

By Senator Diaz de la Portilla

40-00508-15

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1                                   A bill to be entitled  
2       An act relating to guardianship proceedings; amending  
3       s. 744.3031, F.S.; requiring that a duly noticed  
4       hearing be held before the appointment of an emergency  
5       temporary guardian; requiring a notice of filing of a  
6       petition for appointment of an emergency temporary  
7       guardian and any hearing on the petition to be served  
8       on certain persons before a hearing on the petition  
9       commences; revising the time period for which the  
10      emergency temporary guardian may be appointed;  
11      revising the time period for which the authority of  
12      the emergency temporary guardian may be extended after  
13      a hearing is held; requiring the emergency temporary  
14      guardian to file a bond under certain circumstances;  
15      authorizing a court to issue an order to show cause  
16      directed at the emergency temporary guardian under  
17      certain circumstances; requiring the order to include  
18      specific information; authorizing a court, before such  
19      hearing, to issue an order to protect the ward;  
20      requiring a copy of such order to be transmitted to  
21      all parties; authorizing a court, after such hearing,  
22      to impose sanctions on specified persons or to take  
23      any other action authorized by law; creating s.  
24      744.3032, F.S.; providing that an emergency temporary  
25      guardian of an incapacitated person is a fiduciary and  
26      may exercise only delegated rights; providing the  
27      duties and responsibilities of the emergency temporary  
28      guardian; amending s. 744.3115, F.S.; requiring the  
29      court to specify authority for health care decisions

40-00508-15

2015318\_\_

30 with respect to a ward's advance directive; amending  
31 s. 744.312, F.S.; prohibiting the court from giving  
32 certain preferences when appointing a guardian;  
33 reenacting s. 744.344(4), F.S., relating to a court  
34 appointing an emergency temporary guardian, to  
35 incorporate the amendment made to s. 744.3031, F.S.,  
36 in a reference thereto; reenacting s. 765.205(3),  
37 F.S., relating to making health care decisions for the  
38 principal, to incorporate the amendment made to s.  
39 744.3115, F.S., in a reference thereto; reenacting ss.  
40 744.304(4), 744.3045(7), and 744.308(6), F.S.,  
41 relating to confirming the appointment of the guardian  
42 if the court finds the standby guardian to be  
43 qualified to serve as guardian, confirming the  
44 appointment of the guardian if the court finds the  
45 preneed guardian to be qualified to serve as guardian,  
46 and directing how the court will be governed when  
47 appointing a guardian, respectively, to incorporate  
48 the amendment made to s. 744.312, F.S., in references  
49 thereto; providing an effective date.  
50

51 Be It Enacted by the Legislature of the State of Florida:

52  
53 Section 1. Section 744.3031, Florida Statutes, is amended  
54 to read:

55 744.3031 Emergency temporary guardianship.—

56 (1) A court, prior to appointment of a guardian but after a  
57 petition for determination of incapacity has been filed pursuant  
58 to this chapter, and after a duly noticed hearing has been held,

40-00508-15

2015318\_\_

59 may appoint an emergency temporary guardian for the person or  
60 property, or both, of an alleged incapacitated person. The court  
61 must specifically find that there appears to be imminent danger  
62 that the physical or mental health or safety of the person will  
63 be seriously impaired or that the person's property is in danger  
64 of being wasted, misappropriated, or lost unless immediate  
65 action is taken. The subject of the proceeding or any adult  
66 interested in the welfare of that person may apply to the court  
67 in which the proceeding is pending for the emergency appointment  
68 of a temporary guardian. The powers and duties of the emergency  
69 temporary guardian must be specifically enumerated by court  
70 order. The court shall appoint counsel to represent the alleged  
71 incapacitated person during any such summary proceedings, and  
72 such appointed counsel may request that the proceeding be  
73 recorded and transcribed.

74 (2) The court may appoint an emergency temporary guardian  
75 on its own motion if no petition for appointment of guardian has  
76 been filed at the time of entry of an order determining  
77 incapacity.

