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LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 44.407, Florida Statutes, is created to
read:

44.407 Elder-focused dispute resolution process.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Denying an elder a voice in decisions regarding himself
or herself may negatively affect the elder's health and well-



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11 being, as well as deprive the elder of his or her legal rights.
12 Even if an elder is losing capacity to make major decisions for
13 himself or herself, the elder is still entitled to the dignity
14 of having his or her voice heard.

15 (b) In conjunction with proceedings in court, it is in the
16 best interest of an elder, his or her family members, and
17 legally recognized decisionmakers to have access to a
18 nonadversarial process to resolve disputes relating to an elder
19 which focuses on the elder's wants, needs, and best interests.
20 Such a process will protect and preserve the elder's exercisable
21 rights.

22 (c) By recognizing that every elder, including those whose
23 capacity is being questioned, has unique needs, unique
24 interests, and differing abilities, the Legislature intends for
25 this section to promote the public welfare by establishing a
26 unique dispute resolution option to complement and enhance, not
27 replace, other services, such as the provision of legal
28 information or legal representation; financial advice;
29 individual or family therapy; medical, psychological, or
30 psychiatric evaluation; or mediation, specifically for issues
31 related to the care and needs of elders. The Legislature intends
32 that this section be liberally construed to accomplish these
33 goals.

34 (2) DEFINITIONS.—As used in this section, the term:

35 (a)1. "Action" means a proceeding in which a party sought
36 or seeks a judgment or an order from the court to:

37 a. Determine, pursuant to s. 744.331, whether someone is or
38 is not incapacitated.

39 b. Appoint or remove a guardian or guardian advocate.



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40 c. Review any actions of a guardian.

41 d. Execute an investigation pursuant to s. 415.104.

42 e. Review an agent's actions pursuant to s. 709.2116.

43 f. Review a proxy's decision pursuant to s. 765.105.

44 g. Enter an injunction for the protection of an elder under
45 s. 825.1035.

46 h. Follow up on a complaint made to the Office of Public
47 and Professional Guardians pursuant to s. 744.2004.

48 i. At the discretion of the presiding judge, address any
49 other matters pending before the court which involve the care
50 and safety of an elder.

51 2. The term may be applied only to using eldercaring
52 coordination solely to address disputes regarding the care and
53 safety of the elder. The term does not include actions brought
54 under chapter 732, chapter 733, or chapter 736.

55 (b) "Care and safety" means the condition of the aging
56 person's general physical, mental, emotional, psychological, and
57 social well-being. The term does not include:

58 1. A determination of capacity by the court under s.
59 744.331(5) or (6); or

60 2. Unless the parties agree otherwise, matters relating to
61 the elder's estate planning, agent designations under chapter
62 709, or surrogate designations under chapter 765; trusts in
63 which the elder is a grantor, fiduciary, or beneficiary; or
64 other similar financially focused matters.

65 (c) "Elder" means a person 60 years of age or older who is
66 alleged to be suffering from the infirmities of aging as
67 manifested by a physical, mental, or emotional dysfunction to
68 the extent that the elder's ability to provide adequately for



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69 the protection or care of his or her own person or property is
70 impaired.

71 (d) "Eldercaring coordination" means an elder-focused
72 dispute resolution process during which an eldercaring
73 coordinator assists an elder, legally authorized decisionmakers,
74 and others who participate by court order or by invitation of
75 the eldercaring coordinator, in resolving disputes regarding the
76 care and safety of an elder by:

77 1. Facilitating more effective communication and
78 negotiation and the development of problem-solving skills.

79 2. Providing education about eldercare resources.

80 3. Facilitating the creation, modification, or
81 implementation of an eldercaring plan and reassessing it as
82 necessary to reach a resolution of ongoing disputes concerning
83 the care and safety of the elder.

84 4. Making recommendations for the resolution of disputes
85 concerning the care and safety of the elder.

86 5. With the prior approval of the parties to an action or
87 of the court, making limited decisions within the scope of the
88 court's order of referral.

