirectly, to the person  
11 or the family of the person alleged to be incapacitated or for  
12 whom a guardianship is sought. A petitioner may not serve as  
13 a member of the examining committee. Members of the examining  
14 committee must be able to communicate, either directly or  
15 through an interpreter, in the language that the alleged  
16 incapacitated person speaks or to communicate in a medium  
17 understandable to the alleged incapacitated person if she or  
18 he is able to communicate. The clerk of the court shall send  
19 notice of the appointment to each person appointed no later  
20 than 3 days after the court's appointment.

21 (b) A person who has been appointed to serve as a  
22 member of an examining committee to examine an alleged  
23 incapacitated person may not thereafter be appointed as a  
24 guardian for the person who was the subject of the  
25 examination.

26 (c) Each person appointed to an examining committee  
27 must file an affidavit with the court stating that he or she  
28 has completed the required courses or will do so no later than  
29 4 months after his or her initial appointment. Each year, the  
30 chief judge of the circuit must prepare a list of persons  
31 qualified to be members of the examining committee.

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1           (d) A member of an examining committee must complete a  
 2 minimum of 4 hours of initial training. The person must  
 3 complete 2 hours of continuing education during each 2-year  
 4 period after the initial training. The initial training and  
 5 continuing education program must be developed under the  
 6 supervision of the Statewide Public Guardianship Office, in  
 7 consultation with the Florida Conference of Circuit Court  
 8 Judges, the Elder Law and Real Property, Probate and Trust Law  
 9 sections of The Florida Bar, the Florida State Guardianship  
 10 Association, and the Florida Guardianship Foundation. The  
 11 court may waive the initial training requirement for a person  
 12 who has served for not less than 5 years on examining  
 13 committees. If a person wishes to obtain his or her continuing  
 14 education on the Internet or by watching a video course, the  
 15 person must first obtain the approval of the chief judge  
 16 before taking an Internet or video course.

17           (e)(b) Each member of the examining committee shall  
 18 examine the person. ~~Each~~ ~~The~~ examining committee member must  
 19 ~~shall~~ determine the alleged incapacitated person's ability to  
 20 exercise those rights specified in s. 744.3215. In addition to  
 21 the examination, each ~~the~~ examining committee member must  
 22 ~~shall~~ have access to, and may consider, previous examinations  
 23 of the person, including, but not limited to, habilitation  
 24 plans, school records, and psychological and psychosocial  
 25 reports voluntarily offered for use by the alleged  
 26 incapacitated person. Each member of the examining committee  
 27 must ~~shall~~ submit a report within 15 days after appointment.

28           (f)(c) The examination of the alleged incapacitated  
 29 person must include a comprehensive examination, a report of  
 30 which shall be filed by the examining committee as part of its  
 31 written report. The comprehensive examination report should be

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1 an essential element, but not necessarily the only element,  
2 used in making a capacity and guardianship decision. The  
3 comprehensive examination must include, if indicated:

- 4 1. A physical examination;
- 5 2. A mental health examination; and
- 6 3. A functional assessment.

7  
8 If any of these three aspects of the examination is not  
9 indicated or cannot be accomplished for any reason, the  
10 written report must explain the reasons for its omission.

11 ~~(g)(d)~~ The committee's written report must include:

12 1. To the extent possible, a diagnosis, prognosis, and  
13 recommended course of treatment.

14 2. An evaluation of the alleged incapacitated person's  
15 ability to retain her or his rights, including, without  
16 limitation, the rights to marry; vote; contract; manage or  
17 dispose of property; have a driver's license; determine her or  
18 his residence; consent to medical treatment; and make  
19 decisions affecting her or his social environment.

20 3. The results of the comprehensive examination and  
21 the committee members' assessment of information provided by  
22 the attending or family physician, if any.

23 4. A description of any matters with respect to which  
24 the person lacks the capacity to exercise rights, the extent  
25 of that incapacity, and the factual basis for the  
26 determination that the person lacks that capacity.

27 5. The names of all persons present during the time  
28 the committee member conducted his or her examination. If a  
29 person other than the person who is the subject of the  
30 examination supplies answers posed to the alleged  
31 incapacitated person, the report must include the response and

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1 the name of the person supplying the answer.

2 6.5. The signature of each member of the committee and  
3 the date and time each member conducted his or her  
4 examination.

