

CHAMBER ACTION

1 The Future of Florida's Families Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to guardianship; amending s. 744.102,
8 F.S.; defining the terms "audit" and "surrogate guardian";
9 amending s. 744.1083, F.S.; revising provisions relating
10 to identification information provided by professional
11 guardians for registration; providing that the Statewide
12 Public Guardianship Office need not review credit and
13 criminal investigations from a state college or university
14 before registering the institution as a professional
15 guardian; amending s. 744.301, F.S.; providing that in the
16 event of death, the surviving parent is the sole natural
17 guardian of a minor; prohibiting a natural guardian from
18 using the property of the ward for the guardian's benefit
19 without a court order; creating s. 744.3025, F.S.;
20 authorizing a court to appoint a guardian ad litem to
21 represent a minor's interest in certain claims that exceed
22 a specified amount; requiring a court to appoint a
23 guardian ad litem to represent a minor's interest in

HB 457

2006
CS

24 certain claims that exceed a specified amount; providing
25 that a court need not appoint a guardian ad litem under
26 certain circumstances; requiring a court to award
27 reasonable fees and costs to the guardian ad litem;
28 amending s. 744.3031, F.S.; increasing the time an
29 emergency temporary guardian may serve; increasing the
30 time of an extension; requiring an emergency temporary
31 guardian to file a final report; providing for the
32 contents of the final report; amending s. 744.304, F.S.;
33 specifying the persons who may file a petition for a
34 standby guardian; requiring that notice of the appointment
35 hearing be served on the ward's next of kin; clarifying
36 when a standby guardian may assume the duties of guardian;
37 requiring that each standby guardian submit to credit and
38 criminal background checks; amending s. 744.3115, F.S.;
39 defining the term "health care decision"; amending s.
40 744.3135, F.S.; providing procedures for completing a
41 guardian's criminal background investigation; authorizing
42 a guardian to use inkless electronic fingerprinting
43 equipment that is available for background investigations
44 of public employees; providing that a guardian need not be
45 rescreened if he or she uses certain inkless electronic
46 fingerprinting equipment; providing for fees; requiring
47 the Statewide Public Guardianship Office to adopt a rule
48 for credit investigations of guardians; amending s.
49 744.3145, F.S.; reducing the time in which a guardian must
50 complete the education courses; amending s. 744.3215,
51 F.S.; providing that an incapacitated person retains the

Page 2 of 53

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hb0457-01-c1

HB 457

2006
CS

52 | right to receive services and rehabilitation necessary to
53 | maximize the quality of the person's life; revising
54 | provisions relating to rights that may be removed from a
55 | person determined incapacitated; amending s. 744.331,
56 | F.S.; requiring that the court appoint an attorney for an
57 | alleged incapacitated person from a specified registry;
58 | requiring attorneys to complete certain training programs;
59 | providing that a member of the examining committee may not
60 | be related to or associated with certain persons;
61 | prohibiting a person who served on an examining committee
62 | from being appointed as the guardian; requiring each
63 | member of an examining committee to file an affidavit
64 | stating that he or she has completed or will timely
65 | complete the mandatory training; providing for training
66 | programs; requiring each member to report the time and
67 | date that he or she examined the person alleged to be
68 | incapacitated, the names of all persons present during the
69 | examination, and the response and name of each person
70 | supplying an answer posed to the examinee; providing for
71 | an award of attorney's fees; amending s. 744.341, F.S.;
72 | requiring the voluntary guardian to include certain
73 | information in the annual report; amending s. 744.361,
74 | F.S.; requiring a professional guardian to ensure that
75 | each of his or her wards is personally visited at least
76 | quarterly; providing for the assessment of certain
77 | conditions during the personal visit; providing an
78 | exemption; amending s. 744.365, F.S.; requiring that the
79 | verified inventory include information on any trust to

Page 3 of 53

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hb0457-01-c1

HB 457

2006
CS

80 | which a ward is a beneficiary; amending s. 744.367, F.S.;

81 | requiring that the annual report of the guardian filing on

82 | a calendar-year basis be filed on or before a specified

83 | date; exempting all minor wards from service of the annual

84 | report; amending s. 744.3675, F.S.; requiring that the

85 | annual guardianship plan include information on the mental

86 | condition of the ward; providing for an annual

87 | guardianship plan for wards who are minors; amending s.

88 | 744.3678, F.S.; providing that property of the ward which

89 | is not under the control of the guardian, including

90 | certain trusts, is not subject to annual accounting;

91 | requiring certain documentation for the annual accounting;

92 | amending s. 744.3679, F.S.; removing a provision

93 | prohibiting the clerk of the court from having

94 | responsibility for monitoring or auditing accounts in

95 | certain cases; amending s. 744.368, F.S.; requiring that

96 | the verified inventory and the accountings be audited

97 | within a specified time period; amending s. 744.441, F.S.;

98 | requiring the court to retain oversight for assets of a

99 | ward transferred to a trust; creating s. 744.442, F.S.;

100 | providing that a guardian may designate a surrogate

101 | guardian to exercise the powers of the guardian if the

102 | guardian is unavailable to act; requiring the surrogate

103 | guardian to be a professional guardian; providing the

104 | procedures to be used in appointing a surrogate guardian;

105 | providing the duties of a surrogate guardian; requiring

106 | the guardian to be liable for the acts of the surrogate

107 | guardian; authorizing the guardian to terminate the

HB 457

2006
CS

108 services of the surrogate guardian by filing a written
109 notice of the termination with the court; amending s.
110 744.464, F.S.; removing the state attorney from the list
111 of persons to be served a notice of a hearing on
112 restoration of capacity; removing a time limitation on the
113 filing of a suggestion of capacity; amending s. 744.474,
114 F.S.; revising provisions relating to removal of a
115 guardian who is not a family member; revising provisions
116 relating to removal of a guardian upon a showing that
117 removal of the current guardian is in the best interest of
118 the ward; amending s. 744.511, F.S.; providing that a ward
119 who is a minor need not be served with the final report of
120 a removed guardian; amending s. 744.527, F.S.; providing
121 that final reports for a deceased ward be filed at a
122 specified time; amending s. 744.528, F.S.; providing for a
123 notice of the hearing for objections to a report filed by
124 a guardian; amending s. 744.708, F.S.; revising provisions
125 relating to audits and investigations of each office of
126 public guardian; requiring a public guardian to ensure
127 that each of his or her wards is personally visited at
128 least quarterly; providing for the assessment of certain
129 conditions during the personal visit; providing for
130 additional distribution of a specified annual report;
131 deleting a definition; amending s. 765.101, F.S.;
132 redefining the term "health care decision" to include
133 informed consent for mental health treatment services;
134 amending s. 28.345, F.S.; revising provisions relating to
135 exemptions from paying court-related fees and charges;

Page 5 of 53

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hb0457-01-c1

HB 457

2006
CS

136 amending ss. 121.091, 121.4501, 709.08, and 744.1085,
 137 F.S.; conforming cross-references; reenacting s.
 138 117.107(4), F.S., relating to prohibited acts of a notary
 139 public, to incorporate the amendment made to s. 744.3215,
 140 F.S., in a reference thereto; amending s. 318.18, F.S.;
 141 authorizing a county to impose a surcharge on certain
 142 civil penalties to fund local participation in the public
 143 guardianship program; prescribing prerequisites for
 144 imposing the surcharge; providing a limit on the
 145 surcharge; creating s. 938.065, F.S.; requiring that a
 146 specified surcharge be assessed against all misdemeanor
 147 offenses; providing that the clerk of the court may retain
 148 a service charge; directing that the funds collected be
 149 used to fund public guardianship programs; providing an
 150 effective date.

151

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

153

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

156 744.102 Definitions.--As used in this chapter, the term:

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

HB 457

2006
CS

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

165 ~~(3)-(2)~~ "Clerk" means the clerk or deputy clerk of the
166 court.

167 ~~(4)-(3)~~ "Corporate guardian" means a corporation authorized
168 to exercise fiduciary or guardianship powers in this state and
169 includes a nonprofit corporate guardian.

170 ~~(5)-(4)~~ "Court" means the circuit court.

171 ~~(6)-(5)~~ "Court monitor" means a person appointed by the
172 court ~~under pursuant to~~ s. 744.107 to provide the court with
173 information concerning a ward.

174 ~~(7)-(6)~~ "Estate" means the property of a ward subject to
175 administration.

176 ~~(8)-(7)~~ "Foreign guardian" means a guardian appointed in
177 another state or country.

178 ~~(9)-(8)~~ "Guardian" means a person who has been appointed by
179 the court to act on behalf of a ward's person or property, or
180 both.