89 (e) "Eldercaring coordination communication" means an oral
90 or written statement or nonverbal conduct intended to make an
91 assertion by, between, or among parties, participants, or the
92 eldercaring coordinator which is made during the course of an
93 eldercaring coordination activity, or before the activity if
94 made in furtherance of eldercaring coordination. The term does
95 not include statements made during eldercaring coordination
96 which involve the commission of a crime, the intent to commit a
97 crime, or ongoing abuse, exploitation, or neglect of a child or



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98 vulnerable adult.

99 (f) "Eldercaring coordinator" means an impartial third
100 person who is appointed by the court or designated by the
101 parties and who meets the requirements of subsection (5). The
102 role of the eldercaring coordinator is to assist parties through
103 eldercaring coordination in a manner that respects the elder's
104 need for autonomy and safety.

105 (g) "Eldercaring plan" means a continually reassessed plan
106 for the items, tasks, or responsibilities needed to provide for
107 the care and safety of an elder which is modified throughout
108 eldercaring coordination to meet the changing needs of the elder
109 and which takes into consideration the preferences and wishes of
110 the elder. The plan is not a legally enforceable document, but
111 is meant for use by the parties and participants.

112 (h) "Good cause" means a finding that the eldercaring
113 coordinator:

114 1. Is not fulfilling the duties and obligations of the
115 position;

116 2. Has failed to comply with any order of the court, unless
117 the order has been superseded on appeal;

118 3. Has conflicting or adverse interests that affect his or
119 her impartiality;

120 4. Has engaged in circumstances that compromise the
121 integrity of eldercaring coordination; or

122 5. Has had a disqualifying event occur.

123
124 The term does not include a party's disagreement with the
125 eldercaring coordinator's methods or procedures.

126 (i) "Legally authorized decisionmaker" means an individual



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127 designated, either by the elder or by the court, pursuant to
128 chapter 709, chapter 744, chapter 747, or chapter 765 who has
129 the authority to make specific decisions on behalf of the elder
130 who is the subject of an action.

131 (j) "Participant" means an individual who is not a party
132 and who joins eldercaring coordination by invitation of or with
133 the consent of the eldercaring coordinator but who has not filed
134 a pleading in the action from which the case was referred to
135 eldercaring coordination.

136 (k) "Party" includes the elder who is the subject of an
137 action and any other individual over whom the court has
138 jurisdiction related to that action.

139 (3) REFERRAL.—

140 (a) Upon agreement of the parties to an action, the court's
141 own motion, or the motion of a party to the action, the court
142 may appoint an eldercaring coordinator and refer the parties to
143 eldercaring coordination to assist in the resolution of disputes
144 concerning the care and safety of the elder who is the subject
145 of the action.

146 (b) The court may not refer a party who has a history of
147 domestic violence or exploitation of an elderly person to
148 eldercaring coordination unless the elder and other parties in
149 the action consent to such referral.

150 1. The court shall offer each party an opportunity to
151 consult with an attorney or a domestic violence advocate before
152 accepting consent to such referral. The court shall determine
153 whether each party has given his or her consent freely and
154 voluntarily.

155 2. The court shall consider whether a party has committed



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156 an act of exploitation as defined in s. 415.102(8) or s.
157 825.103(1) or domestic violence as defined in s. 741.28 against
158 another party or any member of another party's family; engaged
159 in a pattern of behaviors that exert power and control over
160 another party and that may compromise another party's ability to
161 negotiate a fair result; or engaged in behavior that leads
162 another party to have reasonable cause to believe that he or she
163 is in imminent danger of becoming a victim of domestic violence.
164 The court shall consider and evaluate all relevant factors,
165 including, but not limited to, the factors specified in s.
166 741.30(6)(b).

167 3. If a party has a history of domestic violence or
168 exploitation of an elderly person, the court must order
169 safeguards to protect the safety of the participants and the
170 elder and the elder's property, including, but not limited to,
171 adherence to all provisions of an injunction for protection or
172 conditions of bail, probation, or a sentence arising from
173 criminal proceedings.

174 (4) COURT APPOINTMENT.—

175 (a) A court appointment of an eldercaring coordinator is
176 for a term of up to 2 years, and the court shall conduct review
177 hearings intermittently to determine whether the term should be
178 concluded or extended. Appointments conclude upon expiration of
179 the term or upon discharge by the court, whichever occurs
180 earlier.

