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LEGISLATIVE ACTION

Senate

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House

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Floor: NC/2R

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04/27/2015 01:33 PM

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Senator Lee moved the following:

Senate Amendment (with title amendment)

Delete lines 98 - 167

and insert:

(b) A financial institution that has trust powers, ~~has~~ a place of business in this state, and authorization ~~is authorized~~ to conduct trust business in this state.

(c) A not-for-profit corporation that complies with the requirements of subparagraphs 1.-7.

1. The not-for-profit corporation must be qualified to do business in the state; must be organized for charitable or



563564

12 religious purposes in this state; must have served as a court-
13 appointed guardian before January 1, 1996; must be tax-exempt
14 under s. 501(c)(3) of the Internal Revenue Code; may not charge
15 a fee or cost to a principal for services but may be reimbursed
16 for actual expenses; and must serve only principals who reside
17 in communities that provide housing for older persons as defined
18 in s. 760.29(4), and former residents of such communities.

19 2. The not-for-profit corporation must require each
20 principal who signs a power of attorney on or after July 1,
21 2015, sign a separate written instrument containing the
22 following language in 14-point uppercase type:

23
24 I UNDERSTAND THAT THE AGENT IS A NOT-FOR-PROFIT
25 CORPORATION THAT IS NOT CHARGING A FEE FOR SERVICES TO
26 ME (BUT MAY BE REIMBURSED FOR ACTUAL EXPENSES) AND
27 THAT THE INDIVIDUALS THAT WILL PROVIDE ME SERVICES ARE
28 VOLUNTEERS WHO MAY NOT HAVE A STATE LICENSE OR
29 CERTIFICATION.

30
31 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT
32 CORPORATION MAY NOT BE SUFFICIENT TO COVER LIABILITY
33 ARISING FROM AN ERROR, AN OMISSION, OR ANY INTENTIONAL
34 MISCONDUCT COMMITTED BY A DIRECTOR, OFFICER, EMPLOYEE,
35 VOLUNTEER OR AGENT OF THE CORPORATION.

36
37 3. The not-for-profit corporation must allow the clerk of
38 the circuit court for the circuit in which the corporation
39 maintains its primary place of business to, at any time, audit
40 the books and records of the corporation upon request.



563564

41 4. No person shall act on behalf of the not-for-profit
42 corporation in its role as an agent who:
43 a. Has been convicted of a felony; who, from any incapacity
44 or illness, is incapable of discharging the duties of an agent;
45 or who is otherwise unsuitable to perform the duties of an
46 agent.
47 b. Has been arrested for and is awaiting final disposition
48 of, has been found guilty of, regardless of adjudication, or has
49 entered a plea of nolo contendere or guilty to, any offense
50 involving dishonesty or specified in s. 435.04(2), or similar
51 law of another jurisdiction.
52 c. Has been adjudicated bankrupt in the previous 10 years.
53 d. Provides substantial services to the principal in a
54 professional or business capacity, or is a creditor of the
55 principal, and retains that previous professional or business
56 relationship.
57 e. Is in the employ of any person, agency, government, or
58 corporation that provides service to the principal in a
59 professional or business capacity unless such person so employed
60 is the spouse, adult child, parent, or sibling of the principal
61 or a court determines that the potential conflict of interest is
62 insubstantial and the ability of such person to act on behalf of
63 the not-for-profit corporation in its role as agent would
64 clearly be in the principal's best interest.
65 5. The not-for-profit corporation shall require all
66 directors, officers, and employees of the not-for-profit
67 corporation, and any person that acts on behalf of the not-for-
68 profit corporation in its role as an agent, to submit, at their
69 own expense or at the expense of the corporation, but never at



563564

70 the cost of any principal, to a credit history background check
71 prior to acting as an agent. A credit history background check
72 shall be completed again at least once every 2 years after the
73 initial check. The corporation shall maintain a file on each
74 director, officer, and employee, and any person who acts on
75 behalf of the not-for-profit corporation in its role as an
76 agent, and retain in the file documentation of the result of any
77 credit history background check conducted under this
78 subparagraph. The clerk of court may audit such credit history
79 background files.

80 6. The not-for-profit corporation shall require all
81 directors, officers, and employees of the not-for-profit
82 corporation, and any person that acts on behalf of the not-for-
83 profit corporation in its role as an agent, to submit, at their
84 own expense or at the expense of the corporation, but never at
85 the cost of any principal, to a criminal history background
86 check prior to acting as an agent. The corporation shall
87 maintain a file on each director, officer, and employee, and any
88 person that acts on behalf of the not-for-profit corporation in
89 its role as an agent, and retain in the file documentation of
90 the result of any criminal history background check conducted
91 under this subparagraph. The corporation must allow a principal
92 to review the criminal history background check as to any person
93 acting on behalf of such principal. The clerk of court may audit
94 such criminal history background files.

95 7. The not-for-profit corporation must keep on file in the
96 community in which the corporation is acting an updated listing
97 of each person who is authorized to act on behalf of the
98 corporation as an agent, along with a copy of the background



563564

99 check requirements. Any principal may request a copy of the list
100 of authorized persons.

101 8. Any person who acts on behalf of a not-for-profit
102 corporation pursuant to this paragraph in its role as an agent
103 under a power of attorney has a fiduciary responsibility to the
104 principal and must comply with all provisions of this chapter.

105 9. In addition to any other penalty provided by law, any
106 person acting on behalf of a not-for-profit corporation in its
107 role as an agent pursuant to this paragraph is subject to the
108 provisions of s. 825.103.

109
110 ===== T I T L E A M E N D M E N T =====

111 And the title is amended as follows:

112 Delete line 6

113 and insert:

114 criteria for such corporations; providing that a
115 person acting on behalf of the corporation in its role
116 as an agent under a power of attorney has a fiduciary
117 responsibility to the principal; amending s. 709.2109,