78 (3) Notice of filing of a petition for appointment of an  
79 emergency temporary guardian and notice of any hearing on the  
80 petition must be served on the alleged incapacitated person and  
81 on the alleged incapacitated person's attorney before a hearing  
82 on the petition is commenced.

83 (4)~~(3)~~ The authority of an emergency temporary guardian  
84 expires 60 ~~90~~ days after the date of appointment or when a  
85 guardian is appointed, whichever occurs first. The authority of  
86 the emergency temporary guardian may be extended for an  
87 additional 60 ~~90~~ days after a hearing is held and upon a showing

40-00508-15

2015318\_\_

88 that the emergency conditions still exist.

89 (5)~~(4)~~ The court may issue an injunction, restraining  
90 order, or other appropriate writ to protect the physical or  
91 mental health or safety of the person who is the ward of the  
92 emergency temporary guardianship.

93 (6)~~(5)~~ The emergency temporary guardian shall take an oath  
94 to faithfully perform the duties of a guardian before letters of  
95 emergency temporary guardianship are issued.

96 (7)~~(6)~~ The court may require that, before exercising  
97 authority as guardian, the emergency temporary guardian of the  
98 property ~~may be required to~~ file a bond in accordance with s.  
99 744.351.

100 (8)~~(7)~~ An emergency temporary guardian's authority and  
101 responsibility begins upon issuance of letters of emergency  
102 temporary guardianship in accordance with s. 744.345.

103 (9)~~(8)~~ (a) An emergency temporary guardian shall file a  
104 final report no later than 30 days after the expiration of the  
105 emergency temporary guardianship.

106 (b) If the final report is not timely filed, the court may  
107 issue to the emergency temporary guardian an order to show cause  
108 that requires the emergency temporary guardian to appear before  
109 the court to explain why the court should not take further  
110 action. The order must specify the time and place of the hearing  
111 within a reasonable time after service of the order to allow for  
112 the preparation of a defense.

113 (c) At any time before the hearing on the order to show  
114 cause, the court may issue a temporary injunction, a restraining  
115 order, or an order freezing the assets of the emergency  
116 temporary guardian; suspend the emergency temporary guardian or

40-00508-15

2015318\_\_

117 appoint a guardian ad litem; or issue any other appropriate  
118 order to protect the physical or mental health or safety or the  
119 property of the ward. A copy of any such order or injunction  
120 shall be transmitted by the court or under its direction to all  
121 parties at the time of entry of the order or injunction.

122 (d) After a hearing on the order to show cause, the court  
123 may impose sanctions on the emergency temporary guardian or his  
124 or her attorney or other respondent or take any other action  
125 authorized by law, including, but not limited to, entering a  
126 judgment of contempt; ordering an accounting; freezing assets;  
127 referring the case to local law enforcement agencies or the  
128 state attorney; filing an abuse, neglect, or exploitation  
129 complaint with the Department of Children and Families; and  
130 initiating proceedings to remove the emergency temporary  
131 guardian.

132 (e)~~(b)~~ If an emergency temporary guardian is a guardian for  
133 the property, the final report must consist of a verified  
134 inventory of the property, as provided in s. 744.365, as of the  
135 date the letters of emergency temporary guardianship were  
136 issued, a final accounting that gives a full and correct account  
137 of the receipts and disbursements of all the property of the  
138 ward over which the guardian had control, and a statement of the  
139 property of the ward on hand at the end of the emergency  
140 temporary guardianship. If the emergency temporary guardian  
141 becomes the successor guardian of the property, the final report  
142 must satisfy the requirements of the initial guardianship report  
143 for the guardian of the property as provided in s. 744.362.