181 (b) The order of appointment issued by the court must
182 define the scope of the eldercaring coordinator's authority
183 under the appointment in the particular action, consistent with
184 this section.



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185 (c) The order must specify that, notwithstanding the
186 requirement for intermittent review hearings imposed under
187 paragraph (a), a party may move the court at any time during the
188 period of appointment for termination of the appointment. Upon
189 the filing of such a motion, the court shall timely conduct a
190 hearing to determine whether to terminate the appointment. Until
191 the court has ruled on the motion, the eldercaring coordination
192 process must continue. In making the determination, the court
193 shall consider, at a minimum:

194 1. The efforts and progress of eldercaring coordination in
195 the action to date;

196 2. The preference of the elder, if ascertainable; and

197 3. Whether continuation of the appointment is in the best
198 interests of the elder.

199 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

200 (a) The court shall appoint qualified eldercaring
201 coordinators who meet all of the following requirements:

202 1. Meet one of the following professional requirements:

203 a. Be licensed as a mental health professional under

204 chapter 491 and hold at least a master's degree in the
205 professional field of practice;

206 b. Be licensed as a psychologist under chapter 490;

207 c. Be licensed as a physician under chapter 458 or chapter
208 459;

209 d. Be licensed as a nurse under chapter 464 and hold at
210 least a master's degree;

211 e. Be certified by the Florida Supreme Court as a family
212 mediator and hold at least a master's degree;

213 f. Be a member in good standing of The Florida Bar; or



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214 g. Be a professional guardian as defined in s. 744.102 and
215 hold at least a master's degree.

216 2. Complete all of the following:

217 a. Three years of post-licensure or post-certification
218 practice;

219 b. A family mediation training program certified by the
220 Florida Supreme Court; and

221 c. An eldercaring coordinator training program certified by
222 the Florida Supreme Court. The training must total at least 44
223 hours and must include advanced tactics for dispute resolution
224 of issues related to aging, illness, incapacity, or other
225 vulnerabilities associated with persons 60 years of age or
226 older, as well as elder, guardianship, and incapacity law and
227 procedures and less restrictive alternatives to guardianship;
228 phases of eldercaring coordination and the role and functions of
229 an eldercaring coordinator; the elder's role within eldercaring
230 coordination; family dynamics related to eldercaring
231 coordination; eldercaring coordination skills and techniques;
232 multicultural competence and its use in eldercaring
233 coordination; at least 6 hours on the implications of elder
234 abuse, neglect, and exploitation and other safety issues
235 pertinent to this training; at least 4 hours of ethical
236 considerations pertaining to this training; use of technology
237 within eldercaring coordination; and court-specific eldercaring
238 coordination procedures. Pending certification of such a
239 training program by the Florida Supreme Court, the eldercaring
240 coordinator must document completion of training that satisfies
241 the hours and the elements prescribed in this sub-subparagraph.

242 3. Successfully pass a level 2 background screening as set



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243 forth in s. 435.04(2) and (3) or be exempt from disqualification
244 under s. 435.07. The prospective eldercaring coordinator must
245 submit a full set of fingerprints to the court or to a vendor,
246 entity, or agency authorized by s. 943.053(13). The court,
247 vendor, entity, or agency shall forward the fingerprints to the
248 Department of Law Enforcement for state processing, and the
249 Department of Law Enforcement shall forward the fingerprints to
250 the Federal Bureau of Investigation for national processing. The
251 prospective eldercaring coordinator shall pay the fees for state
252 and federal fingerprint processing. The state cost for
253 fingerprint processing shall be as provided in s. 943.053(3) (e)
254 for records provided to persons or entities other than those
255 specified as exceptions therein.

256 4. Have not been a respondent in a final order granting an
257 injunction for protection against domestic, dating, sexual, or
258 repeat violence or stalking or exploitation of an elder or a
259 disabled person.

260 5. Meet any additional qualifications the court may require
261 to address issues specific to the parties.

262 (b) A qualified eldercaring coordinator must be in good
263 standing or in clear and active status with all professional
264 licensing authorities or certification boards to which the
265 eldercaring coordinator is subject.