181 (a) "Limited guardian" means a guardian who has been
182 appointed by the court to exercise the legal rights and powers
183 specifically designated by court order entered after the court
184 has found that the ward lacks the capacity to do some, but not
185 all, of the tasks necessary to care for his or her person or
186 property, or after the person has voluntarily petitioned for
187 appointment of a limited guardian.

188 (b) "Plenary guardian" means a person who has been
189 appointed by the court to exercise all delegable legal rights

HB 457

2006
CS

190 and powers of the ward after the court has found that the ward
191 lacks the capacity to perform all of the tasks necessary to care
192 for his or her person or property.

193 (10)~~(9)~~ "Guardian ad litem" means a person who is
194 appointed by the court having jurisdiction of the guardianship
195 or a court in which a particular legal matter is pending to
196 represent a ward in that proceeding.

197 (11)~~(10)~~ "Guardian advocate" means a person appointed by a
198 written order of the court to represent a person with
199 developmental disabilities under s. 393.12. As used in this
200 chapter, the term does not apply to a guardian advocate
201 appointed for a person determined incompetent to consent to
202 treatment under s. 394.4598.

203 (12)~~(11)~~ "Incapacitated person" means a person who has
204 been judicially determined to lack the capacity to manage at
205 least some of the property or to meet at least some of the
206 essential health and safety requirements of the ~~such~~ person.

207 (a) To "manage property" means to take those actions
208 necessary to obtain, administer, and dispose of real and
209 personal property, intangible property, business property,
210 benefits, and income.

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

HB 457

2006
CS

216 (13)~~(12)~~ "Minor" means a person under 18 years of age
 217 whose disabilities have not been removed by marriage or
 218 otherwise.

219 (14)~~(13)~~ "Next of kin" means those persons who would be
 220 heirs at law of the ward or alleged incapacitated person if the
 221 ~~such~~ person were deceased and includes the lineal descendants of
 222 the ~~such~~ ward or alleged incapacitated person.

223 (15)~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
 224 corporation organized for religious or charitable purposes and
 225 existing under the laws of this state.

226 (16)~~(15)~~ "Preneed guardian" means a person named in a
 227 written declaration to serve as guardian in the event of the
 228 incapacity of the declarant as provided in s. 744.3045.

229 (17)~~(16)~~ "Professional guardian" means any guardian who
 230 ~~receives or has at any time received compensation for services~~
 231 rendered services to three or more ~~than two~~ wards as their
 232 guardian. A person serving as a guardian for two or more
 233 relatives as defined in s. 744.309(2) is not considered a
 234 professional guardian. A public guardian shall be considered a
 235 professional guardian for purposes of regulation, education, and
 236 registration.

237 (18)~~(17)~~ "Property" means both real and personal property
 238 or any interest in it and anything that may be the subject of
 239 ownership.

240 (19)~~(18)~~ "Standby guardian" means a person empowered to
 241 assume the duties of guardianship upon the death or adjudication
 242 of incapacity of the last surviving natural or appointed
 243 guardian.

HB 457

2006
CS

244 (20) "Surrogate guardian" means a guardian designated
245 according to s. 744.442.

246 ~~(21)-(19)~~ "Totally incapacitated" means incapable of
247 exercising any of the rights enumerated in s. 744.3215(2) and
248 (3).

249 ~~(22)-(20)~~ "Ward" means a person for whom a guardian has
250 been appointed.

251 Section 2. Subsections (3), (7), and (10) of section
252 744.1083, Florida Statutes, are amended to read:

253 744.1083 Professional guardian registration.--

254 (3) Registration must include the following:

255 (a) Sufficient information to identify the professional
256 guardian, as follows:

257 1. If the professional guardian is a natural person, the
258 name, address, date of birth, and employer identification or
259 social security number of the person ~~professional guardian.~~

260 ~~2.(b)~~ If the professional guardian is a partnership or
261 association, the name, address, and ~~date of birth of every~~
262 ~~member,~~ and the employer identification number of the entity
263 ~~partnership or association.~~

264 ~~(c) If the professional guardian is a corporation, the~~
265 ~~name, address, and employer identification number of the~~
266 ~~corporation; the name, address, and date of birth of each of its~~
267 ~~directors and officers; the name of its resident agent; and the~~
268 ~~name, address, and date of birth of each person having at least~~
269 ~~a 10 percent interest in the corporation.~~

270 ~~(d) The name, address, date of birth, and employer~~
271 ~~identification number, if applicable, of each person providing~~

HB 457

2006
CS

272 ~~guardian-delegated financial or personal guardianship services~~
273 ~~for wards.~~

274 (b)~~(e)~~ Documentation that the bonding and educational
275 requirements of s. 744.1085 have been met.

276 (c)~~(f)~~ Sufficient information to distinguish a guardian
277 providing guardianship services as a public guardian,
278 individually, through partnership, corporation, or any other
279 business organization.

280 (7) A trust company, a state banking corporation or state
281 savings association authorized and qualified to exercise
282 fiduciary powers in this state, or a national banking
283 association or federal savings and loan association authorized
284 and qualified to exercise fiduciary powers in this state, may,
285 but is not required to, register as a professional guardian
286 under this section. If a trust company, state banking
287 corporation, state savings association, national banking
288 association, or federal savings and loan association described
289 in this subsection elects to register as a professional guardian
290 under this subsection, the requirements of subsections (3) and
291 (4) do not apply and the registration must include only the
292 name, address, and employer identification number of the
293 registrant, the name and address of its registered agent, if
294 any, and the documentation described in paragraph (3)(b)~~(e)~~.

295 (10) A state college or university or an independent
296 college or university described in s. 1009.98(3)(a), may, but is
297 not required to, register as a professional guardian under this
298 section. If a state college or university or independent college
299 or university elects to register as a professional guardian

HB 457

2006
CS

300 | under this subsection, the requirements of subsections (3) and
 301 | (4) ~~subsection (3)~~ do not apply and the registration must
 302 | include only the name, address, and employer identification
 303 | number of the registrant.

304 | Section 3. Section 744.301, Florida Statutes, is amended
 305 | to read:

306 | 744.301 Natural guardians.--

307 | (1) The mother and father jointly are natural guardians of
 308 | their own children and of their adopted children, during
 309 | minority. If one parent dies, the surviving parent remains the
 310 | sole natural guardian even if he or she ~~the natural guardianship~~
 311 | ~~shall pass to the surviving parent, and the right shall continue~~
 312 | ~~even though the surviving parent remarries.~~ If the marriage
 313 | between the parents is dissolved, the natural guardianship
 314 | belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
 315 | child is awarded. If the parents are given joint custody, then
 316 | both ~~shall~~ continue as natural guardians. If the marriage is
 317 | dissolved and neither the father nor the mother is given custody
 318 | of the child, neither shall act as natural guardian of the
 319 | child. The mother of a child born out of wedlock is the natural
 320 | guardian of the child and is entitled to primary residential
 321 | care and custody of the child unless a court of competent
 322 | jurisdiction enters an order stating otherwise.

323 | (2) ~~The Natural guardian or~~ guardians are authorized, on
 324 | behalf of any of their minor children, to:

325 | (a) Settle and consummate a settlement of any claim or
 326 | cause of action accruing to any of their minor children for
 327 | damages to the person or property of any of said minor children;

HB 457

2006
CS

328 (b) Collect, receive, manage, and dispose of the proceeds
329 of any such settlement;

330 (c) Collect, receive, manage, and dispose of any real or
331 personal property distributed from an estate or trust;

332 (d) Collect, receive, manage, and dispose of and make
333 elections regarding the proceeds from a life insurance policy or
334 annuity contract payable to, or otherwise accruing to the
335 benefit of, the child; and

336 (e) Collect, receive, manage, dispose of, and make
337 elections regarding the proceeds of any benefit plan as defined
338 by s. 710.102, of which the minor is a beneficiary, participant,
339 or owner,

340
341 without appointment, authority, or bond, when the amounts
342 received, in the aggregate, do ~~amount involved in any instance~~
343 ~~does~~ not exceed \$15,000.

344 (3) All instruments executed by a natural guardian for the
345 benefit of the ward under the powers specified ~~provided for~~ in
346 subsection (2) shall be binding on the ward. The natural
347 guardian may not, without a court order, use the property of the
348 ward for the guardian's benefit or to satisfy the guardian's
349 support obligation to the ward.