5 (h)(e) A copy of the report must be served on the  
6 petitioner and on the attorney for the alleged incapacitated  
7 person within 3 days after the report is filed and at least 5  
8 days before the hearing on the petition.

9 (7) FEES.--

10 (a) The examining committee and any attorney appointed  
11 under subsection (2) are entitled to reasonable fees to be  
12 determined by the court.

13 (b) The fees awarded under paragraph (a) shall be paid  
14 by the guardian from the property of the ward or, if the ward  
15 is indigent, by the state. The state shall have a creditor's  
16 claim against the guardianship property for any amounts paid  
17 under this section. The state may file its claim within 90  
18 days after the entry of an order awarding attorney ad litem  
19 fees. If the state does not file its claim within the 90-day  
20 period, the state is thereafter barred from asserting the  
21 claim. Upon petition by the state for payment of the claim,  
22 the court shall enter an order authorizing immediate payment  
23 out of the property of the ward. The state shall keep a record  
24 of the such payments.

25 (c) If the petition is dismissed, costs and attorney's  
26 fees of the proceeding may be assessed against the petitioner  
27 if the court finds the petition to have been filed in bad  
28 faith.

29 Section 12. Present subsection (4) of section 744.341,  
30 Florida Statutes, is redesignated as subsection (5) and  
31 amended, and a new subsection (4) is added to that section, to

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1 read:

2 744.341 Voluntary guardianship.--

3 (4) A guardian must include in the annual report filed  
4 with the court a certificate from a licensed physician who  
5 examined the ward not more than 90 days before the annual  
6 report is filed with the court. The certificate must certify  
7 that the ward is competent to understand the nature of the  
8 guardianship and of the ward's authority to delegate powers to  
9 the voluntary guardian.

10 (5)(4) A voluntary guardianship may be terminated by  
11 the ward by filing a notice with the court that the voluntary  
12 guardianship is terminated. The notice must be accompanied by  
13 a certificate from a licensed physician who has examined the  
14 ward not more than 30 days before the ward filed the notice  
15 with the court. The physician must certify that the ward is  
16 competent to understand the implications of terminating the  
17 guardianship. A copy of the notice and certificate must be  
18 served on all interested persons.

19 Section 13. Subsection (9) is added to section  
20 774.361, Florida Statutes, to read:

21 744.361 Powers and duties of guardian.--

22 (9) A professional guardian must ensure that each of  
23 the guardian's wards is personally visited by the guardian or  
24 one of the guardian's professional staff at least once each  
25 calendar quarter. During the personal visit, the guardian or  
26 the guardian's professional staff person shall assess:

27 (a) The ward's physical appearance and condition;

28 (b) The appropriateness of the ward's current living  
29 situation; and

30 (c) The need for any additional services and the  
31 necessity for continuation of existing services, taking into

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1 consideration all aspects of social, psychological,  
2 educational, direct service, health, and personal care needs.

3  
4 This subsection does not apply to a professional guardian who  
5 has been appointed only as guardian of the property.

6 Section 14. Subsection (2) of section 744.365, Florida  
7 Statutes, is amended to read:

8 744.365 Verified inventory.--

9 (2) CONTENTS.--The verified inventory must include the  
10 following:

11 (a) All property of the ward, real and personal, that  
12 has come into the guardian's possession or knowledge,  
13 including a statement of all encumbrances, liens, and other  
14 secured claims on any item, any claims against the property,  
15 and any cause of action accruing to the ward and any trusts of  
16 which the ward is a beneficiary;

17 (b) The location of the real and personal property in  
18 sufficient detail so that it may be clearly identified or  
19 located; and

20 (c) A description of all sources of income, including,  
21 without limitation, social security benefits and pensions.

22 Section 15. Subsections (1) and (3) of section  
23 744.367, Florida Statutes, are amended to read:

24 744.367 Duty to file annual guardianship report.--

25 (1) Unless the court requires filing on a  
26 calendar-year basis, each guardian of the person shall file  
27 with the court an annual guardianship plan within 90 days  
28 after the last day of the anniversary month the letters of  
29 guardianship were signed, and the plan must cover the coming  
30 fiscal year, ending on the last day in such anniversary month.

31 If the court requires calendar-year filing, the guardianship

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1 plan must be filed on or before April 1 of each year ~~within 90~~  
2 ~~days after the end of the calendar year.~~

3 (3) The annual guardianship report of a guardian of  
4 the property must consist of an annual accounting, and the  
5 annual report of a guardian of the person ~~of an incapacitated~~  
6 ~~person~~ must consist of an annual guardianship plan. The annual  
7 report shall be served on the ward, unless the ward is a minor  
8 ~~under the age of 14 years~~ or is totally incapacitated, and on  
9 the attorney for the ward, if any. The guardian shall provide  
10 a copy to any other person as the court may direct.

