

By the Committees on Children, Families, and Elder Affairs; and
Judiciary; and Senator Berman

586-02298-23

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1 A bill to be entitled
2 An act relating to support for dependent adult
3 children; creating s. 61.1255, F.S.; providing
4 legislative intent; defining the term "dependent adult
5 child"; requiring that certain rights of the parents
6 of a dependent adult child be established in a
7 guardianship proceeding; providing construction;
8 specifying individuals who may file a suit to
9 establish support for a dependent adult child;
10 specifying a timeframe during which such suits may be
11 filed; providing an exception; specifying procedures
12 for establishing support; specifying who may receive
13 such support before and after the dependent adult
14 child reaches the age of 18; providing construction;
15 authorizing the court to assign support to certain
16 trusts established for a dependent adult child;
17 prohibiting the Department of Revenue from filing
18 petitions to establish, modify, or enforce certain
19 support orders; amending s. 61.13, F.S.; conforming a
20 provision to changes made by the act; specifying that
21 a child support order does not terminate on the
22 child's 18th birthday in certain circumstances;
23 specifying that a court may modify a child support
24 order for adult children in certain circumstances;
25 authorizing either parent to consent to mental health
26 treatment for a child in certain circumstances unless
27 stated otherwise in the parenting plan; amending s.
28 61.29, F.S.; providing that child support guidelines
29 do not apply to certain cases; amending s. 61.30,

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30 F.S.; conforming a provision to changes made by the
31 act; creating s. 61.31, F.S.; providing factors a
32 court must consider when determining the amount of
33 child support for a dependent adult child; authorizing
34 a court to assign support to certain trusts
35 established for a dependent adult child for a
36 specified purpose; requiring the court to consider
37 certain state and federal programs and benefits when
38 making its decisions; prohibiting the court from
39 ordering support that will cause ineligibility for
40 certain programs; amending s. 393.12, F.S.; providing
41 an additional circumstance under which a guardian
42 advocate must be represented by an attorney in
43 guardianship proceedings; specifying that petitions to
44 appoint a guardian advocate for a person with
45 disabilities may include certain requests for support
46 from the person's parents; providing construction;
47 amending ss. 742.031 and 742.06, F.S.; conforming
48 provisions to changes made by the act; creating s.
49 744.1013, F.S.; assigning jurisdiction over petitions
50 for support of dependent adult children to the
51 guardianship court; specifying who may receive such
52 support for dependent adult children over the age of
53 18; authorizing a court to assign support to certain
54 trusts established for a dependent adult child for a
55 specified purpose; specifying that such support orders
56 supersede any orders entered under certain other
57 provisions; amending s. 744.3021, F.S.; conforming
58 provisions to changes made by the act; creating s.

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59 744.422, F.S.; authorizing a guardian of a dependent
60 adult child to petition the court for certain support
61 payments from the dependent adult child's parents in
62 certain circumstances; specifying that the amount of
63 such support is determined pursuant to certain
64 provisions; providing construction; providing an
65 effective date.

66
67 Be It Enacted by the Legislature of the State of Florida:

68
69 Section 1. Section 61.1255, Florida Statutes, is created to
70 read:

71 61.1255 Support for dependent adult children; legislative
72 intent; powers of court.-

73 (1) LEGISLATIVE INTENT.-It is the intent of the Legislature
74 to:

75 (a) Codify and clarify existing common law and Florida case
76 law recognizing that the parents of a dependent adult child have
77 an obligation to support that child;

78 (b) Provide procedures for establishing support for a
79 dependent adult child; and

80 (c) Provide safeguards, when establishing court-ordered
81 support for a dependent adult child, to protect and preserve any
82 means-based government benefits the dependent adult child is
83 receiving or may be entitled to receive.

84 (2) POWERS OF COURT.-

85 (a) For purposes of this section, the term "dependent adult
86 child" means an unmarried adult who is incapable of self-support
87 as a result of a physical or mental incapacity that began before

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88 the person reached the age of 18.

89 (b) The right of a parent or other person to decide where
90 the dependent adult child will live must be established in a
91 guardianship proceeding brought under chapter 393 or chapter
92 744. This paragraph may not be construed to require guardian
93 advocacy under chapter 393 or a guardianship under chapter 744
94 or in order for a court to order support for a dependent adult
95 child.