350 ~~(4)(a) In any case where a minor has a claim for personal~~
351 ~~injury, property damage, or wrongful death in which the gross~~
352 ~~settlement for the claim of the minor exceeds \$15,000, the court~~
353 ~~may, prior to the approval of the settlement of the minor's~~
354 ~~claim, appoint a guardian ad litem to represent the minor's~~
355 ~~interests. In any case in which the gross settlement involving a~~

HB 457

2006
CS

356 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~
357 ~~approval of the settlement of the minor's claim, appoint a~~
358 ~~guardian ad litem to represent the minor's interests. The~~
359 ~~appointment of the guardian ad litem must be without the~~
360 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
361 ~~is to protect the minor's interests. The procedure for carrying~~
362 ~~out that duty is as prescribed in the Florida Probate Rules. If~~
363 ~~a legal guardian of the minor has previously been appointed and~~
364 ~~has no potential adverse interest to the minor, the court may~~
365 ~~not appoint a guardian ad litem to represent the minor's~~
366 ~~interests, unless the court determines that the appointment is~~
367 ~~otherwise necessary.~~

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

371 Section 4. Section 744.3025, Florida Statutes, is created
372 to read:

373 744.3025 Claims of minors.--

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

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

HB 457

2006
CS

384 (c) The appointment of the guardian ad litem must be
385 without the necessity of bond or notice.

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

388 (e) A court need not appoint a guardian ad litem for the
389 minor if a guardian of the minor has previously been appointed
390 and that guardian has no potential adverse interest to the
391 minor. A court may appoint a guardian ad litem if the court
392 believes a guardian ad litem is necessary to protect the
393 interests of the minor.

394 (2) Unless waived, the court shall award reasonable fees
395 and costs to the guardian ad litem to be paid out of the gross
396 proceeds of the settlement.

397 Section 5. Subsection (3) of section 744.3031, Florida
398 Statutes, is amended, and subsection (8) is added to that
399 section, to read:

400 744.3031 Emergency temporary guardianship.--

401 (3) The authority of an emergency temporary guardian
402 expires 90 ~~60~~ days after the date of appointment or when a
403 guardian is appointed, whichever occurs first. The authority of
404 the emergency temporary guardian may be extended for an
405 additional 90 ~~30~~ days upon a showing that the emergency
406 conditions still exist.

407 (8) (a) An emergency temporary guardian shall file a final
408 report no later than 30 days after the expiration of the
409 emergency temporary guardianship.

410 (b) An emergency temporary guardian is a guardian for the
411 property. The final report must consist of a verified inventory

HB 457

2006
CS

412 of the property, as provided in s. 744.365, as of the date the
413 letters of emergency temporary guardianship were issued, a final
414 accounting that gives a full and correct account of the receipts
415 and disbursements of all the property of the ward over which the
416 guardian had control, and a statement of the property of the
417 ward on hand at the end of the emergency temporary guardianship.
418 If the emergency temporary guardian becomes the successor
419 guardian of the property, the final report must satisfy the
420 requirements of the initial guardianship report for the guardian
421 of the property as provided in s. 744.362.

422 (c) If the emergency temporary guardian is a guardian of
423 the person, the final report must summarize the activities of
424 the temporary guardian with regard to residential placement,
425 medical condition, mental health and rehabilitative services,
426 and the social condition of the ward to the extent of the
427 authority granted to the temporary guardian in the letters of
428 guardianship. If the emergency temporary guardian becomes the
429 successor guardian of the person, the report must satisfy the
430 requirements of the initial report for a guardian of the person
431 as stated in s. 744.362.

432 (d) A copy of the final report of the emergency temporary
433 guardianship shall be served on the successor guardian and the
434 ward.

435 Section 6. Section 744.304, Florida Statutes, is amended
436 to read:

437 744.304 Standby guardianship.--

438 (1) Upon a petition by the natural guardians or a guardian
439 appointed under s. 744.3021, the court may appoint a standby

HB 457

2006
CS

440 guardian of the person or property of a minor ~~or consent of both~~
 441 ~~parents, natural or adoptive, if living, or of the surviving~~
 442 ~~parent, a standby guardian of the person or property of a minor~~
 443 ~~may be appointed by the court.~~ The court may also appoint an
 444 alternate to the guardian to act if the standby guardian does
 445 not serve or ceases to serve after appointment. Notice of a
 446 hearing on the petition must be served on the parents, natural
 447 or adoptive, and on any guardian currently serving unless the
 448 notice is waived in writing by them or waived by the court for
 449 good cause shown ~~shall renounce, die, or become incapacitated~~
 450 ~~after the death of the last surviving parent of the minor.~~

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

455 (3) The standby guardian or alternate shall be empowered
 456 to assume the duties of guardianship ~~his or her office~~
 457 immediately on the death, removal, or resignation of the
 458 guardian of a minor, or on the death or adjudication of
 459 incapacity of the last surviving natural guardian ~~or adoptive~~
 460 ~~parent~~ of a minor, or upon the death, removal, or resignation of
 461 the guardian for an adult. ~~The; however, such a~~ guardian of the
 462 ward's property may not be empowered to deal with the ward's
 463 property, other than to safeguard it, before ~~prior to~~ issuance
 464 of letters of guardianship. If the ward ~~incapacitated person~~ is
 465 over the age of 18 years, the court shall conduct a hearing as
 466 provided in s. 744.331 before confirming the appointment of the

HB 457

2006
CS

467 standby guardian, unless the ward has previously been found to
468 be incapacitated.

469 (4) Within 20 days after assumption of duties as guardian,
470 a standby guardian shall petition for confirmation of
471 appointment. If the court finds the standby guardian to be
472 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
473 744.312, appointment of the guardian must be confirmed. Each
474 guardian so confirmed shall file an oath in accordance with s.
475 744.347, and shall file a bond, and shall submit to a credit and
476 criminal investigation as set forth in s. 744.3135, if required.
477 Letters of guardianship must then be issued in the manner
478 provided in s. 744.345.

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

482 Section 7. Section 744.3115, Florida Statutes, is amended
483 to read:

484 744.3115 Advance directives for health care.--In each
485 proceeding in which a guardian is appointed under this chapter,
486 the court shall determine whether the ward, prior to incapacity,
487 has executed any valid advance directive under ~~pursuant to~~
488 chapter 765. If any ~~such~~ advance directive exists, the court
489 shall specify in its order and letters of guardianship what
490 authority, if any, the guardian shall exercise over the
491 surrogate. Pursuant to the grounds listed in s. 765.105, the
492 court, upon its own motion, may, with notice to the surrogate
493 and any other appropriate parties, modify or revoke the
494 authority of the surrogate to make health care decisions for the

HB 457

2006
CS

495 | ward. For purposes of this section, the term "health care
496 | decision" has the same meaning as in s. 765.101.

497 | Section 8. Section 744.3135, Florida Statutes, is amended
498 | to read:

499 | 744.3135 Credit and criminal investigation.--

500 | (1) The court may require a nonprofessional guardian and
501 | shall require a professional or public guardian, and all
502 | employees of a professional guardian who have a fiduciary
503 | responsibility to a ward, to submit, at their own expense, to an
504 | investigation of the guardian's credit history and to undergo
505 | level 2 background screening as required under s. 435.04. If a
506 | credit or criminal investigation is required, the court must
507 | consider the results of any investigation before appointing a
508 | guardian. At any time, the court may require a guardian or the
509 | guardian's employees to submit to an investigation of the
510 | person's credit history and complete a level 1 background
511 | screening as set forth in s. 435.03. The court shall consider
512 | the results of any investigation when reappointing a guardian.
513 | The clerk of the court shall maintain a file on each guardian
514 | appointed by the court and retain in the file documentation of
515 | the result of any investigation conducted under this section. A
516 | professional guardian must pay the clerk of the court a fee of
517 | up to \$7.50 for handling and processing professional guardian
518 | files.

519 | (2) The court and the Statewide Public Guardianship Office
520 | shall accept the satisfactory completion of a criminal
521 | background investigation by any method described in this

HB 457

2006
CS

522 subsection. A guardian satisfies the requirements of this
523 section by undergoing:

524 (a) An inkless electronic fingerprint criminal background
525 investigation. A guardian may use any inkless electronic
526 fingerprinting equipment used for criminal background
527 investigations of public employees. The guardian shall pay the
528 actual costs incurred by the Federal Bureau of Investigation and
529 the Department of Law Enforcement for the criminal background
530 investigation. The agency that operates the equipment used by
531 the guardian may charge the guardian an additional fee, not to
532 exceed \$10, for the use of the equipment. The agency completing
533 the investigation must immediately send the results of the
534 criminal background investigation to the clerk of the court and
535 the Statewide Public Guardianship Office. The clerk of the court
536 shall maintain the results in the guardian's file and shall make
537 the results available to the court; or

538 (b) A criminal background investigation using a
539 fingerprint card. The clerk of the court shall obtain
540 fingerprint cards from the Federal Bureau of Investigation and
541 make them available to guardians. Any guardian who is so
542 required shall have his or her fingerprints taken and forward
543 the proper fingerprint card along with the necessary fee to the
544 Florida Department of Law Enforcement for processing. The
545 professional guardian shall pay to the clerk of the court a fee
546 of up to \$7.50 for handling and processing professional guardian
547 files. The results of the fingerprint card background
548 investigations ~~checks~~ shall be forwarded to the clerk of the
549 court who shall maintain the results in the guardian's a

HB 457

2006
CS

550 ~~guardian~~ file and ~~shall~~ make the results available to the court
551 and the Statewide Public Guardianship Office.