11 Section 16. Section 744.3675, Florida Statutes, is  
12 amended to read:

13 744.3675 Annual guardianship plan.--Each guardian of  
14 the person must file with the court an annual guardianship  
15 plan which updates information about the condition of the  
16 ward. The annual plan must specify the current needs of the  
17 ward and how those needs are proposed to be met in the coming  
18 year.

19 (1) Each plan for an adult ward must, if applicable,  
20 include:

21 (a) Information concerning the residence of the ward,  
22 including:

- 23 1. The ward's address at the time of filing the plan;
- 24 2. The name and address of each place where the ward
- 25 was maintained during the preceding year;
- 26 3. The length of stay of the ward at each place;
- 27 4. A statement of whether the current residential
- 28 setting is best suited for the current needs of the ward; and
- 29 5. Plans for ensuring during the coming year that the
- 30 ward is in the best residential setting to meet his or her
- 31 needs.

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1 (b) Information concerning the medical and mental  
2 health conditions ~~condition~~ and treatment and rehabilitation  
3 needs of the ward, including:

4 1. A resume of any professional medical treatment  
5 given to the ward during the preceding year;

6 2. The report of a physician who examined the ward no  
7 more than 90 days before the beginning of the applicable  
8 reporting period. ~~The~~ ~~Such~~ report must contain an evaluation  
9 of the ward's condition and a statement of the current level  
10 of capacity of the ward; and

11 3. The plan for providing ~~provision of~~ medical, mental  
12 health, and rehabilitative services in the coming year.

13 (c) Information concerning the social condition of the  
14 ward, including:

15 1. The social and personal services currently used  
16 ~~utilized~~ by the ward;

17 2. The social skills of the ward, including a  
18 statement of how well the ward communicates and maintains  
19 interpersonal relationships with others; and

20 ~~3. A description of the ward's activities at~~  
21 ~~communication and visitation; and~~

22 ~~3.4.~~ The social needs of the ward.

23 (2) Each plan filed by the legal guardian of a minor  
24 must include:

25 (a) Information concerning the residence of the minor,  
26 including:

27 1. The minor's address at the time of filing the plan;  
28 and

29 2. The name and address of each place where the minor  
30 lived during the preceding year.

31 (b) Information concerning the medical and mental

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1 health conditions and treatment and rehabilitation needs of  
2 the minor, including:

3 1. A resume of any professional medical treatment  
4 given to the minor during the preceding year;

5 2. A report from the physician who examined the minor  
6 no more than 180 days before the beginning of the applicable  
7 reporting period which contains an evaluation of the minor's  
8 physical and mental conditions; and

9 3. The plan for providing medical services in the  
10 coming year.

11 (c) Information concerning the education of the minor,  
12 including:

13 1. A summary of the school progress report;

14 2. The social development of the minor, including a  
15 statement of how well the minor communicates and maintains  
16 interpersonal relationships with others; and

17 3. The social needs of the minor.

18 ~~(3)(2)~~ Each plan for an adult ward must address the  
19 issue of restoration of rights to the ward and include:

20 (a) A summary of activities during the preceding year  
21 which were designed to enhance ~~increase~~ the capacity of the  
22 ward;

23 (b) A statement of whether the ward can have any  
24 rights restored; and

25 (c) A statement of whether restoration of any rights  
26 will be sought.

27 ~~(4)(3)~~ The court, in its discretion, may require  
28 reexamination of the ward by a physician at any time.

29 Section 17. Subsections (2) and (3) of section  
30 744.3678, Florida Statutes, are amended to read:

31 744.3678 Annual accounting.--

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1 (2) The annual accounting must include:

2 (a) A full and correct account of the receipts and  
3 disbursements of all of the ward's property over which the  
4 guardian has control and a statement of the ward's property on  
5 hand at the end of the accounting period. This paragraph does  
6 not apply to any property under the control of the guardian,  
7 including any trust of which the ward is a beneficiary but  
8 which is not under the control or administration of the  
9 guardian.

10 (b) A copy of the annual or year-end statement of all  
11 of the ward's cash accounts from each of the institutions  
12 where the cash is deposited.

