

By the Committees on Rules; and Judiciary; and Senators  
Passidomo, Stewart, and Thurston

595-03555-20

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1                   A bill to be entitled  
2       An act relating to guardianship; amending s. 744.312,  
3       F.S.; expanding factors for a court to consider when  
4       appointing a guardian; amending s. 744.334, F.S.;  
5       revising requirements for a petition for the  
6       appointment of a guardian; defining the term  
7       "alternatives to guardianship"; prohibiting  
8       professional guardians from petitioning for their own  
9       appointment except under certain circumstances;  
10      defining the term "relative"; providing that a  
11      specified provision does not apply to public guardians  
12      under specified circumstances; amending s. 744.363,  
13      F.S.; expanding requirements for initial guardianship  
14      plans; amending s. 744.367, F.S.; expanding  
15      requirements for annual guardianship reports; defining  
16      the term "remuneration"; amending s. 744.3675, F.S.;  
17      expanding requirements for annual guardianship plans;  
18      amending s. 744.441, F.S.; authorizing certain  
19      guardians to sign an order not to resuscitate;  
20      requiring the court to use specified procedures for  
21      expedited judicial intervention under certain  
22      circumstances; amending s. 744.446, F.S.; prohibiting  
23      guardians from taking certain actions on behalf of an  
24      alleged incapacitated person or minor; revising  
25      provisions relating to conflicts of interest;  
26      providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Paragraph (e) is added to subsection (3) of  
31 section 744.312, Florida Statutes, and subsection (1) of that  
32 section is republished, to read:

33 744.312 Considerations in appointment of guardian.—

34 (1) If the person designated is qualified to serve pursuant  
35 to s. 744.309, the court shall appoint any standby guardian or  
36 preneed guardian, unless the court determines that appointing  
37 such person is contrary to the best interests of the ward.

38 (3) The court shall also:

39 (e) Inquire into and consider potential disqualifications  
40 under s. 744.309 and potential conflicts of interest under s.  
41 744.446.

42 Section 2. Section 744.334, Florida Statutes, is amended to  
43 read:

44 744.334 Petition for appointment of guardian or  
45 professional guardian; contents.—

46 (1) Every petition for the appointment of a guardian shall  
47 be verified by the petitioner and shall contain statements, to  
48 the best of petitioner's knowledge and belief, showing the name,  
49 age, residence, and post office address of the alleged  
50 incapacitated person or minor; the nature of her or his  
51 incapacity, if any; the extent of guardianship desired, either  
52 plenary or limited; the residence and post office address of the  
53 petitioner; the names and addresses of the next of kin of the  
54 alleged incapacitated person or minor, if known to the  
55 petitioner; the name of the proposed guardian and the reasons  
56 why she or he should be appointed guardian; whether the proposed  
57 guardian is a professional guardian; the relationship and  
58 previous relationship of the proposed guardian to the alleged

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59 incapacitated person or minor ward; any other type of  
60 guardianship under part III of this chapter or alternatives to  
61 guardianship that the alleged incapacitated person or minor has  
62 designated or is in currently or has been in previously; the  
63 reasons why a guardian advocate under s. 744.3085 or other  
64 alternatives to guardianship are insufficient to meet the needs  
65 of the alleged incapacitated person or minor; and the nature and  
66 value of property subject to the guardianship; and the reasons  
67 why this person should be appointed guardian. The petition must  
68 state whether ~~If a willing and qualified guardian cannot be~~  
69 ~~located, the petition must so state. As used in this subsection,~~  
70 the term "alternatives to guardianship" means an advance  
71 directive as defined in s. 765.101, a durable power of attorney  
72 as provided in chapter 709, a representative payee under 42  
73 U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