552 (3) (a) A professional guardian, and each employee of a
553 professional guardian who has a fiduciary responsibility to a
554 ward, must complete, at his or her own expense, a level 2
555 background screening as set forth in s. 435.04 before and at
556 least once every 5 years after the date the guardian is
557 appointed. A professional guardian, and each employee of a
558 professional guardian who has a fiduciary responsibility to a
559 ward, must complete, at his or her own expense, a level 1
560 background screening as set forth in s. 435.03 at least once
561 every 2 years after the date the guardian is appointed. However,
562 a person is not required to resubmit fingerprints for a criminal
563 background investigation if he or she has been screened using
564 inkless electronic fingerprinting equipment that is capable of
565 notifying the clerk of the court of any crime charged against
566 the person in this state or elsewhere, as appropriate.

567 (b) Effective December 15, 2006, all fingerprints
568 electronically submitted to the Department of Law Enforcement
569 under this section shall be retained by the Department of Law
570 Enforcement in a manner provided by rule and entered in the
571 statewide automated fingerprint identification system authorized
572 by s. 943.05(2) (b). The fingerprints shall thereafter be
573 available for all purposes and uses authorized for arrest
574 fingerprint cards entered in the Criminal Justice Information
575 Program under s. 943.051.

576 (c) Effective December 15, 2006, the Department of Law
577 Enforcement shall search all arrest fingerprint cards received

HB 457

2006
CS

578 under s. 943.051 against the fingerprints retained in the
579 statewide automated fingerprint identification system under
580 paragraph (b). Any arrest record that is identified with the
581 fingerprints of a person described in this paragraph must be
582 reported as soon as possible to the clerk of the court. The
583 clerk of the court must forward any arrest record received for a
584 professional guardian to the Statewide Public Guardianship
585 Office within 5 days. Each guardian who elects to undergo an
586 inkless electronic background investigation shall participate in
587 this search process by paying an annual fee to the clerk of the
588 court and by informing the clerk of the court of any change in
589 the status of his or her guardianship appointment. The amount of
590 the annual fee to be imposed upon each clerk of the court for
591 performing these searches and the procedures for the retention
592 of guardian fingerprints and the dissemination of search results
593 shall be established by rule of the Department of Law
594 Enforcement. The fee may be borne by the clerk of the court or
595 the guardian, but may not exceed \$10.

596 (4) (a) A professional guardian, and each employee of a
597 professional guardian who has a fiduciary responsibility to a
598 ward, must complete, at his or her own expense, an investigation
599 of his or her credit history before and at least once every 2
600 years after the date of the guardian's appointment.

601 (b) The Statewide Public Guardianship Office shall adopt a
602 rule detailing the acceptable methods for completing a credit
603 investigation under this section. If appropriate, the Statewide
604 Public Guardianship Office may administer credit investigations.
605 If the office chooses to administer the credit investigation,

HB 457

2006
CS

606 the office may adopt a rule setting a fee, not to exceed \$25, to
607 reimburse the costs associated with the administration of a
608 credit investigation.

609 (5) The Statewide Public Guardianship Office may inspect
610 at any time the results of any credit or criminal investigation
611 of a public or professional guardian conducted under this
612 section. The office shall maintain copies of the credit or
613 criminal results in the guardian's registration file. If the
614 results of a credit or criminal investigation of a public or
615 professional guardian have not been forwarded to the Statewide
616 Public Guardianship Office by the investigating agency, the
617 clerk of the court shall forward copies of the results of the
618 investigations to the office upon receiving them. If credit or
619 criminal investigations are required, the court must consider
620 the results of the investigations before appointing a guardian.
621 Professional guardians and all employees of a professional
622 guardian who have a fiduciary responsibility to a ward, so
623 appointed, must resubmit, at their own expense, to an
624 investigation of credit history, and undergo level 1 background
625 screening as required under s. 435.03, at least every 2 years
626 after the date of their appointment. At any time, the court may
627 require guardians or their employees to submit to an
628 investigation of credit history and undergo level 1 background
629 screening as required under s. 435.03. The court must consider
630 the results of these investigations in reappointing a guardian.
631 (1) Upon receiving the results of a credit or criminal
632 investigation of any public or professional guardian, the clerk
633 of the court shall forward copies of the results to the

HB 457

2006
CS

634 ~~Statewide Public Guardianship Office in order that the results~~
635 ~~may be maintained in the guardian's registration file.~~

636 (6)(2) The requirements of this section do ~~does~~ not apply
637 to a professional guardian, or to the employees of a
638 professional guardian, that ~~which~~ is a trust company, a state
639 banking corporation or state savings association authorized and
640 qualified to exercise fiduciary powers in this state, or a
641 national banking association or federal savings and loan
642 association authorized and qualified to exercise fiduciary
643 powers in this state.

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

646 744.3145 Guardian education requirements.--

647 (4) Each person appointed by the court to be a guardian
648 must complete the required number of hours of instruction and
649 education within 4 months ~~1 year~~ after his or her appointment as
650 guardian. The instruction and education must be completed
651 through a course approved by the chief judge of the circuit
652 court and taught by a court-approved organization. Court-
653 approved organizations may include, but are not limited to,
654 community or junior colleges, guardianship organizations, and
655 the local bar association or The Florida Bar.

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

658 744.3215 Rights of persons determined incapacitated.--

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

HB 457

2006
CS

661 (i) To receive ~~necessary~~ services and rehabilitation
662 necessary to maximize the quality of life.

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

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

668 (b) To vote.

669 (c) To personally apply for government benefits.

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

671 (e) To travel.

672 (f) To seek or retain employment.

673 Section 11. Subsections (2), (3), and (7) of section
674 744.331, Florida Statutes, are amended to read:

675 744.331 Procedures to determine incapacity.--

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

677 (a) When a court appoints an attorney for an alleged
678 incapacitated person, the court must appoint an attorney who is
679 included in the attorney registry compiled by the circuit's
680 Article V indigent services committee. Appointments must be made
681 on a rotating basis, taking into consideration conflicts arising
682 under this chapter.

683 (b)(a) The court shall appoint an attorney for each person
684 alleged to be incapacitated in all cases involving a petition
685 for adjudication of incapacity. The alleged incapacitated person
686 may substitute her or his own attorney for the attorney
687 appointed by the court, subject to court approval.

HB 457

2006
CS

688 ~~(c)(b)~~ Any attorney representing an alleged incapacitated
689 person may not serve as guardian of the alleged incapacitated
690 person or as counsel for the guardian of the alleged
691 incapacitated person or the petitioner.

692 (d) Effective January 1, 2007, an attorney seeking to be
693 appointed by a court for incapacity and guardianship proceedings
694 must have completed a minimum of 8 hours of education in
695 guardianship. A court may waive the initial training requirement
696 for an attorney who has served as a court-appointed attorney in
697 incapacity proceedings or as an attorney of record for guardians
698 for not less than 3 years.

699 (3) EXAMINING COMMITTEE.--

700 (a) Within 5 days after a petition for determination of
701 incapacity has been filed, the court shall appoint an examining
702 committee consisting of three members. One member must be a
703 psychiatrist or other physician. The remaining members must be
704 either a psychologist, gerontologist, another psychiatrist, or
705 other physician, a registered nurse, nurse practitioner,
706 licensed social worker, a person with an advanced degree in
707 gerontology from an accredited institution of higher education,
708 or other person who by knowledge, skill, experience, training,
709 or education may, in the court's discretion, advise the court in
710 the form of an expert opinion, including a professional
711 guardian. One of three members of the committee must have
712 knowledge of the type of incapacity alleged in the petition.
713 Unless good cause is shown, the attending or family physician
714 may not be appointed to the committee. If the attending or
715 family physician is available for consultation, the committee

Page 26 of 53

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hb0457-01-c1

HB 457

2006
CS

716 must consult with the physician. Members of the examining
717 committee may not be related to or associated with one another,
718 ~~or~~ with the petitioner, with counsel for the petitioner or the
719 proposed guardian, or with the person alleged to be totally or
720 partially incapacitated. A member may not be employed by any
721 private or governmental agency that has custody of, or
722 furnishes, services or subsidies, directly or indirectly, to the
723 person or the family of the person alleged to be incapacitated
724 or for whom a guardianship is sought. A petitioner may not serve
725 as a member of the examining committee. Members of the examining
726 committee must be able to communicate, either directly or
727 through an interpreter, in the language that the alleged
728 incapacitated person speaks or to communicate in a medium
729 understandable to the alleged incapacitated person if she or he
730 is able to communicate. The clerk of the court shall send notice
731 of the appointment to each person appointed no later than 3 days
732 after the court's appointment.