96 (c) A suit to establish support for a dependent adult child
97 may only be filed by one of the following:

98 1. The dependent adult child or his or her agent under a
99 durable power of attorney. Any such action must be brought in
100 the circuit court in the county in which the dependent adult
101 child resides.

102 2. A parent or other person on behalf of the dependent
103 adult child. Any such action must be brought under chapter 393
104 or chapter 744.

105 3. The dependent adult child's guardian advocate appointed
106 under chapter 393 or guardian appointed under chapter 744, if
107 the dependent adult child's right to sue or defend lawsuits has
108 been removed by the court.

109 (d) A suit to establish support for a dependent adult child
110 may be filed at any time after he or she reaches the age of 17
111 years and 6 months, unless such an order is already in place,
112 having been established during the child's minority.

113 (e) If a court has jurisdiction over the parties because of
114 an issue of child support, the parents may agree in writing to
115 provide for dependent adult child support in the existing case
116 if the agreement is submitted to the court for approval before

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117 the dependent adult child reaches the age of 18. Otherwise, the
118 amount of support to be paid by one or both parents must be
119 established in a guardianship proceeding or in a separate
120 support proceeding in circuit court pursuant to subparagraph
121 (c)1. This section does not preclude a court from establishing
122 support, ordering continued support, or enforcing or modifying
123 support orders established under this chapter.

124 (f) Support ordered after the dependent adult child reaches
125 the age of 18 may be paid only to the dependent adult child or
126 his or her court-appointed guardian advocate, guardian, or agent
127 under a durable power of attorney. However, the court may
128 irrevocably assign the support to a special needs trust under 42
129 U.S.C. s. 1396p(d) (4) or to a pooled trust under 42 U.S.C. s.
130 1396p(d) (4) (C) established for the dependent adult child by the
131 dependent adult child, his or her agent under a durable power of
132 attorney, the court, a parent or grandparent, a guardian, or a
133 guardian advocate who has been delegated those rights in order
134 to maintain the dependent adult child's means-based government
135 benefits.

136 (g) The Department of Revenue may not file a petition to
137 establish, modify, or enforce a support order under this
138 section.

139 Section 2. Paragraph (a) of subsection (1) and paragraph
140 (b) of subsection (2) of section 61.13, Florida Statutes, are
141 amended to read:

142 61.13 Support of children; parenting and time-sharing;
143 powers of court.—

144 (1) (a) In a proceeding under this chapter, the court may at
145 any time order either or both parents who owe a duty of support

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146 to a child to pay support to the other parent or, ~~in the case of~~
147 ~~both parents,~~ to a third party who has custody in accordance
148 with the child support guidelines schedule in s. 61.30.

149 1. All child support orders and income deduction orders
150 entered on or after October 1, 2010, must provide:

151 a. For child support to terminate on a child's 18th
152 birthday unless the court finds or previously found that the
153 minor child, or the child who is dependent in fact and between
154 the ages of 18 and 19, is still in high school and is performing
155 in good faith with a reasonable expectation of graduation before
156 he or she reaches the age of 19 ~~s. 743.07(2) applies,~~ or the
157 continued support is otherwise agreed to by the parties;

158 b. A schedule, based on the record existing at the time of
159 the order, stating the amount of the monthly child support
160 obligation for all the minor children at the time of the order
161 and the amount of child support that will be owed for any
162 remaining children after one or more of the children are no
163 longer entitled to receive child support; and

164 c. The month, day, and year that the reduction or
165 termination of child support becomes effective.

166 2. The court initially entering an order requiring one or
167 both parents to make child support payments has continuing
168 jurisdiction after the entry of the initial order to modify the
169 amount and terms and conditions of the child support payments
170 if: the modification is found by the court to be in the best
171 interests of the child; ~~when~~ the child reaches majority; ~~if~~
172 there is a substantial change in the circumstances of the
173 parties; the minor child, or the child who is dependent in fact
174 and between the ages of 18 and 19, is still in high school and

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175 is performing in good faith with a reasonable expectation of
176 graduation before he or she reaches the age of 19 if s.
177 ~~743.07(2) applies; or the~~ when a child is emancipated, marries,
178 joins the armed services, or dies. The court initially entering
179 a child support order has continuing jurisdiction to require the
180 obligee to report to the court on terms prescribed by the court
181 regarding the disposition of the child support payments.