13 (3) The guardian must obtain a receipt, ~~or~~ canceled  
14 check, or other proof of payment for all expenditures and  
15 disbursements made on behalf of the ward. The guardian must  
16 preserve all evidence of payment ~~the receipts and canceled~~  
17 ~~checks~~, along with other substantiating papers, for a period  
18 of 3 years after his or her discharge. The receipts, proof of  
19 payment ~~checks~~, and substantiating papers need not be filed  
20 with the court but shall be made available for inspection and  
21 review at the ~~such~~ time and ~~in such~~ place and before such  
22 persons as the court may ~~from time to time~~ order.

23 Section 18. Section 744.3679, Florida Statutes, is  
24 amended to read:

25 744.3679 Simplified accounting procedures in certain  
26 cases.--

27 (1) In a guardianship of property, when all assets of  
28 the estate are in designated depositories under s. 69.031 and  
29 the only transactions that occur in that account are interest  
30 accrual, deposits from a ~~pursuant to~~ settlement, or financial  
31 institution service charges, the guardian may elect to file an

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1 accounting consisting of:

2 (a) The original or a certified copy of the year-end  
3 statement of the ward's account from the financial  
4 institution; and

5 (b) A statement by the guardian under penalty of  
6 perjury that the guardian has custody and control of the  
7 ward's property as shown in the year-end statement.

8 ~~(2) The clerk has no responsibility to monitor or~~  
9 ~~audit the accounts and may not accept a fee for doing so.~~

10 ~~(2)(3)~~ The accounting allowed by subsection (1) is in  
11 lieu of the accounting and auditing procedures under s.  
12 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any  
13 interested party may seek judicial review as provided in s.  
14 744.3685.

15 ~~(3)(4)~~ The guardian need not be represented by an  
16 attorney in order to file the annual accounting allowed by  
17 subsection (1).

18 Section 19. Subsection (3) of section 744.368, Florida  
19 Statutes, is amended to read:

20 744.368 Responsibilities of the clerk of the circuit  
21 court.--

22 (3) Within 90 days after the filing of the verified  
23 inventory and accountings ~~initial or annual guardianship~~  
24 ~~report~~ by a guardian of the property, the clerk shall audit  
25 the verified inventory and ~~or~~ the accountings ~~annual~~  
26 ~~accounting~~. The clerk shall advise the court of the results of  
27 the audit.

28 Section 20. Subsection (19) of section 744.441,  
29 Florida Statutes, is amended to read:

30 744.441 Powers of guardian upon court approval.--After  
31 obtaining approval of the court pursuant to a petition for

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1 authorization to act, a plenary guardian of the property, or a  
2 limited guardian of the property within the powers granted by  
3 the order appointing the guardian or an approved annual or  
4 amended guardianship report, may:

5 (19) Create or amend revocable or irrevocable trusts  
6 of property of the ward's estate which may extend beyond the  
7 disability or life of the ward in connection with estate,  
8 gift, income, or other tax planning or in connection with  
9 estate planning. The court shall retain oversight of the  
10 assets transferred to a trust, unless otherwise ordered by the  
11 court.

12 Section 21. Section 744.442, Florida Statutes, is  
13 created to read:

14 744.442 Delegation of authority.--

15 (1) A guardian may designate a surrogate guardian to  
16 exercise the powers of the guardian if the guardian is  
17 unavailable to act. A person designated as a surrogate  
18 guardian under this section must be a professional guardian.

19 (2)(a) A guardian must file a petition with the court  
20 requesting permission to designate a surrogate guardian.

21 (b) If the court approves the designation, the order  
22 must specify the name and business address of the surrogate  
23 guardian, and the duration of appointment, which may not  
24 exceed 30 days. The court may extend the appointment for good  
25 cause shown. The surrogate guardian may exercise all powers of  
26 the guardian unless limited by order of the court. The  
27 surrogate guardian must file with the court an oath swearing  
28 or affirming that he or she will faithfully perform the duties  
29 delegated. The court may require the surrogate guardian to  
30 post a bond.

31 (3) This section does not limit the responsibility of

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1 the guardian to the ward and to the court. The guardian is  
 2 liable for the acts of the surrogate guardian. The guardian  
 3 may terminate the authority of the surrogate guardian by  
 4 filing a written notice of the termination with the court.

5 (4) The surrogate guardian is subject to the  
 6 jurisdiction of the court as if appointed to serve as  
 7 guardian.