74 (2) If the petitioner is a professional guardian, she or he  
75 may not petition for her or his own appointment unless the  
76 petitioner is a relative of the alleged incapacitated person or  
77 minor. For purposes of this subsection, the term "relative"  
78 means an individual who would qualify to serve as a nonresident  
79 guardian under s. 744.309(2). This subsection does not apply to  
80 a public guardian appointed under s. 744.2006 who seeks  
81 appointment as a guardian of a person of limited financial means  
82 and whose compensation as guardian for such person would be paid  
83 from the Office of Public and Professional Guardians or any  
84 local government ~~The petition for appointment of a professional~~  
85 ~~guardian must comply with the provisions of subsection (1), and~~  
86 ~~must state that the petitioner is a professional guardian.~~

87 Section 3. Subsection (1) of section 744.363, Florida

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88 Statutes, is amended to read:

89 744.363 Initial guardianship plan.—

90 (1) The initial guardianship plan shall include all of the  
91 following:

92 (a) The provision of medical, mental, or personal care  
93 services for the welfare of the ward.~~†~~

94 (b) The provision of social and personal services for the  
95 welfare of the ward.~~†~~

96 (c) The place and kind of residential setting best suited  
97 for the needs of the ward.~~†~~

98 (d) The application of health and accident insurance and  
99 any other private or governmental benefits to which the ward may  
100 be entitled to meet any part of the costs of medical, mental  
101 health, or related services provided to the ward.~~†~~ and

102 (e) Any physical and mental examinations necessary to  
103 determine the ward's medical and mental health treatment needs.

104 (f) A list of any preexisting orders not to resuscitate  
105 executed under s. 401.45(3) or preexisting advance directives,  
106 as defined in s. 765.101, the date an order or directive was  
107 signed, whether such order or directive has been suspended by  
108 the court, and a description of the steps taken to identify and  
109 locate the preexisting order not to resuscitate or advance  
110 directive.

111 Section 4. Subsection (3) of section 744.367, Florida  
112 Statutes, is amended to read:

113 744.367 Duty to file annual guardianship report.—

114 (3) (a) The annual guardianship report of a guardian of the  
115 property must consist of an annual accounting, and the annual  
116 guardianship report of a guardian of the person must consist of

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117 an annual guardianship plan. The annual guardianship report of a  
118 guardian of the property and the annual guardianship report of a  
119 guardian of the person must both include a declaration of all  
120 remuneration received by the guardian from any source for  
121 services rendered to or on behalf of the ward. As used in this  
122 paragraph, the term "remuneration" means any payment or other  
123 benefit made directly or indirectly, overtly or covertly, or in  
124 cash or in kind to the guardian.

125 (b) The annual guardianship report must ~~shall~~ be served on  
126 the ward, unless the ward is a minor or is totally  
127 incapacitated, and on the attorney for the ward, if any. The  
128 guardian shall provide a copy to any other person as the court  
129 may direct.

130 Section 5. Paragraph (d) is added to subsection (1) of  
131 section 744.3675, Florida Statutes, to read:

132 744.3675 Annual guardianship plan.—Each guardian of the  
133 person must file with the court an annual guardianship plan  
134 which updates information about the condition of the ward. The  
135 annual plan must specify the current needs of the ward and how  
136 those needs are proposed to be met in the coming year.

137 (1) Each plan for an adult ward must, if applicable,  
138 include:

139 (d) A list of any preexisting orders not to resuscitate  
140 executed under s. 401.45(3) or preexisting advance directives,  
141 as defined in s. 765.101, the date an order or directive was  
142 signed, whether such order or directive has been suspended by  
143 the court, and a description of the steps taken to identify and  
144 locate the preexisting order not to resuscitate or advance  
145 directive.

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146 Section 6. Section 744.441, Florida Statutes, is amended to  
147 read:

148 744.441 Powers of guardian upon court approval.—After  
149 obtaining approval of the court pursuant to a petition for  
150 authorization to act:7

151 (1) A plenary guardian of the property, or a limited  
152 guardian of the property within the powers granted by the order  
153 appointing the guardian or an approved annual or amended  
154 guardianship report, may:

155 (a)~~(1)~~ Perform, compromise, or refuse performance of a  
156 ward's contracts that continue as obligations of the estate, as  
157 he or she may determine under the circumstances.