733 (b) A person who has been appointed to serve as a member
734 of an examining committee to examine an alleged incapacitated
735 person may not thereafter be appointed as a guardian for the
736 person who was the subject of the examination.

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

HB 457

2006
CS

743 (d) A member of an examining committee must complete a
 744 minimum of 4 hours of initial training. The person must complete
 745 2 hours of continuing education during each 2-year period after
 746 the initial training. The initial training and continuing
 747 education program must be developed under the supervision of the
 748 Statewide Public Guardianship Office, in consultation with the
 749 Florida Conference of Circuit Court Judges; the Elder Law and
 750 the Real Property, Probate and Trust Law sections of The Florida
 751 Bar; the Florida State Guardianship Association; and the Florida
 752 Guardianship Foundation. The court may waive the initial
 753 training requirement for a person who has served for not less
 754 than 5 years on examining committees. If a person wishes to
 755 obtain his or her continuing education on the Internet or by
 756 watching a video course, the person must first obtain the
 757 approval of the chief judge before taking an Internet or video
 758 course.

759 (e) ~~(b)~~ Each member of the examining committee shall
 760 examine the person. Each ~~The~~ examining committee member must
 761 ~~shall~~ determine the alleged incapacitated person's ability to
 762 exercise those rights specified in s. 744.3215. In addition to
 763 the examination, each ~~the~~ examining committee member must ~~shall~~
 764 have access to, and may consider, previous examinations of the
 765 person, including, but not limited to, habilitation plans,
 766 school records, and psychological and psychosocial reports
 767 voluntarily offered for use by the alleged incapacitated person.
 768 Each member of the examining committee must ~~shall~~ submit a
 769 report within 15 days after appointment.

HB 457

2006
CS

770 (f)~~(e)~~ The examination of the alleged incapacitated person
771 must include a comprehensive examination, a report of which
772 shall be filed by the examining committee as part of its written
773 report. The comprehensive examination report should be an
774 essential element, but not necessarily the only element, used in
775 making a capacity and guardianship decision. The comprehensive
776 examination must include, if indicated:

- 777 1. A physical examination;
- 778 2. A mental health examination; and
- 779 3. A functional assessment.

780

781 If any of these three aspects of the examination is not
782 indicated or cannot be accomplished for any reason, the written
783 report must explain the reasons for its omission.

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

- 785 1. To the extent possible, a diagnosis, prognosis, and
786 recommended course of treatment.

- 787 2. An evaluation of the alleged incapacitated person's
788 ability to retain her or his rights, including, without
789 limitation, the rights to marry; vote; contract; manage or
790 dispose of property; have a driver's license; determine her or
791 his residence; consent to medical treatment; and make decisions
792 affecting her or his social environment.

- 793 3. The results of the comprehensive examination and the
794 committee members' assessment of information provided by the
795 attending or family physician, if any.

- 796 4. A description of any matters with respect to which the
797 person lacks the capacity to exercise rights, the extent of that

HB 457

2006
CS

798 incapacity, and the factual basis for the determination that the
799 person lacks that capacity.

800 5. The names of all persons present during the time the
801 committee member conducted his or her examination. If a person
802 other than the person who is the subject of the examination
803 supplies answers posed to the alleged incapacitated person, the
804 report must include the response and the name of the person
805 supplying the answer.

806 6.5. The signature of each member of the committee and the
807 date and time that each member conducted his or her examination.

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

812 (7) FEES.--

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

816 (b) The fees awarded under paragraph (a) shall be paid by
817 the guardian from the property of the ward or, if the ward is
818 indigent, by the state. The state shall have a creditor's claim
819 against the guardianship property for any amounts paid under
820 this section. The state may file its claim within 90 days after
821 the entry of an order awarding attorney ad litem fees. If the
822 state does not file its claim within the 90-day period, the
823 state is thereafter barred from asserting the claim. Upon
824 petition by the state for payment of the claim, the court shall

HB 457

2006
CS

825 enter an order authorizing immediate payment out of the property
826 of the ward. The state shall keep a record of the ~~such~~ payments.

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

830 Section 12. Subsection (4) of section 744.341, Florida
831 Statutes, is renumbered as subsection (5) and a new subsection
832 (4) is added to that section to read:

833 744.341 Voluntary guardianship.--

834 (4) A guardian must include in the annual report filed
835 with the court a certificate from a licensed physician who
836 examined the ward not more than 90 days before the annual report
837 is filed with the court. The certificate must certify that the
838 ward is competent to understand the nature of the guardianship
839 and of the ward's authority to delegate powers to the voluntary
840 guardian.

841 Section 13. Subsection (9) is added to section 744.361,
842 Florida Statutes, to read:

843 744.361 Powers and duties of guardian.--

844 (9) A professional guardian must ensure that each of the
845 guardian's wards is personally visited by the guardian or one of
846 the guardian's professional staff at least once each calendar
847 quarter. During the personal visit, the guardian or the
848 guardian's professional staff person shall assess:

849 (a) The ward's physical appearance and condition.

850 (b) The appropriateness of the ward's current living
851 situation.

HB 457

2006
CS

852 (c) The need for any additional services and the necessity
853 for continuation of existing services, taking into consideration
854 all aspects of social, psychological, educational, direct
855 service, health, and personal care needs.

856

857 This subsection does not apply to a professional guardian who
858 has been appointed only as guardian of the property.

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

861 744.365 Verified inventory.--

862 (2) CONTENTS.--The verified inventory must include the
863 following:

864 (a) All property of the ward, real and personal, that has
865 come into the guardian's possession or knowledge, including a
866 statement of all encumbrances, liens, and other secured claims
867 on any item, any claims against the property, ~~and~~ any cause of
868 action accruing to the ward, and any trusts of which the ward is
869 a beneficiary.†

870 (b) The location of the real and personal property in
871 sufficient detail so that it may be clearly identified or
872 located.† ~~and~~

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

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

877 744.367 Duty to file annual guardianship report.--

878 (1) Unless the court requires filing on a calendar-year
879 basis, each guardian of the person shall file with the court an

HB 457

2006
CS

880 annual guardianship plan within 90 days after the last day of
881 the anniversary month the letters of guardianship were signed,
882 and the plan must cover the coming fiscal year, ending on the
883 last day in such anniversary month. If the court requires
884 calendar-year filing, the guardianship plan must be filed on or
885 before April 1 of each year ~~within 90 days after the end of the~~
886 ~~calendar year.~~

887 (3) The annual guardianship report of a guardian of the
888 property must consist of an annual accounting, and the annual
889 report of a guardian of the person ~~of an incapacitated person~~
890 must consist of an annual guardianship plan. The annual report
891 shall be served on the ward, unless the ward is a minor ~~under~~
892 ~~the age of 14 years~~ or is totally incapacitated, and on the
893 attorney for the ward, if any. The guardian shall provide a copy
894 to any other person as the court may direct.

895 Section 16. Section 744.3675, Florida Statutes, is amended
896 to read:

897 744.3675 Annual guardianship plan.--Each guardian of the
898 person must file with the court an annual guardianship plan
899 which updates information about the condition of the ward. The
900 annual plan must specify the current needs of the ward and how
901 those needs are proposed to be met in the coming year.

902 (1) Each plan for an adult ward must, if applicable,
903 include:

904 (a) Information concerning the residence of the ward,
905 including:

906 1. The ward's address at the time of filing the plan.†

HB 457

2006
CS

907 | 2. The name and address of each place where the ward was
908 | maintained during the preceding year.~~;~~

909 | 3. The length of stay of the ward at each place.~~;~~

910 | 4. A statement of whether the current residential setting
911 | is best suited for the current needs of the ward.~~;~~~~and~~

912 | 5. Plans for ensuring during the coming year that the ward
913 | is in the best residential setting to meet his or her needs.

914 | (b) Information concerning the medical and mental health
915 | conditions ~~condition~~ and treatment and rehabilitation needs of
916 | the ward, including:

917 | 1. A resume of any professional medical treatment given to
918 | the ward during the preceding year.~~;~~

919 | 2. The report of a physician who examined the ward no more
920 | than 90 days before the beginning of the applicable reporting
921 | period. The ~~Such~~ report must contain an evaluation of the ward's
922 | condition and a statement of the current level of capacity of
923 | the ward.~~;~~~~and~~

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

926 | (c) Information concerning the social condition of the
927 | ward, including:

928 | 1. The social and personal services currently used
929 | ~~utilized~~ by the ward.~~;~~

930 | 2. The social skills of the ward, including a statement of
931 | how well the ward communicates and maintains interpersonal
932 | relationships. ~~with others;~~

933 | ~~3. A description of the ward's activities at communication~~
934 | ~~and visitation;~~ ~~and~~

HB 457

2006
CS

935 ~~3.4.~~ The social needs of the ward.