8 Section 22. Paragraphs (c), (e), and (f) of subsection  
 9 (2) and subsection (4) of section 744.464, Florida Statutes,  
 10 are amended to read:

11 744.464 Restoration to capacity.--

12 (2) SUGGESTION OF CAPACITY.--

13 (c) The court shall immediately send notice of the  
 14 filing of the suggestion of capacity to the ward, the  
 15 guardian, the attorney for the ward, if any, ~~the state~~  
 16 ~~attorney~~, and any other interested persons designated by the  
 17 court. Formal notice must be served on the guardian.  
 18 Informal notice may be served on other persons. Notice need  
 19 not be served on the person who filed the suggestion of  
 20 capacity.

21 (e) If an objection is timely filed, or if the medical  
 22 examination suggests that full restoration is not appropriate,  
 23 the court shall set the matter for hearing. If the ward does  
 24 not have an attorney, the court shall appoint one to represent  
 25 the ward.

26 (f) Notice of the hearing and copies of the objections  
 27 and medical examination reports shall be served upon the ward,  
 28 the ward's attorney, the guardian, ~~the state attorney~~, the  
 29 ward's next of kin, and any other interested persons as  
 30 directed by the court.

31 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~

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1 ~~CAPACITY.--Notwithstanding this section, a suggestion of~~  
 2 ~~capacity may not be filed within 90 days after an adjudication~~  
 3 ~~of incapacity or denial of restoration, unless good cause is~~  
 4 ~~shown.~~

5 Section 23. Subsection (19) of section 744.474,  
 6 Florida Statutes, is amended to read:

7 744.474 Reasons for removal of guardian.--A guardian  
 8 may be removed for any of the following reasons, and the  
 9 removal shall be in addition to any other penalties prescribed  
 10 by law:

11 (19) Upon a showing by a person who did not receive  
 12 notice of the petition for adjudication of incapacity, when  
 13 such notice is required, or who is related to the ward within  
 14 the relationships specified for nonresident relatives in ss.  
 15 744.309(2) and 744.312(2) and who has not previously been  
 16 rejected by the court as a guardian that+

17 ~~(a)~~ the current guardian is not a family member+ and  
 18 subsection (20) applies.

19 ~~(20)(b)~~ Removal of the current guardian is in the best  
 20 interest of the ward.7 The court may remove the current  
 21 guardian and appoint the petitioner, or such person as the  
 22 court deems in the best interest of the ward, either as  
 23 guardian of the person or of the property, or both.

24 Section 24. Section 744.511, Florida Statutes, is  
 25 amended to read:

26 744.511 Accounting upon removal.--A removed guardian  
 27 shall file with the court a true, complete, and final report  
 28 of his or her guardianship within 20 days after removal and  
 29 shall serve a copy on the successor guardian and the ward,  
 30 unless the ward is a minor ~~under 14 years of age~~ or has been  
 31 determined to be totally incapacitated.

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1 Section 25. Section 744.527, Florida Statutes, is  
2 amended to read:

3 744.527 Final reports and application for discharge;  
4 hearing.--

5 (1) When the court terminates the guardianship,  
6 according to the reasons set forth in s. 744.521 the guardian  
7 shall promptly file his or her final report. If the ward has  
8 died, the guardian must file a final report with the court no  
9 later than 45 days after he or she has been served with  
10 letters of administration or letters of curatorship. If no  
11 objections are filed and if it appears that the guardian has  
12 made full and complete distribution to the person entitled and  
13 has otherwise faithfully discharged his or her duties, the  
14 court shall approve the final report. If objections are  
15 filed, the court shall conduct a hearing in the same manner as  
16 provided for a hearing on objections to annual guardianship  
17 reports.

18 (2) The guardian applying for discharge may is  
19 ~~authorized to~~ retain from the funds in his or her possession a  
20 sufficient amount to pay the final costs of administration,  
21 including guardian and attorney's fees regardless of the death  
22 of the ward, accruing between the filing of his or her final  
23 returns and the order of discharge.

24 Section 26. Subsection (3) of section 744.528, Florida  
25 Statutes, is amended to read:

26 744.528 Discharge of guardian named as personal  
27 representative.--

28 (3) Any interested person may file a notice of ~~The~~  
29 ~~court shall set~~ a hearing on any objections filed by the  
30 beneficiaries. Notice of the hearing must ~~shall~~ be served upon  
31 the guardian, beneficiaries of the ward's estate, and any

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1 other person to whom the court directs service. If a notice of  
2 hearing on the objections is not served within 90 days after  
3 filing of the objections, the objections are deemed abandoned.