158 (b)~~(2)~~ Execute, exercise, or release any powers as trustee,  
159 personal representative, custodian for minors, conservator, or  
160 donee of any power of appointment or other power that the ward  
161 might have lawfully exercised, consummated, or executed if not  
162 incapacitated, if the best interest of the ward requires such  
163 execution, exercise, or release.

164 (c)~~(3)~~ Make ordinary or extraordinary repairs or  
165 alterations in buildings or other structures; demolish any  
166 improvements; or raze existing, or erect new, party walls or  
167 buildings.

168 (d)~~(4)~~ Subdivide, develop, or dedicate land to public use;  
169 make or obtain the vacation of plats and adjust boundaries;  
170 adjust differences in valuation on exchange or partition by  
171 giving or receiving consideration; or dedicate easements to  
172 public use without consideration.

173 (e)~~(5)~~ Enter into a lease as lessor or lessee for any  
174 purpose, with or without option to purchase or renew, for a term

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175 within, or extending beyond, the period of guardianship.

176 (f)~~(6)~~ Enter into a lease or arrangement for exploration  
177 and removal of minerals or other natural resources or enter into  
178 a pooling or unitization agreement.

179 (g)~~(7)~~ Abandon property when, in the opinion of the  
180 guardian, it is valueless or is so encumbered or in such  
181 condition that it is of no benefit to the estate.

182 (h)~~(8)~~ Pay calls, assessments, and other sums chargeable or  
183 accruing against, or on account of, securities.

184 (i)~~(9)~~ Borrow money, with or without security, to be repaid  
185 from the property or otherwise and advance money for the  
186 protection of the estate.

187 (j)~~(10)~~ Effect a fair and reasonable compromise with any  
188 debtor or obligor or extend, renew, or in any manner modify the  
189 terms of any obligation owing to the estate.

190 (k)~~(11)~~ Prosecute or defend claims or proceedings in any  
191 jurisdiction for the protection of the estate and of the  
192 guardian in the performance of his or her duties. Before  
193 authorizing a guardian to bring an action described in s.  
194 736.0207, the court shall first find that the action appears to  
195 be in the ward's best interests during the ward's probable  
196 lifetime. There shall be a rebuttable presumption that an action  
197 challenging the ward's revocation of all or part of a trust is  
198 not in the ward's best interests if the revocation relates  
199 solely to a devise. This paragraph ~~subsection~~ does not preclude  
200 a challenge after the ward's death. If the court denies a  
201 request that a guardian be authorized to bring an action  
202 described in s. 736.0207, the court shall review the continued  
203 need for a guardian and the extent of the need for delegation of

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204 the ward's rights.

205 (l)~~(12)~~ Sell, mortgage, or lease any real or personal  
206 property of the estate, including homestead property, or any  
207 interest therein for cash or credit, or for part cash and part  
208 credit, and with or without security for unpaid balances.

209 (m)~~(13)~~ Continue any unincorporated business or venture in  
210 which the ward was engaged.

211 (n)~~(14)~~ Purchase the entire fee simple title to real estate  
212 in this state in which the guardian has no interest, but the  
213 purchase may be made only for a home for the ward, to protect  
214 the home of the ward or the ward's interest, or as a home for  
215 the ward's dependent family. If the ward is a married person and  
216 the home of the ward or of the dependent family of the ward is  
217 owned by the ward and spouse as an estate by the entirety and  
218 the home is sold pursuant to the authority of paragraph (l)  
219 ~~subsection (12)~~, the court may authorize the investment of any  
220 part or all of the proceeds from the sale toward the purchase of  
221 a fee simple title to real estate in this state for a home for  
222 the ward or the dependent family of the ward as an estate by the  
223 entirety owned by the ward and spouse. If the guardian is  
224 authorized to acquire title to real estate for the ward or  
225 dependent family of the ward as an estate by the entirety in  
226 accordance with the preceding provisions, the conveyance shall  
227 be in the name of the ward and spouse and shall be effective to  
228 create an estate by the entirety in the ward and spouse.