144 (f)~~(e)~~ If the emergency temporary guardian is a guardian of  
145 the person, the final report must summarize the activities of

40-00508-15

2015318\_\_

146 the temporary guardian with regard to residential placement,  
147 medical condition, mental health and rehabilitative services,  
148 and the social condition of the ward to the extent of the  
149 authority granted to the temporary guardian in the letters of  
150 guardianship. If the emergency temporary guardian becomes the  
151 successor guardian of the person, the report must satisfy the  
152 requirements of the initial report for a guardian of the person  
153 as stated in s. 744.362.

154 (g)~~(d)~~ A copy of the final report of the emergency  
155 temporary guardianship shall be served on the successor guardian  
156 and the ward.

157 Section 2. Section 744.3032, Florida Statutes, is created  
158 to read:

159 744.3032 Powers and duties of an emergency temporary  
160 guardian.—An emergency temporary guardian of an incapacitated  
161 person is a fiduciary and may exercise only those rights that  
162 the court has removed from the ward and delegated to the  
163 guardian. The emergency temporary guardian:

164 (1) Shall act within the scope of the authority granted by  
165 the court and as provided by law;

166 (2) Shall act in good faith;

167 (3) May not act in a manner that is contrary to the ward's  
168 best interests under the circumstances;

169 (4) Shall use special skills or expertise if the emergency  
170 temporary guardian has special skills or expertise or is  
171 appointed in reliance upon the emergency temporary guardian's  
172 representation that he or she has special skills or expertise;  
173 and

174 (5) Recognizing that every individual has unique needs and

40-00508-15

2015318\_\_

175 abilities, shall, if the emergency temporary guardian is given  
176 authority over the ward's person and if the following actions  
177 are appropriate under the circumstances:

178 (a) Consider the expressed desires of the ward as known by  
179 the emergency temporary guardian when making decisions that  
180 affect the ward.

181 (b) Allow the ward to maintain contact with family and  
182 friends unless the emergency temporary guardian believes that  
183 such contact may cause harm to the ward.

184 (c) Not restrict the physical liberty of the ward more than  
185 reasonably necessary to protect the ward or another person from  
186 serious physical injury, illness, or disease.

187 (d) Assist the ward in developing or regaining his or her  
188 own capacity, if medically possible.

189 (e) Notify the court if the emergency temporary guardian  
190 believes that the ward has regained capacity and that one or  
191 more of the rights that have been removed should be restored.

192 (f) To the extent applicable, make provision for the  
193 medical, mental, rehabilitative, or personal care services for  
194 the welfare of the ward.

195 (g) To the extent applicable, acquire a clear understanding  
196 of the risks and benefits of a recommended course of health care  
197 treatment before making health care decisions for the ward.

198 (h) Evaluate the ward's medical and health care options,  
199 financial resources, and desires when making residential  
200 decisions that are best suited for the current needs of the  
201 ward.

202 (i) Advocate on behalf of the ward in institutional and  
203 other residential settings.

40-00508-15

2015318\_\_

204 Section 3. Section 744.3115, Florida Statutes, is amended  
205 to read:

206 744.3115 Advance directives for health care.—In each  
207 proceeding in which a guardian is appointed under this chapter,  
208 the court shall determine whether the ward, prior to incapacity,  
209 has executed any valid advance directive under chapter 765. If  
210 any advance directive exists, the court shall specify in its  
211 order and letters of guardianship what authority, if any, the  
212 guardian shall exercise over the ward with regard to health care  
213 decisions and what authority, if any, the surrogate shall  
214 continue to exercise over the ward with regard to health care  
215 decisions ~~surrogate~~. Pursuant to the grounds listed in s.  
216 765.105, the court, upon its own motion, may, with notice to the  
217 surrogate and any other appropriate parties, modify or revoke  
218 the authority of the surrogate to make health care decisions for  
219 the ward. If the court order provides that the guardian is  
220 responsible for making health care decisions for the ward, the  
221 guardian shall assume the responsibilities of the surrogate  
222 which are provided in s. 765.205. For purposes of this section,  
223 the term "health care decision" has the same meaning as in s.  
224 765.101.