266 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
267 COORDINATORS.—

268 (a) An eldercaring coordinator must resign and immediately
269 report to the court if he or she no longer meets the minimum
270 qualifications or if any of the disqualifying circumstances
271 occurs.



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272 (b) The court shall remove an eldercaring coordinator upon
273 the eldercaring coordinator's resignation or disqualification or
274 a finding of good cause shown based on the court's own motion or
275 a party's motion.

276 (c) Upon the court's own motion or upon a party's motion,
277 the court may suspend the authority of an eldercaring
278 coordinator pending a hearing on the motion for removal. Notice
279 of hearing on removal must be timely served on the eldercaring
280 coordinator and all parties.

281 (d) If a motion was made in bad faith, a court may, in
282 addition to any other remedy authorized by law, award reasonable
283 attorney fees and costs to a party or an eldercaring coordinator
284 who successfully challenges a motion for removal.

285 (7) SUCCESSOR ELDERCARING COORDINATOR.—If an eldercaring
286 coordinator resigns, is removed, or is suspended from an
287 appointment, the court shall appoint a successor qualified
288 eldercaring coordinator who is agreed to by all parties or, if
289 the parties do not reach agreement on a successor, another
290 qualified eldercaring coordinator to serve for the remainder of
291 the original term.

292 (8) FEES AND COSTS.—Each party referred by the court to the
293 eldercaring coordination process shall pay an equal portion of
294 the eldercaring coordinator's fees and costs unless the court
295 determines that an unequal allocation is necessary based on the
296 financial circumstances of each party, including the elder. The
297 court's order of referral must specify which parties are ordered
298 to the process and the percentage of the eldercaring
299 coordinator's fees and costs which each party is required to
300 pay.



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301 (a) A party who is asserting that he or she is unable to
302 pay the eldercaring coordination fees and costs must complete a
303 financial affidavit form approved by the presiding court. The
304 court shall consider the party's financial circumstances,
305 including income; assets; liabilities; financial obligations;
306 and resources, including, but not limited to, whether the party
307 can receive or is receiving trust benefits, whether the party is
308 represented by and paying a lawyer, and whether paying the fees
309 and costs of eldercaring coordination would create a substantial
310 hardship.

311 (b) If a court finds that a party is indigent based upon
312 the criteria prescribed in s. 57.082, the court may not order
313 the party to eldercaring coordination unless funds are available
314 to pay the indigent party's allocated portion of the eldercaring
315 coordination fees and costs, which may include funds provided
316 for that purpose by one or more nonindigent parties who consent
317 to paying such fees and costs, or unless insurance coverage or
318 reduced or pro bono services are available to pay all or a
319 portion of such fees and costs. If financial assistance, such as
320 health insurance or eldercaring coordination grants, is
321 available, such assistance must be taken into consideration by
322 the court in determining the financial abilities of the parties.

323 (9) CONFIDENTIALITY; PRIVILEGE; EXCEPTIONS.—

324 (a) Except as provided in this section, all eldercaring
325 coordination communications are confidential. An eldercaring
326 coordination party, an eldercaring coordinator, or a participant
327 may not disclose an eldercaring coordination communication to a
328 person other than another eldercaring coordination party, an
329 eldercaring coordinator, or a participant, or a party's or



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330 participant's counsel. A violation of this section may be
331 remedied as provided in paragraph (g). If the eldercaring
332 coordination is court ordered, a violation of this section also
333 may subject the eldercaring coordination participant to
334 sanctions by the court, including, but not limited to, costs,
335 attorney fees, and eldercaring coordinator's fees.

336 (b) An eldercaring coordination party, an eldercaring
337 coordinator, or a participant has a privilege to refuse to
338 testify and to prevent any other person from testifying in a
339 subsequent proceeding regarding eldercaring coordination
340 communications.

341 (c) Notwithstanding paragraphs (a) and (b), confidentiality
342 or privilege does not attach to a signed written agreement
343 reached during eldercaring coordination, unless the parties
344 agree otherwise, or to any eldercaring coordination
345 communication that:

346 1. Is necessary to identify, authenticate, confirm, or deny
347 a written and signed agreement entered into by the parties
348 during eldercaring coordination.

