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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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04/27/2015 09:50 AM

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Senator Lee moved the following:

**Senate Amendment (with title amendment)**

Delete lines 98 - 366

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



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11 business in the state; must be organized for charitable or  
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 have each principal  
20 who signs a power of attorney on or after July 1, 2015 sign a  
21 separate written instrument containing the following language in  
22 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



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40 the books and records of the corporation upon request.

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 listed at s. 435.04(2), or similar law  
51 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



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69 own expense or at the expense of the corporation, but never at  
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 that 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



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98 corporation as an agent, along with a copy of the background  
99 check requirements. Any principal may request a copy of the list  
100 of authorized persons.

101 8. Any person that 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 (2) A power of attorney must be signed by the principal and  
110 by two subscribing witnesses and be acknowledged by the  
111 principal before a notary public or as otherwise provided in s.  
112 695.03.

113 (3) If the principal is physically unable to sign the power  
114 of attorney, the notary public before whom the principal's oath  
115 or acknowledgment is made may sign the principal's name on the  
116 power of attorney pursuant to s. 117.05(14).

117 Section 2. Subsection (3) of section 709.2109, Florida  
118 Statutes, is amended to read:

119 709.2109 Termination or suspension of power of attorney or  
120 agent's authority.—

121 (3) If any person initiates judicial proceedings to  
122 determine the principal's incapacity or for the appointment of a  
123 guardian advocate, the authority granted under the power of  
124 attorney is suspended until the petition is dismissed or  
125 withdrawn or the court enters an order authorizing the agent to  
126 exercise one or more powers granted under the power of attorney.



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127 However, if the agent named in the power of attorney is the  
128 principal's parent, spouse, child, or grandchild, the authority  
129 under the power of attorney is not suspended unless a verified  
130 motion in accordance with s. 744.3203 is also filed.

131 (a) If an emergency arises after initiation of proceedings  
132 to determine incapacity and before adjudication regarding the  
133 principal's capacity, the agent may petition the court in which  
134 the proceeding is pending for authorization to exercise a power  
135 granted under the power of attorney. The petition must set forth  
136 the nature of the emergency, the property or matter involved,  
137 and the power to be exercised by the agent.

138 (b) Notwithstanding the provisions of this section, unless  
139 otherwise ordered by the court, a proceeding to determine  
140 incapacity does not affect the authority of the agent to make  
141 health care decisions for the principal, including, but not  
142 limited to, those provided in chapter 765. If the principal has  
143 executed a health care advance directive designating a health  
144 care surrogate, the terms of the directive control if the  
145 directive and the power of attorney are in conflict unless the  
146 power of attorney is later executed and expressly states  
147 otherwise.

148 Section 3. Subsection (5) is added to section 744.107,  
149 Florida Statutes, to read:

150 744.107 Court monitors.—

151 (5) The court may appoint the office of criminal conflict  
152 and civil regional counsel as monitor if the ward is indigent.

153 Section 4. Subsection (6) is added to section 744.1075,  
154 Florida Statutes, to read:

155 744.1075 Emergency court monitor.—



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156 (6) The court may appoint the office of criminal conflict  
157 and civil regional counsel as monitor if the ward is indigent.

158 Section 5. Subsections (5) and (8) of section 744.108,  
159 Florida Statutes, are amended, and subsection (9) is added to  
160 that section, to read:

161 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees  
162 and expenses.-

163 (5) All petitions for guardian ~~guardian's~~ and attorney  
164 ~~attorney's~~ fees and expenses must be accompanied by an itemized  
165 description of the services performed for the fees and expenses  
166 sought to be recovered.

167 (8) When court proceedings are instituted to review or  
168 determine a guardian ~~guardian's~~ or an attorney ~~attorney's~~ fees  
169 under subsection (2), such proceedings are part of the  
170 guardianship administration process and the costs, including  
171 costs and attorney fees for the guardian's attorney, an attorney  
172 appointed under s. 744.331(2), or an attorney who has rendered  
173 services to the ward, shall be determined by the court and paid  
174 from the assets of the guardianship estate unless the court  
175 finds the requested compensation under subsection (2) to be  
176 substantially unreasonable.

177 (9) The court may determine that a request for compensation  
178 by the guardian, the guardian's attorney, a person employed by  
179 the guardian, an attorney appointed under s. 744.331(2), or an  
180 attorney who has rendered services to the ward is reasonable  
181 without receiving expert testimony. A person or party may offer  
182 expert testimony for or against a request for compensation after  
183 giving notice to interested persons. Reasonable expert witness  
184 fees shall be awarded by the court and paid from the assets of



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185 the guardianship estate using the standards in subsection (8).

186 Section 6. Section 744.3025, Florida Statutes, is amended  
187 to read:

188 744.3025 Claims of minors.—

189 (1) (a) The court may appoint a guardian ad litem to  
190 represent the minor's interest before approving a settlement of  
191 the minor's portion of the claim in a any case in which a minor  
192 has a claim for personal injury, property damage, wrongful  
193 death, or other cause of action in which the gross settlement of  
194 the claim exceeds \$15,000 if the court believes a guardian ad  
195 litem is necessary to protect the minor's interest.