936 (2) Each plan filed by the legal guardian of a minor must

937 include:

938 (a) Information concerning the residence of the minor,

939 including:

940 1. The minor's address at the time of filing the plan.

941 2. The name and address of each place the minor lived

942 during the preceding year.

943 (b) Information concerning the medical and mental health

944 conditions and treatment and rehabilitation needs of the minor,

945 including:

946 1. A resume of any professional medical treatment given to

947 the minor during the preceding year.

948 2. A report from the physician who examined the minor no

949 more than 180 days before the beginning of the applicable

950 reporting period that contains an evaluation of the minor's

951 physical and mental conditions.

952 3. The plan for providing medical services in the coming

953 year.

954 (c) Information concerning the education of the minor,

955 including:

956 1. A summary of the school progress report.

957 2. The social development of the minor, including a

958 statement of how well the minor communicates and maintains

959 interpersonal relationships.

960 3. The social needs of the minor.

961 ~~(3)-(2)~~ Each plan for an adult ward must address the issue

962 of restoration of rights to the ward and include:

Page 35 of 53

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hb0457-01-c1

HB 457

2006
CS

963 (a) A summary of activities during the preceding year that
 964 ~~which~~ were designed to enhance ~~increase~~ the capacity of the
 965 ward. ~~†~~

966 (b) A statement of whether the ward can have any rights
 967 restored. ~~† and~~

968 (c) A statement of whether restoration of any rights will
 969 be sought.

970 ~~(4)(3)~~ The court, in its discretion, may require
 971 reexamination of the ward by a physician at any time.

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

974 744.3678 Annual accounting.--

975 (2) The annual accounting must include:

976 (a) A full and correct account of the receipts and
 977 disbursements of all of the ward's property over which the
 978 guardian has control and a statement of the ward's property on
 979 hand at the end of the accounting period. This paragraph does
 980 not apply to any property or any trust of which the ward is a
 981 beneficiary but which is not under the control or administration
 982 of the guardian.

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

986 (3) The guardian must obtain a receipt, ~~or~~ canceled check,
 987 or other proof of payment for all expenditures and disbursements
 988 made on behalf of the ward. The guardian must preserve all
 989 evidence of payment ~~the receipts and canceled checks~~, along with
 990 other substantiating papers, for a period of 3 years after his

HB 457

2006
CS

991 or her discharge. The receipts, proofs of payment ~~checks~~, and
 992 substantiating papers need not be filed with the court but shall
 993 be made available for inspection and review at the ~~such~~ time and
 994 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~
 995 ~~time to time~~ order.

996 Section 18. Section 744.3679, Florida Statutes, is amended
 997 to read:

998 744.3679 Simplified accounting procedures in certain
 999 cases.--

1000 (1) In a guardianship of property, when all assets of the
 1001 estate are in designated depositories under s. 69.031 and the
 1002 only transactions that occur in that account are interest
 1003 accrual, deposits from a ~~pursuant to~~ settlement, or financial
 1004 institution service charges, the guardian may elect to file an
 1005 accounting consisting of:

1006 (a) The original or a certified copy of the year-end
 1007 statement of the ward's account from the financial institution;
 1008 and

1009 (b) A statement by the guardian under penalty of perjury
 1010 that the guardian has custody and control of the ward's property
 1011 as shown in the year-end statement.

1012 ~~(2) The clerk has no responsibility to monitor or audit~~
 1013 ~~the accounts and may not accept a fee for doing so.~~

1014 (2)(3) The accounting allowed by subsection (1) is in lieu
 1015 of the accounting and auditing procedures under s. 744.3678(2)
 1016 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
 1017 may seek judicial review as provided in s. 744.3685.

HB 457

2006
CS

1018 ~~(3)(4)~~ The guardian need not be represented by an attorney
1019 in order to file the annual accounting allowed by subsection
1020 (1).

1021 Section 19. Subsection (3) of section 744.368, Florida
1022 Statutes, is amended to read:

1023 744.368 Responsibilities of the clerk of the circuit
1024 court.--

1025 (3) Within 90 days after the filing of the verified
1026 inventory and accountings ~~initial or annual guardianship report~~
1027 by a guardian of the property, the clerk shall audit the
1028 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
1029 clerk shall advise the court of the results of the audit.

1030 Section 20. Subsection (19) of section 744.441, Florida
1031 Statutes, is amended to read:

1032 744.441 Powers of guardian upon court approval.--After
1033 obtaining approval of the court pursuant to a petition for
1034 authorization to act, a plenary guardian of the property, or a
1035 limited guardian of the property within the powers granted by
1036 the order appointing the guardian or an approved annual or
1037 amended guardianship report, may:

1038 (19) Create or amend revocable or irrevocable trusts of
1039 property of the ward's estate which may extend beyond the
1040 disability or life of the ward in connection with estate, gift,
1041 income, or other tax planning or in connection with estate
1042 planning. The court shall retain oversight of the assets
1043 transferred to a trust, unless otherwise ordered by the court.

1044 Section 21. Section 744.442, Florida Statutes, is created
1045 to read:

HB 457

2006
CS

1046 744.442 Delegation of authority.--
 1047 (1) A guardian may designate a surrogate guardian to
 1048 exercise the powers of the guardian if the guardian is
 1049 unavailable to act. A person designated as a surrogate guardian
 1050 under this section must be a professional guardian.

1051 (2) (a) A guardian must file a petition with the court
 1052 requesting permission to designate a surrogate guardian.

1053 (b) If the court approves the designation, the order must
 1054 specify the name and business address of the surrogate guardian
 1055 and the duration of appointment, which may not exceed 30 days.
 1056 The court may extend the appointment for good cause shown. The
 1057 surrogate guardian may exercise all powers of the guardian
 1058 unless limited by order of the court. The surrogate guardian
 1059 must file with the court an oath swearing or affirming that he
 1060 or she will faithfully perform the duties delegated. The court
 1061 may require the surrogate guardian to post a bond.

1062 (3) This section does not limit the responsibility of the
 1063 guardian to the ward and to the court. The guardian is liable
 1064 for the acts of the surrogate guardian. The guardian may
 1065 terminate the authority of the surrogate guardian by filing a
 1066 written notice of the termination with the court.

1067 (4) The surrogate guardian is subject to the jurisdiction
 1068 of the court as if appointed to serve as guardian.

1069 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
 1070 and subsection (4) of section 744.464, Florida Statutes, are
 1071 amended to read:

1072 744.464 Restoration to capacity.--

1073 (2) SUGGESTION OF CAPACITY.--

HB 457

2006
CS

1074 (c) The court shall immediately send notice of the filing
 1075 of the suggestion of capacity to the ward, the guardian, the
 1076 attorney for the ward, if any, ~~the state attorney,~~ and any other
 1077 interested persons designated by the court. Formal notice must
 1078 be served on the guardian. Informal notice may be served on
 1079 other persons. Notice need not be served on the person who filed
 1080 the suggestion of capacity.

1081 (e) If an objection is timely filed, or if the medical
 1082 examination suggests that full restoration is not appropriate,
 1083 the court shall set the matter for hearing. If the ward does not
 1084 have an attorney, the court shall appoint one to represent the
 1085 ward.

1086 (f) Notice of the hearing and copies of the objections and
 1087 medical examination reports shall be served upon the ward, the
 1088 ward's attorney, the guardian, ~~the state attorney,~~ the ward's
 1089 next of kin, and any other interested persons as directed by the
 1090 court.

1091 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
 1092 ~~CAPACITY.—Notwithstanding this section, a suggestion of~~
 1093 ~~capacity may not be filed within 90 days after an adjudication~~
 1094 ~~of incapacity or denial of restoration, unless good cause is~~
 1095 ~~shown.~~

1096 Section 23. Paragraph (a) of subsection (19) of section
 1097 744.474, Florida Statutes, is amended, and paragraph (b) of that
 1098 subsection is redesignated as subsection (20) of that section
 1099 and amended, to read:

HB 457

2006
CS

1100 744.474 Reasons for removal of guardian.--A guardian may
1101 be removed for any of the following reasons, and the removal
1102 shall be in addition to any other penalties prescribed by law:

1103 (19) Upon a showing by a person who did not receive notice
1104 of the petition for adjudication of incapacity, when such notice
1105 is required, or who is related to the ward within the
1106 relationships specified for nonresident relatives in ss.
1107 744.309(2) and 744.312(2) and who has not previously been
1108 rejected by the court as a guardian that+

1109 ~~(a)~~ the current guardian is not a family member+ and
1110 subsection (20) applies.

1111 (20)~~(b)~~ Upon a showing that removal of the current
1112 guardian is in the best interest of the ward, the court may
1113 remove the current guardian and appoint the petitioner, or such
1114 person as the court deems in the best interest of the ward,
1115 either as guardian of the person or of the property, or both.