4 Section 27. Subsection (6) of section 744.708, Florida  
5 Statutes, is amended to read:

6 744.708 Reports and standards.--

7 (6) A ~~The~~ public guardian shall ensure that each of  
8 the guardian's wards is personally visited ~~ward is seen~~ by the  
9 public guardian or by a professional staff person of the  
10 public guardian at least once each calendar quarter ~~four times~~  
11 ~~a year~~. During this personal visit, the public guardian or the  
12 professional staff person shall assess:

13 (a) The ward's physical appearance and condition;

14 (b) The appropriateness of the ward's current living  
15 situation; and

16 (c) The need for any additional services and the  
17 necessity for continuation of existing services, taking into  
18 consideration all aspects of social, psychological,  
19 educational, direct service, health, and personal care needs.

20 Section 28. Paragraph (a) of subsection (5) of section  
21 765.101, Florida Statutes, is amended to read:

22 765.101 Definitions.--As used in this chapter:

23 (5) "Health care decision" means:

24 (a) Informed consent, refusal of consent, or  
25 withdrawal of consent to any and all health care, including  
26 life-prolonging procedures and mental health treatment, unless  
27 otherwise stated in the advance directives.

28 Section 29. Section 28.345, Florida Statutes, is  
29 amended to read:

30 28.345 Exemption from court-related fees and  
31 charges.--~~Notwithstanding any other provision of this chapter~~

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1 ~~or~~ law to the contrary, judges, state attorneys, guardians ad  
 2 litem, public guardians, and public defenders, acting in their  
 3 official capacity, and state agencies, are exempt from all  
 4 court-related fees and charges assessed by the clerks of the  
 5 circuit courts.

6 Section 30. Paragraph (c) of subsection (8) of section  
 7 121.091, Florida Statutes, is amended to read:

8 121.091 Benefits payable under the system.--Benefits  
 9 may not be paid under this section unless the member has  
 10 terminated employment as provided in s. 121.021(39)(a) or  
 11 begun participation in the Deferred Retirement Option Program  
 12 as provided in subsection (13), and a proper application has  
 13 been filed in the manner prescribed by the department. The  
 14 department may cancel an application for retirement benefits  
 15 when the member or beneficiary fails to timely provide the  
 16 information and documents required by this chapter and the  
 17 department's rules. The department shall adopt rules  
 18 establishing procedures for application for retirement  
 19 benefits and for the cancellation of such application when the  
 20 required information or documents are not received.

21 (8) DESIGNATION OF BENEFICIARIES.--

22 (c) Notwithstanding the member's designation of  
 23 benefits to be paid through a trust to a beneficiary that is a  
 24 natural person as provided in s. 121.021(46), and  
 25 notwithstanding the provisions of the trust, benefits shall be  
 26 paid directly to the beneficiary if the ~~such~~ person is no  
 27 longer a minor or incapacitated as defined in s. 744.102(12)  
 28 and (13) ~~s. 744.102(11) and (12)~~.

29 Section 31. Subsection (1) of section 709.08, Florida  
 30 Statutes, is amended to read:

31 709.08 Durable power of attorney.--

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1           (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable  
2 power of attorney is a written power of attorney by which a  
3 principal designates another as the principal's attorney in  
4 fact. The durable power of attorney must be in writing, must  
5 be executed with the same formalities required for the  
6 conveyance of real property by Florida law, and must contain  
7 the words: "This durable power of attorney is not affected by  
8 subsequent incapacity of the principal except as provided in  
9 s. 709.08, Florida Statutes"; or similar words that show the  
10 principal's intent that the authority conferred is exercisable  
11 notwithstanding the principal's subsequent incapacity, except  
12 as otherwise provided by this section. The durable power of  
13 attorney is exercisable as of the date of execution; however,  
14 if the durable power of attorney is conditioned upon the  
15 principal's lack of capacity to manage property as defined in  
16 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of  
17 attorney is exercisable upon the delivery of affidavits in  
18 paragraphs (4)(c) and (d) to the third party.