182 (2)

183 (b) A parenting plan approved by the court must, at a
184 minimum:

185 1. Describe in adequate detail how the parents will share
186 and be responsible for the daily tasks associated with the
187 upbringing of the child;

188 2. Include the time-sharing schedule arrangements that
189 specify the time that the minor child will spend with each
190 parent;

191 3. Designate who will be responsible for:

192 a. Any and all forms of health care. If the court orders
193 shared parental responsibility over health care decisions, ~~the~~
194 ~~parenting plan must provide that~~ either parent may consent to
195 mental health treatment for the child unless stated otherwise in
196 the parenting plan.

197 b. School-related matters, including the address to be used
198 for school-boundary determination and registration.

199 c. Other activities; and

200 4. Describe in adequate detail the methods and technologies
201 that the parents will use to communicate with the child.

202 Section 3. Section 61.29, Florida Statutes, is amended to
203 read:

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204 61.29 Child support guidelines; principles; application.-

205 (1) The following principles establish the public policy of
206 the State of Florida in the creation of the child support
207 guidelines:

208 (a)~~(1)~~ Each parent has a fundamental obligation to support
209 his or her minor or legally dependent child.

210 (b)~~(2)~~ The guidelines schedule is based on the parent's
211 combined net income estimated to have been allocated to the
212 child as if the parents and children were living in an intact
213 household.

214 (c)~~(3)~~ The guidelines encourage fair and efficient
215 settlement of support issues between parents and minimizes the
216 need for litigation.

217 (2) The guidelines in this section do not apply to support
218 for a dependent adult child as defined in s. 61.1255. The amount
219 of support for a dependent adult child is determined by s.
220 61.31.

221 Section 4. Paragraph (a) of subsection (1) of section
222 61.30, Florida Statutes, is amended to read:

223 61.30 Child support guidelines; retroactive child support.-

224 (1) (a) The child support guideline amount as determined by
225 this section presumptively establishes the amount the trier of
226 fact must ~~shall~~ order as child support for a minor child, or a
227 child who is dependent in fact and between the ages of 18 and 19
228 and who is still in high school and is performing in good faith
229 with a reasonable expectation of graduation before he or she
230 reaches the age of 19, in an initial proceeding for such support
231 or in a proceeding for modification of an existing order for
232 such support, whether the proceeding arises under this or

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233 another chapter. The trier of fact may order payment of child
234 support which varies, plus or minus 5 percent, from the
235 guideline amount, after considering all relevant factors,
236 including the needs of the child or children, age, station in
237 life, standard of living, and the financial status and ability
238 of each parent. The trier of fact may order payment of child
239 support in an amount which varies more than 5 percent from such
240 guideline amount only upon a written finding explaining why
241 ordering payment of such guideline amount would be unjust or
242 inappropriate. Notwithstanding the variance limitations of this
243 section, the trier of fact must ~~shall~~ order payment of child
244 support which varies from the guideline amount as provided in
245 paragraph (11) (b) whenever any of the children are required by
246 court order or mediation agreement to spend a substantial amount
247 of time with either parent. This requirement applies to any
248 living arrangement, whether temporary or permanent.

249 Section 5. Section 61.31, Florida Statutes, is created to
250 read:

251 61.31 Amount of support for a dependent adult child.—

252 (1) In determining the amount of support to be paid after a
253 dependent adult child as defined in s. 61.1255 reaches the age
254 of 18, the specific terms and conditions of such support, and
255 the rights and duties of both parents with respect to the
256 support, the court shall determine and give consideration to all
257 of the following:

258 (a) The dependent adult child's income and assets.

259 (b) Any existing and future needs of the dependent adult
260 child which are directly related to his or her mental or
261 physical incapacity and the substantial care and personal

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262 supervision directly required by or related to that incapacity.

263 (c) Whether a parent or other person pays for or will pay
264 for the care or supervision of the dependent adult child or
265 provides or will provide substantial care or personal
266 supervision to the dependent adult child himself or herself.