229 (o)~~(15)~~ Exercise any option contained in any policy of  
230 insurance payable to, or inuring to the benefit of, the ward.

231 (p)~~(16)~~ Pay reasonable funeral, interment, and grave marker  
232 expenses for the ward from the ward's estate.



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233        (q) ~~(17)~~ Make gifts of the ward's property to members of the  
234 ward's family in estate and income tax planning procedures.

235        (r) ~~(18)~~ When the ward's will evinces an objective to obtain  
236 a United States estate tax charitable deduction by use of a  
237 split interest trust (as that term is defined in s. 736.1201),  
238 but the maximum charitable deduction otherwise allowable will  
239 not be achieved in whole or in part, execute a codicil on the  
240 ward's behalf amending said will to obtain the maximum  
241 charitable deduction allowable without diminishing the aggregate  
242 value of the benefits of any beneficiary under such will.

243        (s) ~~(19)~~ Create or amend revocable trusts or create  
244 irrevocable trusts of property of the ward's estate which may  
245 extend beyond the disability or life of the ward in connection  
246 with estate, gift, income, or other tax planning or in  
247 connection with estate planning. The court shall retain  
248 oversight of the assets transferred to a trust, unless otherwise  
249 ordered by the court.

250        (t) ~~(20)~~ Renounce or disclaim any interest by testate or  
251 intestate succession or by inter vivos transfer.

252        (u) ~~(21)~~ Enter into contracts that are appropriate for, and  
253 in the best interest of, the ward.

254        (v) ~~(22)~~ As to a minor ward, pay expenses of the ward's  
255 support, health, maintenance, and education, if the ward's  
256 parents, or either of them, are alive.

257        (2) A plenary guardian or a limited guardian of a ward may  
258 sign an order not to resuscitate as provided in s. 401.45(3).  
259 When a plenary guardian or a limited guardian of a ward seeks to  
260 obtain approval of the court to sign an order not to  
261 resuscitate, if required by exigent circumstances, the

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262 procedures for expedited judicial intervention under rule 5.900  
263 of the Florida Probate Rules apply, and the court must hold a  
264 preliminary hearing within 72 hours after the petition is filed.

265 Section 7. Present subsections (2), (3), and (4) of section  
266 744.446, Florida Statutes, are redesignated as subsections (3),  
267 (4), and (5), respectively, a new subsection (2) is added to  
268 that section, and present subsection (2) of that section is  
269 amended, to read:

270 744.446 Conflicts of interest; prohibited activities; court  
271 approval; breach of fiduciary duty.—

272 (2) A guardian may not offer, pay, solicit, or receive a  
273 commission, benefit, bonus, rebate, or kickback, directly or  
274 indirectly, overtly or covertly, in cash or in kind, or engage  
275 in a split-fee arrangement in return for referring, soliciting,  
276 or engaging in a transaction for goods or services on behalf of  
277 an alleged incapacitated person or minor, or a ward, for past or  
278 future goods or services.

279 (3)~~(2)~~ Unless prior approval is obtained by court order, or  
280 unless such relationship existed before ~~prior to~~ appointment of  
281 the guardian and is disclosed to the court in the petition for  
282 appointment of guardian, a guardian may not:

283 (a) Have any interest, financial or otherwise, direct or  
284 indirect, in any business transaction or activity with the ward,  
285 the judge presiding over the case, any member of the appointed  
286 examining committee, any court employee involved in the  
287 guardianship process, or the attorney for the ward;

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

290 (c) Be designated as a beneficiary on any life insurance

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291 policy, pension, or benefit plan of the ward unless such  
292 designation was validly made by the ward before ~~prior to~~  
293 adjudication of incapacity of the ward; and

294 (d) Directly or indirectly purchase, rent, lease, or sell  
295 any property or services from or to any business entity of which  
296 the guardian or the guardian's spouse or any of the guardian's  
297 lineal descendants, or collateral kindred, is an officer,  
298 partner, director, shareholder, or proprietor, or has any  
299 financial interest.

300 Section 8. This act shall take effect July 1, 2020.