19           Section 32. Subsection (3) of section 744.1085,  
20 Florida Statutes, is amended to read:

21           744.1085 Regulation of professional guardians;  
22 application; bond required; educational requirements.--

23           (3) Each professional guardian defined in s.  
24 744.102(17) ~~s. 744.102(16)~~ and public guardian must receive a  
25 minimum of 40 hours of instruction and training. Each  
26 professional guardian must receive a minimum of 16 hours of  
27 continuing education every 2 calendar years after the year in  
28 which the initial 40-hour educational requirement is met. The  
29 instruction and education must be completed through a course  
30 approved or offered by the Statewide Public Guardianship  
31 Office. The expenses incurred to satisfy the educational

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1 requirements prescribed in this section may not be paid with  
2 the assets of any ward. This subsection does not apply to any  
3 attorney who is licensed to practice law in this state.

4 Section 33. For the purpose of incorporating the  
5 amendment made by this act to section 744.3215, Florida  
6 Statutes, in a reference thereto, subsection (4) of section  
7 117.107, Florida Statutes, is reenacted to read:

8 117.107 Prohibited acts.--

9 (4) A notary public may not take the acknowledgment of  
10 or administer an oath to a person whom the notary public  
11 actually knows to have been adjudicated mentally incapacitated  
12 by a court of competent jurisdiction, where the acknowledgment  
13 or oath necessitates the exercise of a right that has been  
14 removed pursuant to s. 744.3215(2) or (3), and where the  
15 person has not been restored to capacity as a matter of  
16 record.

17 Section 34. This act shall take effect July 1, 2005.

18  
19

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

21 And the title is amended as follows:

22 Delete everything before the enacting clause

23

24 and insert:

25 A bill to be entitled  
26 An act relating to guardianship; amending s.  
27 744.102, F.S.; defining the terms "audit" and  
28 "surrogate guardian"; amending s. 744.1083,  
29 F.S.; authorizing revocation or suspension of a  
30 guardian's registration; providing that the  
31 Statewide Public Guardianship Office need not

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1 review credit and criminal investigations from  
2 a college or university before registering the  
3 institution as a professional guardian;  
4 amending s. 744.301, F.S.; providing that in  
5 the event of death, the surviving parent is the  
6 sole natural guardian of a minor; prohibiting a  
7 natural guardian from using the property of the  
8 ward for the guardian's benefit without a court  
9 order; creating s. 744.3025, F.S.; authorizing  
10 a court to appoint a guardian ad litem to  
11 represent a minor's interest in certain claims  
12 that exceed a specified amount; requiring a  
13 court to appoint a guardian ad litem to  
14 represent a minor's interest in certain claims  
15 that exceed a specified amount; providing that  
16 a court need not appoint a guardian ad litem  
17 under certain circumstances; requiring a court  
18 to award reasonable fees and costs to the  
19 guardian ad litem; amending s. 744.3031, F.S.;  
20 increasing the time an emergency temporary  
21 guardian may serve to 90 days; authorizing an  
22 extension; requiring an emergency temporary  
23 guardian to file a final report; providing for  
24 the contents of the final report; amending s.  
25 744.304, F.S.; specifying the persons who may  
26 file a petition for a standby guardian;  
27 requiring that notice of the appointment  
28 hearing be served on the ward's next of kin;  
29 clarifying when a standby guardian may assume  
30 the duties of guardian; requiring that each  
31 standby guardian submit to credit and criminal

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1 background checks; amending s. 744.3115, F.S.;

2 providing a cross-reference; amending s.

3 744.3135, F.S.; providing procedures for

4 completing a guardians' criminal background

5 investigation; authorizing a guardian to use

6 inkless electronic fingerprinting equipment

7 that is available for background investigations

8 of public employees; providing that a guardian

9 need not be rescreened if he or she uses

10 certain inkless electronic fingerprinting

11 equipment; requiring the Department of Law

12 Enforcement to retain electronically submitted

13 fingerprints and to enter them into the

14 statewide automated fingerprint identification

15 system; requiring the department to search all

16 fingerprint cards received from each guardian

17 and each employee of such guardian against

18 fingerprints retained in the statewide

19 automated fingerprint identification system;

20 requiring a guardian to pay an annual fee to

21 the clerk of court for the background

22 investigation; requiring a guardian and each

23 employee of such guardian to complete an

24 investigation of his or her credit history;

25 requiring the Statewide Public Guardianship

26 Office to adopt a rule for credit

27 investigations of guardians; authorizing the

28 office to inspect the results of any criminal

29 or credit investigation; amending s. 744.3145,

30 F.S.; reducing the time in which a guardian

31 must complete the education courses from 1 year

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1 to 4 months; amending s. 744.3215, F.S.;

2 providing that an incapacitated person retains

3 the right to receive necessary services and

4 rehabilitation necessary to maximize the

5 quality of the person's life; amending s.