1116 Section 24. Section 744.511, Florida Statutes, is amended
1117 to read:

1118 744.511 Accounting upon removal.--A removed guardian shall
1119 file with the court a true, complete, and final report of his or
1120 her guardianship within 20 days after removal and shall serve a
1121 copy on the successor guardian and the ward, unless the ward is
1122 a minor ~~under 14 years of age~~ or has been determined to be
1123 totally incapacitated.

1124 Section 25. Section 744.527, Florida Statutes, is amended
1125 to read:

1126 744.527 Final reports and application for discharge;
1127 hearing.--

HB 457

2006
CS

1128 (1) When the court terminates the guardianship for any of
 1129 the reasons set forth in s. 744.521, the guardian shall promptly
 1130 file his or her final report. If the ward has died, the guardian
 1131 must file a final report with the court no later than 45 days
 1132 after he or she has been served with letters of administration
 1133 or letters of curatorship. If no objections are filed and if it
 1134 appears that the guardian has made full and complete
 1135 distribution to the person entitled and has otherwise faithfully
 1136 discharged his or her duties, the court shall approve the final
 1137 report. If objections are filed, the court shall conduct a
 1138 hearing in the same manner as provided for a hearing on
 1139 objections to annual guardianship reports.

1140 (2) The guardian applying for discharge may ~~is authorized~~
 1141 ~~to~~ retain from the funds in his or her possession a sufficient
 1142 amount to pay the final costs of administration, including
 1143 guardian and attorney's fees regardless of the death of the
 1144 ward, accruing between the filing of his or her final returns
 1145 and the order of discharge.

1146 Section 26. Subsection (3) of section 744.528, Florida
 1147 Statutes, is amended to read:

1148 744.528 Discharge of guardian named as personal
 1149 representative.--

1150 (3) Any interested person may file a notice of ~~The court~~
 1151 ~~shall set~~ a hearing on any objections filed by the
 1152 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
 1153 the guardian, beneficiaries of the ward's estate, and any other
 1154 person to whom the court directs service. If a notice of hearing

HB 457

2006
CS

1155 on the objections is not served within 90 days after filing of
1156 the objections, the objections are deemed abandoned.

1157 Section 27. Subsections (5) through (8) of section
1158 744.708, Florida Statutes, are amended to read:

1159 744.708 Reports and standards.--

1160 (5) (a) Each office of public guardian shall undergo an
1161 independent audit by a qualified certified public accountant
1162 shall be performed at least once every 2 years. The audit should
1163 include an investigation into the practices of the office for
1164 managing the person and property of the wards. A copy of the
1165 audit report shall be submitted to the Statewide Public
1166 Guardianship Office.

1167 (b) In addition to regular monitoring activities, the
1168 Statewide Public Guardianship Office shall conduct an
1169 investigation into the practices of each office of public
1170 guardian related to the managing of each ward's personal affairs
1171 and property. When feasible, the investigation required under
1172 this paragraph shall be conducted in conjunction with the
1173 financial audit of each office of public guardian under
1174 paragraph (a).

1175 (c) In addition, each ~~the~~ office of public guardian shall
1176 be subject to audits or examinations by the Auditor General and
1177 the Office of Program Policy Analysis and Government
1178 Accountability pursuant to law.

1179 (6) A ~~The~~ public guardian shall ensure that each of the
1180 guardian's wards is personally visited ~~ward is seen~~ by the
1181 public guardian or by one of the guardian's a professional staff
1182 person at least once each calendar quarter ~~four times a year.~~

HB 457

2006
CS

1183 During this personal visit, the public guardian or the
 1184 professional staff person shall assess:

1185 (a) The ward's physical appearance and condition.

1186 (b) The appropriateness of the ward's current living
 1187 situation.

1188 (c) The need for any additional services and the necessity
 1189 for continuation of existing services, taking into consideration
 1190 all aspects of social, psychological, educational, direct
 1191 service, health, and personal care needs.

1192 (7) The ratio for professional staff to wards shall be 1
 1193 professional to 40 wards. The Statewide Public Guardianship
 1194 Office may increase or decrease the ratio after consultation
 1195 with the local public guardian and the chief judge of the
 1196 circuit court. The basis of the decision to increase or decrease
 1197 the prescribed ratio shall be reported in the annual report to
 1198 the Secretary of Elderly Affairs, the Governor, the President of
 1199 the Senate, the Speaker of the House of Representatives, and the
 1200 Chief Justice of the Supreme Court.

1201 ~~(8) The term "professional," for purposes of this part,~~
 1202 ~~shall not include the public guardian nor the executive director~~
 1203 ~~of the Statewide Public Guardianship Office. The term~~
 1204 ~~"professional" shall be limited to those persons who exercise~~
 1205 ~~direct supervision of individual wards under the direction of~~
 1206 ~~the public guardian.~~

1207 Section 28. Paragraph (a) of subsection (5) of section
 1208 765.101, Florida Statutes, is amended to read:

1209 765.101 Definitions.--As used in this chapter:

1210 (5) "Health care decision" means:

HB 457

2006
CS

1211 (a) Informed consent, refusal of consent, or withdrawal of
 1212 consent to any and all health care, including life-prolonging
 1213 procedures and mental health treatment, unless otherwise stated
 1214 in the advance directives.

1215 Section 29. Section 28.345, Florida Statutes, is amended
 1216 to read:

1217 28.345 Exemption from court-related fees and
 1218 charges.--Notwithstanding any other ~~provision of this chapter or~~
 1219 law to the contrary, judges and those court staff acting on
 1220 behalf of judges, state attorneys, guardians ad litem, public
 1221 guardians, attorneys ad litem, court-appointed private counsel,
 1222 and public defenders, acting in their official capacity, and
 1223 state agencies, are exempt from all court-related fees and
 1224 charges assessed by the clerks of the circuit courts.

1225 Section 30. Paragraph (c) of subsection (8) of section
 1226 121.091, Florida Statutes, is amended to read:

1227 121.091 Benefits payable under the system.--Benefits may
 1228 not be paid under this section unless the member has terminated
 1229 employment as provided in s. 121.021(39) (a) or begun
 1230 participation in the Deferred Retirement Option Program as
 1231 provided in subsection (13), and a proper application has been
 1232 filed in the manner prescribed by the department. The department
 1233 may cancel an application for retirement benefits when the
 1234 member or beneficiary fails to timely provide the information
 1235 and documents required by this chapter and the department's
 1236 rules. The department shall adopt rules establishing procedures
 1237 for application for retirement benefits and for the cancellation

HB 457

2006
CS

1238 | of such application when the required information or documents
1239 | are not received.

1240 | (8) DESIGNATION OF BENEFICIARIES.--

1241 | (c) Notwithstanding the member's designation of benefits
1242 | to be paid through a trust to a beneficiary that is a natural
1243 | person as provided in s. 121.021(46), and notwithstanding the
1244 | provisions of the trust, benefits shall be paid directly to the
1245 | beneficiary if the ~~such~~ person is no longer a minor or an
1246 | incapacitated person as defined in s. 744.102(~~11~~) and (~~12~~).

1247 | Section 31. Paragraph (c) of subsection (20) of section
1248 | 121.4501, Florida Statutes, is amended to read:

1249 | 121.4501 Public Employee Optional Retirement Program.--

1250 | (20) DESIGNATION OF BENEFICIARIES.--

1251 | (c) Notwithstanding the participant's designation of
1252 | benefits to be paid through a trust to a beneficiary that is a
1253 | natural person, and notwithstanding the provisions of the trust,
1254 | benefits shall be paid directly to the beneficiary if the ~~such~~
1255 | person is no longer a minor or an incapacitated person as
1256 | defined in s. 744.102(~~11~~) and (~~12~~).

1257 | Section 32. Subsection (1) and paragraphs (b), (d), and
1258 | (f) of subsection (4) of section 709.08, Florida Statutes, are
1259 | amended to read:

1260 | 709.08 Durable power of attorney.--

1261 | (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
1262 | power of attorney is a written power of attorney by which a
1263 | principal designates another as the principal's attorney in
1264 | fact. The durable power of attorney must be in writing, must be
1265 | executed with the same formalities required for the conveyance

HB 457

2006
CS

1266 of real property by Florida law, and must contain the words:
 1267 "This durable power of attorney is not affected by subsequent
 1268 incapacity of the principal except as provided in s. 709.08,
 1269 Florida Statutes"; or similar words that show the principal's
 1270 intent that the authority conferred is exercisable
 1271 notwithstanding the principal's subsequent incapacity, except as
 1272 otherwise provided by this section. The durable power of
 1273 attorney is exercisable as of the date of execution; however, if
 1274 the durable power of attorney is conditioned upon the
 1275 principal's lack of capacity to manage property as defined in s.
 1276 744.102 (12) ~~(11)~~ (a), the durable power of attorney is exercisable
 1277 upon the delivery of affidavits in paragraphs (4) (c) and (d) to
 1278 the third party.