349 2. Is necessary to identify an issue for resolution by the
350 court, including to support a motion to terminate eldercaring
351 coordination, without otherwise disclosing communications made
352 by any party, participant, or the eldercaring coordinator.

353 3. Is limited to the subject of a party's compliance with
354 the order of referral to eldercaring coordination, orders for
355 psychological evaluation, court orders or health care provider
356 recommendations for counseling, or court orders for substance
357 abuse testing or treatment.

358 4. Is necessary to determine the qualifications of an



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359 eldercaring coordinator or to determine the immunity and
360 liability of an eldercaring coordinator who has acted in bad
361 faith or with malicious purpose or in a manner exhibiting wanton
362 and willful disregard for the rights, safety, or property of the
363 parties under subsection (11).

364 5. The parties agree may be disclosed or for which
365 privilege against disclosure has been waived by all parties.

366 6. Is made in the event the eldercaring coordinator needs
367 to contact persons outside of the eldercaring coordination
368 process to give or obtain information that furthers the
369 eldercaring coordination process.

370 7. Must be reported pursuant to chapter 39 or chapter 415
371 solely for the purpose of making the mandatory report to the
372 entity requiring the report.

373 8. Is necessary to protect any person from future acts that
374 would constitute child abuse, neglect, or abandonment under
375 chapter 39; abuse, neglect, or exploitation of an elderly or
376 disabled adult under chapter 415 or chapter 825; or domestic
377 violence under chapter 741 or is necessary to further an
378 investigation conducted under s. 744.2004 or a review conducted
379 under s 744.368(5).

380 9. Is offered, solely for the internal use of a body
381 conducting an investigation of professional misconduct, to
382 report, prove, or disprove such misconduct that is alleged to
383 have occurred during eldercaring coordination.

384 10. Is offered, solely for consideration in a professional
385 malpractice proceeding, to report, prove, or disprove
386 professional malpractice alleged to have occurred during
387 eldercaring coordination.



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388 11. Is willfully used to plan a crime, commit or attempt to
389 commit a crime, conceal ongoing criminal activity, or threaten
390 violence.

391 (d) An eldercaring coordination communication disclosed
392 under subparagraph (c)1., subparagraph (c)2., subparagraph
393 (c)5., subparagraph (c)8., or subparagraph (c)9. remains
394 confidential and is not discoverable or admissible for any other
395 purpose, unless otherwise authorized by this section.

396 (e) Information that is otherwise admissible or subject to
397 discovery is not inadmissible or protected from discovery by
398 reason of its disclosure or use in the eldercaring coordination
399 process.

400 (f) A party who discloses or makes a representation about a
401 privileged eldercaring coordination communication waives that
402 privilege, but only to the extent necessary for the other party
403 or parties to respond to the disclosure or representation.

404 (g)1. Any eldercaring coordination party or participant who
405 knowingly and willfully discloses an eldercaring coordination
406 communication in violation of this subsection, upon application
407 by any party to a court of competent jurisdiction, is subject to
408 remedies, including:

409 a. Equitable relief;

410 b. Compensatory damages;

411 c. Contribution to the other party's or parties' attorney
412 fees, the other party's or parties' portion of the eldercaring
413 coordinator fees, and the other party's or parties' portion of
414 the costs incurred in the eldercaring coordination process; and

415 d. Reasonable attorney fees and costs incurred in the
416 application for remedies under this section.



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417 2. Notwithstanding any other law, an application for relief
418 filed under this paragraph may not be commenced later than 2
419 years after the date on which the party had a reasonable
420 opportunity to discover the breach of confidentiality, but in no
421 case more than 4 years after the breach.

422 3. An eldercaring coordination party or participant may not
423 be subject to a civil action under this paragraph for lawful
424 compliance with s. 119.07.