267 (d) The financial resources available to each parent for
268 the support, care, and supervision of the dependent adult child.

269 (e) Any other financial resources or other resources or
270 programs available for the support, care, and supervision of the
271 dependent adult child.

272 (2) The court may irrevocably assign the support to a
273 special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a
274 pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for
275 the dependent adult child by the dependent adult child, his or
276 her agent under a durable power of attorney, the court, a parent
277 or grandparent, a guardian, or a guardian advocate who has been
278 delegated those rights in order to maintain the dependent adult
279 child's means-based government benefits.

280 (3) In making its decisions, the court shall take into
281 consideration:

282 (a) Any state or federal programs and benefits that the
283 dependent adult child is receiving or may receive due to
284 reaching the age of majority; and

285 (b) The effect that the court-ordered support would have on
286 the dependent adult child's eligibility for such programs and
287 benefits.

288 (4) The court may not order support that will cause
289 ineligibility for programs in which the dependent adult child
290 currently participates, or programs and services for which the

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291 dependent adult child is reasonably expected to become eligible
292 upon reaching the age of majority.

293 Section 6. Paragraph (b) of subsection (2) and subsection
294 (3) of section 393.12, Florida Statutes, are amended to read:

295 393.12 Capacity; appointment of guardian advocate.—

296 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

297 (b) A person who is being considered for appointment or is
298 appointed as a guardian advocate is not required to ~~need not~~ be
299 represented by an attorney unless required by the court or if
300 the guardian advocate is delegated any rights regarding property
301 other than the right to be the representative payee for
302 government benefits or the right of a parent to receive periodic
303 payments for the support, care, maintenance, education, or other
304 needs of the person with a developmental disability. This
305 paragraph applies only to proceedings relating to the
306 appointment of a guardian advocate and the court's supervision
307 of a guardian advocate and is not an exercise of the
308 Legislature's authority under ~~pursuant to~~ s. 2(a), Art. V of the
309 State Constitution.

310 (3) PETITION.—

311 (a) A petition to appoint a guardian advocate for a person
312 with a developmental disability may be executed by an adult
313 person who is a resident of this state. The petition must be
314 verified and must:

315 1. ~~(a)~~ State the name, age, and present address of the
316 petitioner and his or her relationship to the person with a
317 developmental disability;

318 2. ~~(b)~~ State the name, age, county of residence, and present
319 address of the person with a developmental disability;

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320 3.~~(e)~~ Allege that the petitioner believes that the person
321 needs a guardian advocate and specify the factual information on
322 which such belief is based;

323 4.~~(d)~~ Specify the exact areas in which the person lacks the
324 decisionmaking ability to make informed decisions about his or
325 her care and treatment services or to meet the essential
326 requirements for his or her physical health or safety;

327 5.~~(e)~~ Specify the legal disabilities to which the person is
328 subject; and

329 6.~~(f)~~ State the name of the proposed guardian advocate, the
330 relationship of that person to the person with a developmental
331 disability; the relationship that the proposed guardian advocate
332 had or has with a provider of health care services, residential
333 services, or other services to the person with a developmental
334 disability; and the reason why this person should be appointed.
335 The petition must also state if a willing and qualified guardian
336 advocate cannot be located,~~the petition shall so state.~~

337 (b) A petition to appoint a guardian advocate may include a
338 request for periodic payments from either or both parents of the
339 person with a developmental disability for the support, care,
340 maintenance, education, or other needs of that person pursuant
341 to s. 61.1255. This section may not be construed to confer any
342 obligation or duty for a guardian advocate to pursue support for
343 the person with a developmental disability.

344 Section 7. Subsection (1) of section 742.031, Florida
345 Statutes, is amended to read:

346 742.031 Hearings; court orders for support, hospital
347 expenses, and attorney ~~attorney's~~ fee.-