1279 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
 1280 AFFIDAVITS.--

1281 (b) Any third party may rely upon the authority granted in
 1282 a durable power of attorney that is conditioned on the
 1283 principal's lack of capacity to manage property as defined in s.
 1284 744.102 (12) ~~(11)~~ (a) only after receiving the affidavits provided
 1285 in paragraphs (c) and (d), and such reliance shall end when the
 1286 third party has received notice as provided in subsection (5).

1287 (d) A determination that a principal lacks the capacity to
 1288 manage property as defined in s. 744.102 (12) ~~(11)~~ (a) must be made
 1289 and evidenced by the affidavit of a physician licensed to
 1290 practice medicine pursuant to chapters 458 and 459 as of the
 1291 date of the affidavit. A judicial determination that the
 1292 principal lacks the capacity to manage property pursuant to
 1293 chapter 744 is not required prior to the determination by the

HB 457

2006
CS

1294 physician and the execution of the affidavit. For purposes of
 1295 this section, the physician executing the affidavit must be the
 1296 primary physician who has responsibility for the treatment and
 1297 care of the principal. The affidavit executed by a physician
 1298 must state where the physician is licensed to practice medicine,
 1299 that the physician is the primary physician who has
 1300 responsibility for the treatment and care of the principal, and
 1301 that the physician believes that the principal lacks the
 1302 capacity to manage property as defined in s. 744.102 (12) ~~(11)~~ (a).
 1303 The affidavit may, but need not, be in the following form:

1304
 1305 STATE OF _____
 1306 COUNTY OF _____

1308 Before me, the undersigned authority, personally appeared
 1309 (name of physician) , Affiant, who swore or affirmed that:
 1310 1. Affiant is a physician licensed to practice medicine in
 1311 (name of state, territory, or foreign country) .
 1312 2. Affiant is the primary physician who has responsibility
 1313 for the treatment and care of (principal's name) .
 1314 3. To the best of Affiant's knowledge after reasonable
 1315 inquiry, Affiant believes that the principal lacks the capacity
 1316 to manage property, including taking those actions necessary to
 1317 obtain, administer, and dispose of real and personal property,
 1318 intangible property, business property, benefits, and income.

1319
 1320
 1321 _____

HB 457

2006
CS

1322 (Affiant)

1323

1324 Sworn to (or affirmed) and subscribed before me this (day
1325 of) (month) , (year) , by (name of person making
1326 statement)

1327

1328 (Signature of Notary Public-State of Florida)

1329

1330 (Print, Type, or Stamp Commissioned Name of Notary Public)

1331

1332 Personally Known OR Produced Identification

1333 (Type of Identification Produced)

1334 (f) A third party may not rely on the authority granted in
1335 a durable power of attorney conditioned on the principal's lack
1336 of capacity to manage property as defined in s.

1337 744.102(12)~~(11)~~(a) when any affidavit presented has been
1338 executed more than 6 months prior to the first presentation of
1339 the durable power of attorney to the third party.

1340 Section 33. Subsection (3) of section 744.1085, Florida
1341 Statutes, is amended to read:

1342 744.1085 Regulation of professional guardians;
1343 application; bond required; educational requirements.--

1344 (3) Each professional guardian defined in s.
1345 744.102(17)~~(16)~~ and public guardian must receive a minimum of 40
1346 hours of instruction and training. Each professional guardian
1347 must receive a minimum of 16 hours of continuing education every
1348 2 calendar years after the year in which the initial 40-hour
1349 educational requirement is met. The instruction and education

HB 457

2006
CS

1350 must be completed through a course approved or offered by the
 1351 Statewide Public Guardianship Office. The expenses incurred to
 1352 satisfy the educational requirements prescribed in this section
 1353 may not be paid with the assets of any ward. This subsection
 1354 does not apply to any attorney who is licensed to practice law
 1355 in this state.

1356 Section 34. For the purpose of incorporating the amendment
 1357 made by this act to section 744.3215, Florida Statutes, in a
 1358 reference thereto, subsection (4) of section 117.107, Florida
 1359 Statutes, is reenacted to read:

1360 117.107 Prohibited acts.--

1361 (4) A notary public may not take the acknowledgment of or
 1362 administer an oath to a person whom the notary public actually
 1363 knows to have been adjudicated mentally incapacitated by a court
 1364 of competent jurisdiction, where the acknowledgment or oath
 1365 necessitates the exercise of a right that has been removed
 1366 pursuant to s. 744.3215(2) or (3), and where the person has not
 1367 been restored to capacity as a matter of record.

1368 Section 35. Subsection (13) of section 318.18, Florida
 1369 Statutes, is amended to read:

1370 318.18 Amount of civil penalties.--The penalties required
 1371 for a noncriminal disposition pursuant to s. 318.14 are as
 1372 follows:

1373 (13) In addition to any penalties imposed for noncriminal
 1374 traffic infractions under ~~pursuant to~~ this chapter or imposed
 1375 for criminal violations listed in s. 318.17, notwithstanding s.
 1376 318.121, a board of county commissioners or any unit of local
 1377 government which is consolidated as provided by s. 9, Art. VIII

HB 457

2006
CS

1378 of the State Constitution of 1885, as preserved by s. 6(e), Art.
1379 VIII of the Constitution of 1968:

1380 (a) May impose by ordinance a surcharge of up to \$15 for
1381 any infraction or violation to fund state court facilities. The
1382 court may ~~shall~~ not waive this surcharge. Up to 25 percent of
1383 the revenue from such surcharge may be used to support local law
1384 libraries provided that the county or unit of local government
1385 provides a level of service equal to that provided prior to July
1386 1, 2004, which shall include the continuation of library
1387 facilities located in or near the county courthouse or annexes.

1388 (b) That imposed increased fees or service charges by
1389 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
1390 purpose of securing payment of the principal and interest on
1391 bonds issued by the county before July 1, 2003, to finance state
1392 court facilities, may impose by ordinance a surcharge for any
1393 infraction or violation for the exclusive purpose of securing
1394 payment of the principal and interest on bonds issued by the
1395 county before July 1, 2003, to fund state court facilities until
1396 the date of stated maturity. The court may ~~shall~~ not waive this
1397 surcharge. The ~~Such~~ surcharge may not exceed an amount per
1398 violation calculated as the quotient of the maximum annual
1399 payment of the principal and interest on the bonds as of July 1,
1400 2003, divided by the number of traffic citations for county
1401 fiscal year 2002-2003 certified as paid by the clerk of the
1402 court of the county. The ~~Such~~ quotient shall be rounded up to
1403 the next highest dollar amount. The bonds may be refunded only
1404 if savings will be realized on payments of debt service and the

HB 457

2006
CS

1405 | refunding bonds are scheduled to mature on the same date or
1406 | before the bonds being refunded.

1407 | (c) May impose an additional \$15 surcharge to fund the
1408 | county's participation in the public guardianship program under
1409 | chapter 744. Imposition of this surcharge must be by vote of
1410 | two-thirds of the board of county commissioners or after a
1411 | referendum approved by the electors of the county. Before
1412 | imposing the surcharge, the county commission must demonstrate
1413 | that available revenue sources are insufficient to fund such
1414 | participation. The court may not waive this surcharge.

1415 |
1416 | A county may not impose ~~both~~ of the surcharges authorized under
1417 | both paragraphs (a) and (b) concurrently. The clerk of court
1418 | shall report, no later than 30 days after the end of the
1419 | quarter, the amount of funds collected under this subsection
1420 | during each quarter of the fiscal year. The clerk shall submit
1421 | the report, in a format developed by the Office of State Courts
1422 | Administrator, to the chief judge of the circuit, the Governor,
1423 | the President of the Senate, and the Speaker of the House of
1424 | Representatives.

1425 | Section 36. Section 938.065, Florida Statutes, is created
1426 | to read:

1427 | 938.065 Additional cost for public guardianship
1428 | programs.--

1429 | (1) In addition to any fine prescribed by law for any
1430 | misdemeanor offense, there is assessed as a court cost an
1431 | additional surcharge of \$18 on each fine, which shall be imposed

HB 457

2006
CS

1432 by each county and circuit court and collected by the clerk of
1433 the court together with the fine.

1434 (2) The clerk of the court shall collect and forward, on a
1435 monthly basis, all costs assessed under this section, less \$3
1436 per assessment as a service charge to be retained by the clerk,
1437 to the Department of Revenue for deposit into the General
1438 Revenue Fund. The funds collected shall be used exclusively to
1439 fund public guardianship programs in this state.

1440 Section 37. This act shall take effect July 1, 2006.