

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to guardianship; amending s. 737.2065,
7 F.S.; excepting from a prohibition against commencing
8 certain actions contesting trust validity by property
9 guardians of incapacitated grantors; amending s. 744.331,
10 F.S.; requiring a court to determine whether acceptable
11 alternatives to guardianship of incapacitated persons
12 exist under certain circumstances; requiring appointment
13 of a guardian if no alternative exists; prohibiting such
14 appointment if an alternative exists; specifying
15 circumstances of nonexistence of an alternative;
16 preserving certain court authority to determine exercise
17 of certain powers of attorney; amending s. 744.441, F.S.;
18 requiring a court to make certain findings in a ward's
19 best interest before authorizing a guardian to bring
20 certain actions; requiring a court to review certain
21 continuing needs for guardians and delegation of a ward's
22 rights; creating s. 744.462, F.S.; requiring guardians to
23 immediately report certain judicial determinations in

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24 | certain guardianship proceedings; requiring a court to
25 | review certain continuing needs for guardians and
26 | delegation of a ward's rights under certain circumstances;
27 | providing an effective date.

28 |

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

31 | Section 1. Section 737.2065, Florida Statutes, is amended
32 | to read:

33 | 737.2065 Trust contests.--An action to contest the
34 | validity of all or part of a trust may not be commenced until
35 | the trust becomes irrevocable, except this section shall not
36 | prohibit such action by the guardian of the property of an
37 | incapacitated grantor.

38 | Section 2. Paragraphs (b) and (f) of subsection (6) of
39 | section 744.331, Florida Statutes, are amended to read:

40 | 744.331 Procedures to determine incapacity.--

41 | (6) ORDER DETERMINING INCAPACITY.--If, after making
42 | findings of fact on the basis of clear and convincing evidence,
43 | the court finds that a person is incapacitated with respect to
44 | the exercise of a particular right, or all rights, the court
45 | shall enter a written order determining such incapacity. A
46 | person is determined to be incapacitated only with respect to
47 | those rights specified in the order.

48 | (b) When an order is entered which determines that a
49 | person is incapable of exercising delegable rights, the court
50 | must consider and find whether there is an alternative to
51 | guardianship that will sufficiently address the problems of the

52 incapacitated person. A guardian must be appointed to exercise
 53 the incapacitated person's delegable rights unless the court
 54 finds that there is an alternative. A guardian shall not be
 55 appointed if the court finds that there is an alternative to
 56 guardianship that will sufficiently address the problems of the
 57 incapacitated person ~~In any order declaring a person~~
 58 ~~incapacitated the court must find that alternatives to~~
 59 ~~guardianship were considered and that no alternative to~~
 60 ~~guardianship will sufficiently address the problems of the ward.~~

61 (f) Upon the filing of a verified statement by an
 62 interested person stating:

63 1. That he or she has a good faith belief that the alleged
 64 incapacitated person's trust, trust amendment, or durable power
 65 of attorney is invalid; and

66 2. A reasonable factual basis for that belief,
 67
 68 the trust, trust amendment, or durable power of attorney shall
 69 not be deemed to be an alternative to the appointment of a
 70 guardian. The appointment of a guardian shall not limit the
 71 court's authority to determine that certain authority granted by
 72 a durable power of attorney is to remain exercisable by the
 73 attorney in fact ~~When an order is entered which determines that~~
 74 ~~a person is incapable of exercising delegable rights, a guardian~~
 75 ~~must be appointed to exercise those rights.~~

76 Section 3. Subsection (11) of section 744.441, Florida
 77 Statutes, is amended to read:

78 744.441 Powers of guardian upon court approval.--After
 79 obtaining approval of the court pursuant to a petition for

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80 authorization to act, a plenary guardian of the property, or a
 81 limited guardian of the property within the powers granted by
 82 the order appointing the guardian or an approved annual or
 83 amended guardianship report, may:

84 (11) Prosecute or defend claims or proceedings in any
 85 jurisdiction for the protection of the estate and of the
 86 guardian in the performance of his or her duties. Before
 87 authorizing a guardian to bring an action described in s.
 88 737.2065, the court shall first find that the action appears to
 89 be in the ward's best interests during the ward's probable
 90 lifetime. If the court denies a request that a guardian be
 91 authorized to bring an action described in s. 737.2065, the
 92 court shall review the continued need for a guardian and the
 93 extent of the need for delegation of the ward's rights.

94 Section 4. Section 744.462, Florida Statutes, is created
 95 to read:

96 744.462 Determination regarding alternatives to
 97 guardianship.--Any judicial determination concerning the
 98 validity of the ward's durable power of attorney, trust, or
 99 trust amendment shall be promptly reported in the guardianship
 100 proceeding by the guardian of the property. If the instrument
 101 has been judicially determined to be valid, or if after the
 102 appointment of a guardian a petition is filed alleging that
 103 there is an alternative to guardianship that will sufficiently
 104 address the problems of the ward, the court shall review the
 105 continued need for a guardian and the extent of the need for
 106 delegation of the ward's rights.

107 Section 5. This act shall take effect upon becoming a law.