

**BILL #:** HB 1327                  Guardianship  
**SPONSOR(S):** Bogdanoff  
**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 2688

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	<u>16 Y, 0 N</u>	<u>Walsh</u>	<u>Liem</u>
2) <u>Judiciary</u>			
3) <u>Appropriations</u>			
4) <u></u>			
5) <u></u>			

HB 1327 creates a limited exception to existing law to allow for the contest of the validity of a revocable trust by the guardian of the property of an incapacitated grantor.

**STORAGE NAME:** h1327a.fff.doc  
**DATE:** March 15, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Current law prohibits bringing an action against a will or will substitute, i.e., a trust, until it becomes irrevocable.<sup>1</sup> Revocable trusts may be changed during the grantor's lifetime by exercise of the grantor's reserved power to do so. However, when a grantor becomes incapacitated, he or she is unable to exercise that reserved power and revoke a trust that may no longer be in his or her best interest. Accordingly, under current law, incapacitated persons have no avenue by which to contest the validity of all or part of a trust.

HB 1327 creates a limited exception to existing law to allow for the contest of the validity of a revocable trust by the guardian of the property of an incapacitated grantor.

- It provides that, upon the filing by an interested person<sup>2</sup> of a verified statement with the court stating a good faith belief that the trust, trust amendment, or durable power of attorney of the incapacitated person is invalid, the trust, trust amendment, or durable power of attorney shall not be deemed an alternative to guardianship.
- The court must find that the bringing of such an action is in the ward's best interest during his or her probable lifetime before authorizing a guardian to commence the proceeding. If the court denies the request, the court must also review the grantor's continued need for a guardian.
- If the request is authorized, the bill requires that the guardian of the property promptly report the outcome of the action in the guardianship proceeding. The court must review the grantor's continued need for a guardian if the trust was judicially determined to be valid.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 737.2065, F.S., providing for the commencement of trust contest by the guardian of the property of an incapacitated person.

Section 2: Amends s. 744.331(6), F.S., requiring that the court find whether there is an alternative to guardianship and requiring appointment of a guardian under certain circumstances; providing that a trust, trust amendment, or durable power of attorney is not an alternative to the appointment of a guardian under certain circumstances

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<sup>1</sup> S. 731.2065, F.S.

<sup>2</sup> S. 744.1025, s. 731.201(21): "interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.

Section 3: Amends s. 744.441, F.S., providing that the court make certain findings prior to authorizing a guardian to bring an action under s. 737.2065; requiring that, if the guardian's request to institute such an action is denied, the court will review the continued need for a guardian and the extent of need for delegation of the ward's rights.

Section 4: Creates s. 744.462, F.S., requiring prompt reporting of any judicial determination regarding the validity of a durable power of attorney, trust, or trust amendment in the guardianship proceeding.

Section 5: Provides the act is effective upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The Office of the State Courts Administrator advises that that there will be minimal impact on court operations and workload as a result of this legislation.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

At its March 15, 2004, meeting, the Committee on the Future of Florida's Families adopted HB 1327 without amendment.