225 Section 4. Subsection (1) of section 744.312, Florida  
226 Statutes, is amended, present subsections (3) and (4) of that  
227 section are redesignated as subsections (4) and (5),  
228 respectively, and a new subsection (3) is added to that section,  
229 to read:

230 744.312 Considerations in appointment of guardian.—

231 (1) Subject to the provisions of subsection (5) ~~(4)~~, the  
232 court may appoint any person who is fit and proper and qualified

40-00508-15

2015318\_\_

233 to act as guardian, whether related to the ward or not.

234 (3) The court may not give preference to the appointment of  
235 a person solely based on the fact that the person was appointed  
236 as an emergency temporary guardian.

237 Section 5. For the purpose of incorporating the amendment  
238 made by this act to section 744.3031, Florida Statutes, in a  
239 reference thereto, subsection (4) of section 744.344, Florida  
240 Statutes, is reenacted to read:

241 744.344 Order of appointment.—

242 (4) If a petition for the appointment of a guardian has not  
243 been filed at the time of the hearing on the petition to  
244 determine capacity, the court may appoint an emergency temporary  
245 guardian in the manner and for the purposes specified in s.  
246 744.3031.

247 Section 6. For the purpose of incorporating the amendment  
248 made by this act to section 744.3115, Florida Statutes, in a  
249 reference thereto, subsection (3) of section 765.205, Florida  
250 Statutes, is reenacted to read:

251 765.205 Responsibility of the surrogate.—

252 (3) If, after the appointment of a surrogate, a court  
253 appoints a guardian, the surrogate shall continue to make health  
254 care decisions for the principal, unless the court has modified  
255 or revoked the authority of the surrogate pursuant to s.  
256 744.3115. The surrogate may be directed by the court to report  
257 the principal's health care status to the guardian.

258 Section 7. For the purpose of incorporating the amendment  
259 made by this act to section 744.312, Florida Statutes, in a  
260 reference thereto, subsection (4) of section 744.304, Florida  
261 Statutes, is reenacted to read:

40-00508-15

2015318\_\_

262 744.304 Standby guardianship.—

263 (4) Within 20 days after assumption of duties as guardian,  
264 a standby guardian shall petition for confirmation of  
265 appointment. If the court finds the standby guardian to be  
266 qualified to serve as guardian under ss. 744.309 and 744.312,  
267 appointment of the guardian must be confirmed. Each guardian so  
268 confirmed shall file an oath in accordance with s. 744.347,  
269 shall file a bond, and shall submit to a credit and a criminal  
270 history record check as set forth in s. 744.3135, if required.  
271 Letters of guardianship must then be issued in the manner  
272 provided in s. 744.345.

273 Section 8. For the purpose of incorporating the amendment  
274 made by this act to section 744.312, Florida Statutes, in a  
275 reference thereto, subsection (7) of section 744.3045, Florida  
276 Statutes, is reenacted to read:

277 744.3045 Preneed guardian.—

278 (7) Within 20 days after assumption of duties as guardian,  
279 a preneed guardian shall petition for confirmation of  
280 appointment. If the court finds the preneed guardian to be  
281 qualified to serve as guardian pursuant to ss. 744.309 and  
282 744.312, appointment of the guardian must be confirmed. Each  
283 guardian so confirmed shall file an oath in accordance with s.  
284 744.347 and shall file a bond, if required. Letters of  
285 guardianship must then be issued in the manner provided in s.  
286 744.345.

287 Section 9. For the purpose of incorporating the amendment  
288 made by this act to section 744.312, Florida Statutes, in a  
289 reference thereto, subsection (6) of section 744.308, Florida  
290 Statutes, is reenacted to read:

40-00508-15

2015318\_\_

291           744.308 Resident guardian of the property of nonresident  
292 ward.—

293           (6) In the appointment of the guardian, the court shall be  
294 governed by s. 744.312.

295           Section 10. This act shall take effect July 1, 2015.