196 (b) Except as provided in paragraph (e), the court shall  
197 appoint a guardian ad litem to represent the minor's interest  
198 before approving a settlement of the minor's claim in a any case  
199 in which the gross settlement involving a minor equals or  
200 exceeds \$50,000.

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

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

205 (e) A court need not appoint a guardian ad litem for the  
206 minor if a guardian of the minor has previously been appointed  
207 and that guardian has no potential adverse interest to the  
208 minor. ~~A court may appoint a guardian ad litem if the court~~  
209 ~~believes a guardian ad litem is necessary to protect the~~  
210 ~~interests of the minor.~~

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





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214 (3) A settlement of a claim pursuant to this section is  
215 subject to the confidentiality provisions of this chapter.

216 Section 7. Subsections (2) through (8) of section 744.3031,  
217 Florida Statutes, are renumbered as subsections (3) through (9),  
218 respectively, a new subsection (2) is added to that section, and  
219 present subsection (8) of that section is amended, to read:

220 744.3031 Emergency temporary guardianship.-

221 (2) Notice of filing of the petition for appointment of an  
222 emergency temporary guardian and a hearing on the petition must  
223 be served on the alleged incapacitated person and on the alleged  
224 incapacitated person's attorney at least 24 hours before the  
225 hearing on the petition is commenced, unless the petitioner  
226 demonstrates that substantial harm to the alleged incapacitated  
227 person would occur if the 24-hour notice is given.

228 (9)~~(8)~~(a) An emergency temporary guardian shall file a  
229 final report no later than 30 days after the expiration of the  
230 emergency temporary guardianship.

231 (b) A court may not authorize any final payment of the  
232 emergency temporary guardian fees or the fees of his or her  
233 attorney until the final report is filed.

234 (c)~~(b)~~ If an emergency temporary guardian is a guardian for  
235 the property, the final report must consist of a verified  
236 inventory of the property, as provided in s. 744.365, as of the  
237 date the letters of emergency temporary guardianship were  
238 issued, a final accounting that gives a full and correct account  
239 of the receipts and disbursements of all the property of the  
240 ward over which the guardian had control, and a statement of the  
241 property of the ward on hand at the end of the emergency  
242 temporary guardianship. If the emergency temporary guardian



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243 becomes the successor guardian of the property, the final report  
244 must satisfy the requirements of the initial guardianship report  
245 for the guardian of the property as provided in s. 744.362.

246 (d)~~(e)~~ If the emergency temporary guardian is a guardian of  
247 the person, the final report must summarize the activities of  
248 the temporary guardian with regard to residential placement,  
249 medical condition, mental health and rehabilitative services,  
250 and the social condition of the ward to the extent of the  
251 authority granted to the temporary guardian in the letters of  
252 guardianship. If the emergency temporary guardian becomes the  
253 successor guardian of the person, the report must satisfy the  
254 requirements of the initial report for a guardian of the person  
255 as stated in s. 744.362.

256 (e)~~(d)~~ A copy of the final report of the emergency  
257 temporary guardianship shall be served on the successor guardian  
258 and the ward.

259

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

261 And the title is amended as follows:

262 Delete lines 6 - 43

263 and insert:

264 criteria for such corporations; providing that a  
265 person acting on behalf of the corporation in its role  
266 as an agent under a power of attorney has a fiduciary  
267 responsibility to the principal; amending s. 709.2109,  
268 F.S.; requiring the filing of a motion before  
269 suspension of a power of attorney in proceedings to  
270 determine a principal's incapacity or for appointment  
271 of a guardian advocate under certain circumstances;



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272 amending ss. 744.107 and 744.1075, F.S.; authorizing a  
273 court to appoint the office of criminal conflict and  
274 civil regional counsel as a court monitor in  
275 guardianship proceedings; amending s. 744.108, F.S.;  
276 providing that fees and costs incurred by an attorney  
277 appointed by a court or an attorney who has rendered  
278 services to a ward in compensation proceedings are  
279 payable from guardianship assets; providing that  
280 expert testimony is not required in proceedings to  
281 determine compensation for an attorney, a guardian, or  
282 a person employed by a guardian; requiring a person  
283 offering expert testimony to provide notice to  
284 interested persons; providing that reasonable expert  
285 witness fees are recoverable; amending s. 744.3025,  
286 F.S.; providing that a court may appoint a guardian ad  
287 litem to represent a minor if necessary to protect the  
288 minor's interest in a settlement; providing that a  
289 settlement of a minor's claim is subject to certain  
290 confidentiality provisions; amending s. 744.3031,  
291 F.S.; requiring notice to an alleged incapacitated  
292 person and such person's attorney of a petition for  
293 appointment of an emergency temporary guardian before  
294 a hearing on the petition commences; providing an  
295 exception; prohibiting the final payment of the  
296 emergency temporary guardian fees and his or her  
297 attorney fees until the final report is filed;  
298 amending s.