348 (1) Hearings for the purpose of establishing or refuting

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349 the allegations of the complaint and answer must ~~shall~~ be held
350 in the chambers and may be restricted to persons, in addition to
351 the parties involved and their counsel, as the judge in his or
352 her discretion may direct. The court shall determine the issues
353 of paternity of the child and the ability of the parents to
354 support the child. Each party's social security number must
355 ~~shall~~ be recorded in the file containing the adjudication of
356 paternity. If the court finds that the alleged father is the
357 father of the child, it must ~~shall~~ so order. If appropriate, the
358 court may ~~shall~~ order the father to pay the complainant, her
359 guardian, or any other person assuming responsibility for the
360 child moneys sufficient to pay reasonable attorney ~~attorney's~~
361 fees, hospital or medical expenses, cost of confinement, and any
362 other expenses incident to the birth of the child and to pay all
363 costs of the proceeding. Bills for pregnancy, childbirth, and
364 scientific testing are admissible as evidence without requiring
365 third-party foundation testimony, and ~~shall~~ constitute prima
366 facie evidence of amounts incurred for such services or for
367 testing on behalf of the child. The court shall order either or
368 both parents owing a duty of support to the child to pay support
369 under chapter 61 pursuant to s. 61.30. The court must ~~shall~~
370 issue, upon motion by a party, a temporary order requiring child
371 support for a minor child under ~~pursuant to~~ s. 61.30 pending an
372 administrative or judicial determination of parentage, if there
373 is clear and convincing evidence of paternity on the basis of
374 genetic tests or other evidence. The court may also make a
375 determination of an appropriate parenting plan, including a
376 time-sharing schedule, in accordance with chapter 61.

377 Section 8. Section 742.06, Florida Statutes, is amended to

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378 read:

379 742.06 Jurisdiction retained for future orders.—The court
380 shall retain jurisdiction of the cause for the purpose of
381 entering such other and further orders as changing circumstances
382 of the parties may in justice and equity require. Modifications
383 of child support and time-sharing are determined under chapter
384 61.

385 Section 9. Section 744.1013, Florida Statutes, is created
386 to read:

387 744.1013 Jurisdiction for support claims.—The court has
388 jurisdiction over claims for support of a dependent adult child
389 as defined in s. 61.1255 and shall adjudicate the financial
390 obligation, including health insurance, of the dependent adult
391 child's parents and enforce the financial obligation as provided
392 in chapter 61. All support required to be paid in relation to a
393 dependent adult child over the age of 18 must be paid to the
394 dependent adult child or his or her court-appointed guardian
395 advocate, guardian, or agent under a durable power of attorney.
396 However, the court may irrevocably assign the support to a
397 special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a
398 pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for
399 the dependent adult child by the dependent adult child, his or
400 her agent under a durable power of attorney, the court, a parent
401 or grandparent, a guardian, or a guardian advocate who has been
402 delegated those rights in order to maintain the dependent adult
403 child's means-based government benefits. Any order for support
404 entered in a proceeding under this chapter or chapter 393
405 supersedes any support order entered under chapter 61.

406 Section 10. Subsection (4) of section 744.3021, Florida

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407 Statutes, is amended to read:

408 744.3021 Guardians of minors.—

409 (4) If a petition is filed under ~~pursuant to~~ this section
410 requesting appointment of a guardian for a minor who is the
411 subject of any proceeding under chapter 39 or chapter 61 and who
412 is aged 17 years and 6 months or older, the court division with
413 jurisdiction over guardianship matters has jurisdiction over the
414 proceedings under s. 744.331. The alleged incapacitated minor
415 under this subsection must ~~shall~~ be provided all the due process
416 rights conferred upon an alleged incapacitated adult under
417 ~~pursuant to~~ this chapter and applicable court rules. The order
418 of adjudication under s. 744.331 and the letters of limited or
419 plenary guardianship may issue upon the minor's 18th birthday or
420 as soon thereafter as possible. Any proceeding under ~~pursuant to~~
421 this subsection must ~~shall~~ be conducted separately from any
422 other proceeding.

423 Section 11. Section 744.422, Florida Statutes, is created
424 to read:

425 744.422 Petition for child support for a dependent adult
426 child.—Pursuant to s. 61.1255, a guardian may petition the court
427 for an order requiring either or both parents to pay periodic
428 amounts for the support, care, maintenance, education, and any
429 other needs of a dependent adult child if not otherwise provided
430 for in the guardianship plan. The amount of support is
431 determined pursuant to s. 61.31. This section may not be
432 construed to confer any obligation or duty for a guardian to
433 pursue support on behalf of a ward.

434 Section 12. This act shall take effect July 1, 2023.