6 744.331, F.S.; requiring that the court appoint

7 an attorney from a specified registry;

8 requiring attorneys to complete certain

9 training programs; providing that a member of

10 the examining committee may not be related to

11 or associated with certain persons; prohibiting

12 a person who served on an examining committee

13 from being appointed as the guardian; requiring

14 each member of an examining committee to file

15 an affidavit stating that he or she has

16 completed the mandatory training; providing for

17 training programs; requiring each member to

18 report the time and date that he or she

19 examined the person alleged to be

20 incapacitated; providing for an award of

21 attorney's fees; amending s. 744.341, F.S.;

22 requiring the voluntary guardian to include

23 certain information in the annual report;

24 requiring that certain specified information be

25 included in the notice to terminate a voluntary

26 guardianship; amending s. 744.361, F.S.;

27 requiring a professional guardian to ensure

28 that each of his or her wards is personally

29 visited at least quarterly; providing for the

30 assessment of certain conditions during the

31 personal visit; amending s. 744.365, F.S.;

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1 requiring that the verified inventory include  
2 information on any trust to which a ward is a  
3 beneficiary; amending s. 744.367, F.S.;  
4 requiring that the annual report of the  
5 guardian be filed on or before April 1 of each  
6 year; amending s. 744.3675, F.S.; requiring  
7 that the annual guardianship plan include  
8 information on the mental condition of the  
9 ward; providing for an annual guardianship plan  
10 for wards who are minors; amending s. 744.3678,  
11 F.S.; providing that property of the ward which  
12 is not under the control of the guardian,  
13 including certain trusts, is not subject to  
14 annual accounting; requiring certain  
15 documentation for the annual accounting;  
16 amending s. 744.3679, F.S.; removing a  
17 provision prohibiting the clerk of court from  
18 having responsibility for monitoring or  
19 auditing accounts in certain cases; amending s.  
20 744.368, F.S.; requiring that the verified  
21 inventory and the accountings be audited within  
22 a specified time period; amending s. 744.441,  
23 F.S.; requiring the court to retain oversight  
24 for assets of a ward transferred to a trust;  
25 creating s. 744.442, F.S.; providing that a  
26 guardian may designate a surrogate guardian to  
27 exercise the powers of the guardian if the  
28 guardian is unavailable to act; requiring the  
29 surrogate guardian to be a professional  
30 guardian; providing the procedures to be used  
31 in appointing a surrogate guardian; providing

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1 the duties of a surrogate guardian; requiring  
2 the guardian to be liable for the acts of the  
3 surrogate guardian; authorizing the guardian to  
4 terminate the services of the surrogate  
5 guardian by filing a written notice of the  
6 termination with the court; amending s.  
7 744.464, F.S.; removing the state attorney from  
8 the list of persons to be served a notice of a  
9 hearing on restoration of capacity; removing a  
10 time limitation on the filing of a suggestion  
11 of capacity; amending s. 744.474, F.S.;  
12 revising the circumstances under which a  
13 guardian may be removed; amending s. 744.511,  
14 F.S.; providing that a ward who is a minor need  
15 not be served with the final report of a  
16 removed guardian; amending s. 744.527, F.S.;  
17 providing that final reports for a deceased  
18 ward be filed at a specified time; amending s.  
19 744.528, F.S.; providing for a notice of the  
20 hearing for objections to a report filed by a  
21 guardian; amending s. 744.708, F.S.; requiring  
22 a public guardian to ensure that each of his or  
23 her wards is personally visited at least  
24 quarterly; providing for the assessment of  
25 certain conditions during the personal visit;  
26 amending s. 765.101, F.S.; redefining the term  
27 "health care decision" to include informed  
28 consent for mental health treatment services;  
29 amending s. 28.345, F.S.; exempting a public  
30 guardian from paying court-related fees and  
31 charges; amending ss. 121.091, 709.08, and

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1           744.1085, F.S.; conforming cross-references;  
2           reenacting s. 117.107(4), F.S., relating to  
3           prohibited acts of a notary public, to  
4           incorporate the amendment made to s. 744.3215,  
5           F.S., in a reference thereto; providing an  
6           effective date.

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