425 (10) EMERGENCY REPORTING TO THE COURT.—

426 (a) An eldercaring coordinator must immediately inform the
427 court by affidavit or verified report, without notice to the
428 parties, if:

429 1. The eldercaring coordinator has or will be making a
430 report pursuant to chapter 39 or chapter 415; or

431 2. A party, including someone acting on a party's behalf,
432 is threatening or is believed to be planning to commit the
433 offense of kidnapping upon an elder as defined in s. 787.01, or
434 wrongfully removes or is removing the elder from the
435 jurisdiction of the court without prior court approval or
436 compliance with the requirements of s. 744.1098. If the
437 eldercaring coordinator suspects that a party or family member
438 has relocated an elder within this state to protect the elder
439 from a domestic violence situation, the eldercaring coordinator
440 may not disclose the location of the elder unless required by
441 court order.

442 (b) An eldercaring coordinator shall immediately inform the
443 court by affidavit or verified report and serve a copy of such
444 affidavit or report on each party upon learning that a party is
445 the subject of a final order or injunction of protection against



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446 domestic violence or exploitation of an elderly person or has
447 been arrested for an act of domestic violence or exploitation of
448 an elderly person.

449 (11) IMMUNITY AND LIMITATION ON LIABILITY.-

450 (a) A person who is appointed or employed to assist the
451 body designated to perform duties relating to disciplinary
452 proceedings involving eldercaring coordinators has absolute
453 immunity from liability arising from the performance of his or
454 her duties while acting within the scope of his or her appointed
455 functions or duties of employment.

456 (b) An eldercaring coordinator who is appointed by the
457 court is not liable for civil damages for any act or omission
458 within the scope of his or her duties under an order of referral
459 unless such person acted in bad faith or with malicious purpose
460 or in a manner exhibiting wanton and willful disregard for the
461 rights, safety, or property of the parties.

462 (12) MINIMUM STANDARDS AND PROCEDURES.-The Florida Supreme
463 Court shall establish minimum standards and procedures for the
464 qualification, ethical conduct, discipline, and training and
465 education of eldercaring coordinators who serve under this
466 section. The Florida Supreme Court may appoint or employ such
467 personnel as are necessary to assist the court in exercising its
468 powers and performing its duties under this section. Pending the
469 establishment of such minimum standards and procedures for the
470 discipline of eldercaring coordinators, the order of referral by
471 the court may address procedures governing complaints against
472 the appointed eldercaring coordinator consistent with this
473 section.

474 Section 2. This act shall take effect July 1, 2021.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to an elder-focused dispute resolution
process; creating s. 44.407, F.S.; providing
legislative findings; defining terms; authorizing the
courts to appoint an eldercaring coordinator and refer
certain parties and elders to eldercaring
coordination; prohibiting the courts from referring
certain parties to eldercaring coordination without
the consent of the elder and other parties to the
action; specifying the duration of eldercaring
coordinator appointments; requiring the courts to
conduct intermittent review hearings regarding the
conclusion or extension of such appointments;
providing qualifications and disqualifications for
eldercaring coordinators; requiring eldercaring
coordinators to document completed training that meets
certain requirements until the Florida Supreme Court
certifies a training program; requiring the applicant
to meet certain qualifications for background
screening, unless otherwise exempt; requiring
prospective eldercaring coordinators to submit
fingerprints for purposes of criminal history
background screening; providing for the payment and
cost of fingerprint processing; providing for the



504 removal and suspension of authority of certain
505 eldercaring coordinators; requiring that notice of
506 hearing on removal of a coordinator be timely served;
507 authorizing the courts to award certain fees and costs
508 under certain circumstances; requiring the court to
509 appoint successor eldercaring coordinators under
510 certain circumstances; requiring the parties to
511 eldercaring coordination to pay an equal share of the
512 eldercaring coordinator's fees and costs under certain
513 circumstances; authorizing the courts to make certain
514 determinations based on the fees and costs of
515 eldercaring coordination; providing that all
516 eldercaring communications are confidential; providing
517 exceptions to confidentiality; providing remedies for
518 breaches of such confidentiality; providing
519 requirements for emergency reporting to courts under
520 certain circumstances; providing immunity from
521 liability for eldercaring coordinators under specified
522 circumstances; requiring the Florida Supreme Court to
523 establish certain minimum standards and procedures for
524 eldercaring coordinators; authorizing the court's
525 order of referral to address procedures governing
526 complaints until the minimum standards and procedures
527 are established; providing an effective date.