

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1016

SPONSOR: Committees on Children and Families and Judiciary and Senator Rossin

SUBJECT: Guardianship

DATE: April 5, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute for the Committee Substitute for Senate Bill 1016 increases from \$5,000 to \$15,000 the maximum amount for which a natural guardian may settle a claim by or on behalf of a minor without the necessity of an appointment of bond, the establishment of a legal guardianship or appointment of a guardian ad litem and prior court approval of the settlement.

This bill amends the following sections of the Florida Statutes: 744.301 and 744.387.

**II. Present Situation:**

**Settlement Authority of Natural Guardians**

A natural guardian of a ward may settle on behalf of a ward a claim before bringing a legal action to recover on any claim. *See* s. 744.387(2), F.S. Parents are considered natural guardians of their own children.<sup>1</sup> A natural guardian of a minor may settle a claim by or on behalf of a minor ward for an amount not to exceed \$5,000 without having to secure a bond and without having prior court approval or involvement. If the net settlement exceeds \$5,000, a natural guardian can not settle the claim until a legal guardianship is established to represent the minor ward. The natural parent may be appointed as a legal guardian.

Upon reaching a proposed settlement exceeding \$5,000, the guardian must petition the court, stating the facts of the claim, the question or dispute and the proposed settlement terms. The court must review the petition and any evidence introduced to determine if the settlement is in the best interest of the ward. If the court determines that the settlement agreement is in the best

<sup>1</sup> If the child is born out of wedlock, the mother is considered a child's natural guardian. *See* s. 744.301(1), F.S. If the parents divorce, the parent granted custody of the minor becomes the natural guardian. If the parents are granted joint custody, then both parents remain natural guardians of the child.

interest of the ward, the court must issue an order authorizing the settlement, which relieves the guardian from any further responsibility in connection with the claim. The order may also determine the amount of any additional bond that may be required. A settlement reached after an action has been filed on behalf of a ward is not effective, unless approved by the court. *See* s. 744.387(3), F.S.

Section 744.301, F.S., provides a similar statutory scheme for settlement of claims or a cause of action for personal injury, property damage, or wrongful death by a natural guardian on behalf of a minor under specified circumstances. This section is distinguishable in that it pertains to the appointment of a guardian ad litem in lieu of the appointment of a legal guardian. It establishes a three-tiered scheme based on threshold settlement amounts which determine if and when a guardian ad litem may or needs to be appointed by the court. As in s. 744.387, F.S., a natural guardian may settle a minor's claim without court authority or bond if the settlement amount is for \$5,000 or less. If the gross settlement amount equals or exceeds \$10,000, the court *may* appoint a guardian ad litem to represent the minor's interests. If the gross settlement amount equals or exceeds \$25,000, the court *must* appoint a guardian ad litem. However, if a legal guardian has been previously appointed and no potential adverse interest exists, a guardian ad litem may not be appointed unless the court determines that it is necessary.

### III. Effect of Proposed Changes:

**Section 1** amends s. 744.387(2), F.S., to increase the maximum amount of any settlement on a claim that a natural guardian may settle by or on behalf of a minor without bond or court involvement. The threshold is raised from an amount not to exceed \$5,000 to an amount not to exceed \$15,000. Consequently, a legal guardianship or court approval (unless an action has been initiated) would not be required for a minor until the proposed settlement amount exceeded \$15,000.

**Section 2** amends s. 744.301, F.S., to increase the maximum amount of any settlement on a claim that a natural guardian may settle by or on behalf of a minor without bond or court involvement. The threshold is raised from an amount not to exceed \$5,000 to an amount not to exceed \$15,000. Consequently, the court need not appoint a guardian ad litem for settlements totaling \$15,000 or less. The remaining statutory scheme remains relatively the same. That is, absent a previously appointed legal guardian and no potential adverse interest, the court is still permitted to appoint a guardian ad litem when the settlement exceeds \$15,000, and the court is still required to appoint a guardian ad litem when the settlement equals or exceeds \$25,000.

**Section 3** provides that the bill will take effect July 1, 2001.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Since the bill raises the settlement threshold amount from more than \$5,000 to more than \$15,000, this bill may reduce the number of natural guardians who have to petition the court for legal guardianship or who have to wait for the appointment of a guardian ad litem in order to settle specified claims on behalf of their minor ward.

C. Government Sector Impact:

The Office of State Courts Administrator anticipate that there may be some workload reduction on the court and the guardian ad litem program based on decreased number of petitions filed due to the settlements of these smaller types of claims. Consequently, there may be a reduction, albeit insignificant, in revenue from filing fees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.