

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Bogdanoff offered the following:

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3 **Amendment (with title amendment)**

4 Between lines 659 and 660 insert:

5 Section 18. Section 737.2065, Florida Statutes, is amended
6 to read:

7 737.2065 Trust contests.--An action to contest the
8 validity of all or part of a trust may not be commenced until
9 the trust becomes irrevocable, except this section shall not
10 prohibit such action by the guardian of the property of an
11 incapacitated grantor.

12 Section 19. Paragraphs (b) and (f) of subsection (6) of
13 section 744.331, Florida Statutes, are amended to read:

14 744.331 Procedures to determine incapacity.--

15 (6) ORDER DETERMINING INCAPACITY.--If, after making
16 findings of fact on the basis of clear and convincing evidence,

Amendment No. (for drafter's use only)

17 the court finds that a person is incapacitated with respect to
18 the exercise of a particular right, or all rights, the court
19 shall enter a written order determining such incapacity. A
20 person is determined to be incapacitated only with respect to
21 those rights specified in the order.

22 (b) When an order is entered which determines that a
23 person is incapable of exercising delegable rights, the court
24 must consider and find whether there is an alternative to
25 guardianship that will sufficiently address the problems of the
26 incapacitated person. A guardian must be appointed to exercise
27 the incapacitated person's delegable rights unless the court
28 finds that there is an alternative. A guardian shall not be
29 appointed if the court finds that there is an alternative to
30 guardianship that will sufficiently address the problems of the
31 incapacitated person ~~In any order declaring a person~~
32 ~~incapacitated the court must find that alternatives to~~
33 ~~guardianship were considered and that no alternative to~~
34 ~~guardianship will sufficiently address the problems of the ward.~~

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

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

40 2. A reasonable factual basis for that belief,
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42 the trust, trust amendment, or durable power of attorney shall
43 not be deemed to be an alternative to the appointment of a
44 guardian. The appointment of a guardian shall not limit the

406465

Amendment No. (for drafter's use only)

45 court's authority to determine that certain authority granted by
46 a durable power of attorney is to remain exercisable by the
47 attorney in fact ~~When an order is entered which determines that~~
48 ~~a person is incapable of exercising delegable rights, a guardian~~
49 ~~must be appointed to exercise those rights.~~

50 Section 20. Subsection (11) of section 744.441, Florida
51 Statutes, is amended to read:

52 744.441 Powers of guardian upon court approval.--After
53 obtaining approval of the court pursuant to a petition for
54 authorization to act, a plenary guardian of the property, or a
55 limited guardian of the property within the powers granted by
56 the order appointing the guardian or an approved annual or
57 amended guardianship report, may:

58 (11) Prosecute or defend claims or proceedings in any
59 jurisdiction for the protection of the estate and of the
60 guardian in the performance of his or her duties. Before
61 authorizing a guardian to bring an action described in s.
62 737.2065, the court shall first find that the action appears to
63 be in the ward's best interest during the ward's probable
64 lifetime. If the court denies a request that a guardian be
65 authorized to bring an action described in s. 737.2065, the
66 court shall review the continued need for a guardian and the
67 extent of the need for delegation of the ward's rights.

68 Section 21. Section 744.462, Florida Statutes, is created
69 to read:

70 744.462 Determination regarding alternatives to
71 guardianship.--Any judicial determination concerning the
72 validity of the ward's durable power of attorney, trust, or

406465

Amendment No. (for drafter's use only)

trust amendment shall be promptly reported in the guardianship proceeding by the guardian of the property. If the instrument has been judicially determined to be valid, or if after the appointment of a guardian a petition is filed alleging that there is an alternative to guardianship that will sufficiently address the problems of the ward, the court shall review the continued need for a guardian and the extent of the need for delegation of the ward's rights.

===== T I T L E A M E N D M E N T =====

Remove lines 2-52, and insert:

An act relating to guardianship; amending s. 121.901, F.S.; correcting cross references; amending s. 393.063, F.S.; revising a definition; amending s. 393.12, F.S.; providing that a guardian advocate is not required to file an annual accounting under certain circumstances; amending s. 709.08, F.S.; correcting cross references; amending s. 744.102, F.S.; providing a definition; amending s. 744.1083, F.S.; deleting a requirement for background screening; requiring the Statewide Public Guardianship Office to receive and review credit and criminal investigations prior to registering a professional guardian; authorizing the executive director of the office to deny registration under certain circumstances; amending s. 744.1085, F.S.; correcting a cross reference; creating s. 744.3085, F.S.; authorizing a circuit court to appoint a guardian advocate under certain circumstances; amending

Amendment No. (for drafter's use only)

101 s. 744.3135, F.S.; requiring the clerk of the court to
102 forward copies of credit and criminal investigations of
103 public and professional guardians to the office to be
104 maintained in the guardians' files; amending s. 744.3678,
105 F.S.; specifying nonapplication of certain annual
106 accounting requirements to certain guardians under certain
107 circumstances; amending s. 744.7082, F.S.; providing a
108 definition; requiring a direct-support organization to
109 operate under written contract with the office; providing
110 the requirements of such contract; requiring the Secretary
111 of Elderly Affairs to appoint a board of directors for the
112 direct-support organization; authorizing the Department of
113 Elderly Affairs to allow the use of department facilities
114 and property by the organization; authorizing the
115 organization to hold moneys in a separate account;
116 requiring an annual audit; authorizing judicial
117 dissolution for corporations fraudulently representing
118 themselves as direct-support organizations; creating s.
119 744.7101, F.S.; providing a popular name; creating s.
120 744.711, F.S.; providing legislative findings and intent;
121 creating s. 744.712, F.S.; creating the Joining Forces for
122 Public Guardianship matching grant program; providing a
123 purpose; providing for distribution of grant funds;
124 providing limitations on awards; providing requirements
125 for disbursement of grant funds to prior awardees;
126 requiring grant funds to be used for a certain purpose;
127 providing that program implementation is subject to
128 specific appropriation; creating s. 744.713, F.S.;

406465

Amendment No. (for drafter's use only)

129 requiring the office to administer the grant program;
130 providing guidelines for such administration; creating s.
131 744.714, F.S.; providing eligibility requirements to
132 receive grant funding; creating s. 744.715, F.S.;
133 providing grant application requirements; requiring
134 matching funds from local funding sources; amending s.
135 737.2065, F.S.; excepting from a prohibition against
136 commencing certain actions contesting trust validity by
137 property guardians of incapacitated grantors; amending s.
138 744.331, F.S.; requiring a court to determine whether
139 acceptable alternatives to guardianship of incapacitated
140 persons exist under certain circumstances; requiring
141 appointment of a guardian if no alternative exists;
142 prohibiting such appointment if an alternative exists;
143 specifying circumstances of nonexistence of an
144 alternative; preserving certain court authority to
145 determine exercise of certain powers of attorney; amending
146 s. 744.441, F.S.; requiring a court to make certain
147 findings in a ward's best interest before authorizing a
148 guardian to bring certain actions; requiring a court to
149 review certain continuing needs for guardians and
150 delegation of a ward's rights; creating s. 744.462, F.S.;
151 requiring guardians to immediately report certain judicial
152 determinations in certain guardianship proceedings;
153 requiring a court to review certain continuing needs for
154 guardians and delegation of a ward's rights under certain
155 circumstances; providing effective dates.

406465