

# 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/SB 1016

SPONSOR: Judiciary Committee and Senator Rossin

SUBJECT: Guardianship

DATE: March 20, 2001                      REVISED: \_\_\_\_\_

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

**I. Summary:**

This bill 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. It also restricts the authority of a judicially appointed guardian to withdraw or withhold life-prolonging procedures without prior specific court authority to be established at a separate evidentiary hearing.

This bill amends the following sections of the Florida Statutes: 744.301, 744.3215 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

<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.

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 interest of 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 section 744.387, F.S., a natural guardian can 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.

### **Guardian Authority Regarding Medical and Mental Health Treatment**

In any guardianship proceeding under chapter 744, F.S., in which a ward is found to have exercised a valid health care advance directive, the court must specify in its order and letters of administration to what extent a guardian will have authority, if any, over health care decisions by a health care surrogate. *See s. 744.3115, F.S.* The court has authority to modify or revoke the authority of the health care surrogate established pursuant to chapter 765, F.S., which relates to health care advance directives.

If no directive was executed and no surrogate was designated, then it is presumed that other provisions of chapter 744, F.S., would govern. Under s. 744.315(3)(f), F.S., the court may delegate to a guardian the power to "consent to medical and mental health treatment" on behalf of the incapacitated person (or ward). The terms "medical and mental health treatment" are not defined and it is not known whether they ought to be construed to include the decision to direct, withdraw or withhold life-prolonging procedures.<sup>2</sup> Under a separate statutory provision, the guardian's authority to consent to specified types of medical or psychological treatment is conditioned upon specific court authority. *See s. 744.3215, F.S.* This entails a separate hearing being held in which the court appoints an independent attorney, receives medical, psychological and social evaluations, visits personally with the ward to confirm the ward's incapacity, and makes a determination that the procedure is in the ward's best interests. *See s. 744.3725, F.S.* The types of acts or procedures for which specific court authority is required include: commitment of a ward without formal placement proceedings, experimental biomedical or

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<sup>2</sup> Notably, a provision in chapter 765, F.S., states that a court may authorize a previously appointed guardian with prior authority to consent to medical treatment to make health care decisions if no health care surrogate is available and none of the other specified persons is available. *See s. 765.401, F.S.* Under chapter 765, F.S., the term "health care decision" is defined to include the right to consent or refuse to consent to life-prolonging procedures.

behavioral procedures, initiation of a petition for dissolution of marriage, termination of parental rights, and sterilization or abortion.

### 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** amends s. 744.3215, F.S., to restrict a guardian's authority to withhold or withdraw life-prolonging procedures on behalf of a ward without first obtaining specific court authority through a separate evidentiary hearing to determine the ward's incapacity and the ward's best interests. Any authority exercised by the guardian to this effect must comply with the provisions of chapter 765, F.S.

**Section 4** 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.

Court-appointed guardians with authority to consent to medical treatment under chapter 744, F.S., will be restricted as to their authority to withdraw or withhold life-prolonging procedures. They may have to secure authority first through the separate evidentiary hearing under s. 744.3725, F.S., and second through consultation with an attending physician and a medical ethics committee under s. 744.404, F.S., prior to being able to withdraw or withhold life-prolonging procedures on behalf of a ward.

**C. Government Sector Impact:**

There may be some impact on the court's workload due to the additional requirement that a separate hearing be held to determine a court-appointed guardian's authority to withdraw or withhold life-prolonging procedures on behalf of a ward.

The Office of State Courts Administrator anticipate that there may some workload reduction on the court and the guardian ad litem program based on decreased number of petitions for 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:**

It may be necessary to clarify how the provision in s. 744.3215, F.S., which requires specific court authority for a judicially-appointed guardian to withdraw or withhold life-prolonging procedures will operate in conjunction with the following non-judicial procedures set forth in Part IV of chapter 765, F.S.:

- In the absence of a health care advance directive or a surrogate, a *previously* judicially-appointed guardian with authority to consent to medical treatment under chapter 744, F.S., may be designated as a proxy to make health care decisions including the decision to withdraw or withhold life-prolonging procedures on behalf of the patient. There has to be clear and convincing evidence that the decision would have been one that the patient would have chosen had the patient been competent. *See* s. 765.401, F.S.
- In the absence of a health care advance directive, a surrogate or a proxy, a judicially appointed guardian (with authority to consent to medical treatment) can consent to the withdrawal or withholding of life-prolonging procedures. However, the consent must be exercised in conjunction with the patient's attending physician and the health care facility's

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medical ethics committee after a determination that there is no medical probability for the patient's recovery and that the decision is in the patient's best interests. *See* s. 765.404, F.S.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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