

By Senator Webster

9-1394-04

1 A bill to be entitled
 2 An act relating to guardians for unborn
 3 children; amending s. 744.102, F.S.; defining
 4 the term "ward" for purposes of the Florida
 5 Guardianship Law to include an unborn child for
 6 whom a guardian has been appointed by the
 7 court; amending s. 744.3021, F.S.; providing
 8 procedures for appointing a guardian of an
 9 unborn child; amending s. 744.3725, F.S.;
 10 directing that the court receive as evidence
 11 medical evaluations or other reports,
 12 documents, or testimony by competent
 13 professionals before authorizing the guardian
 14 of an unborn child to consent to certain
 15 placements or procedures; providing an
 16 effective date.

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

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 20 Section 1. Subsection (19) of section 744.102, Florida
 21 Statutes, is amended to read:

22 744.102 Definitions.--As used in this chapter, the
 23 term:

24 (19) "Ward" means a person for whom a guardian has
 25 been appointed or an unborn child for whom a guardian has been
 26 appointed under s. 744.3021(4).

27 Section 2. Section 744.3021, Florida Statutes, is
 28 amended to read:

29 744.3021 Guardians of minors and unborn children.--

30 (1) Upon petition of a parent, brother, sister, next
 31 of kin, or other person interested in the welfare of a minor,

1 a guardian for a minor may be appointed by the court without
2 the necessity of adjudication pursuant to s. 744.331. A
3 guardian appointed for a minor, whether of the person or
4 property, has the authority of a plenary guardian.

5 (2) A minor is not required to attend the hearing on
6 the petition for appointment of a guardian, unless otherwise
7 directed by the court.

8 (3) In its discretion, the court may appoint an
9 attorney to represent the interests of a minor at the hearing
10 on the petition for appointment of a guardian.

11 (4) Upon petition of a parent, brother, sister, next
12 of kin, or other person interested in the welfare of an unborn
13 child, the court may appoint a guardian for an unborn child
14 after:

15 (a) An adjudication that the unborn child's mother is
16 incapable of exercising the right to consent to medical and
17 mental health treatment under s. 744.331; or

18 (b) The court has appointed a guardian for the mother
19 of the unborn child under s. 744.342.

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21 A guardian appointed for an unborn child, whether of the
22 person or property, has the authority of a plenary guardian.

23 Section 3. Section 744.3725, Florida Statutes, is
24 amended to read:

25 744.3725 Procedure for extraordinary
26 authority.--Before the court may grant authority to a guardian
27 to exercise any of the rights specified in s. 744.3215(4), the
28 court must:

29 (1) Appoint an independent attorney to act on the
30 incapacitated person's behalf, and the attorney must have the
31 opportunity to meet with the person and to present evidence

1 and cross-examine witnesses at any hearing on the petition for
2 authority to act;

3 (2) Receive as evidence independent medical,
4 psychological, and social evaluations with respect to the
5 incapacitated person by competent professionals or appoint its
6 own experts to assist in the evaluations;

7 (3) Personally meet with the incapacitated person to
8 obtain its own impression of the person's capacity, so as to
9 afford the incapacitated person the full opportunity to
10 express his or her personal views or desires with respect to
11 the judicial proceeding and issue before the court;

12 (4) Find by clear and convincing evidence that the
13 person lacks the capacity to make a decision about the issue
14 before the court and that the incapacitated person's capacity
15 is not likely to change in the foreseeable future;

16 (5) Be persuaded by clear and convincing evidence that
17 the authority being requested is in the best interests of the
18 incapacitated person; ~~and~~

19 (6) In the case of dissolution of marriage, find that
20 the ward's spouse has consented to the dissolution; ~~an-~~

21 (7) In the case of a request by the guardian of an
22 unborn child for specific authority to exercise any right
23 specified in s. 744.3215(4)(a), (b), or (e), receive as
24 evidence any medical evaluations or other reports, documents,
25 or testimony by competent professionals presented by the
26 unborn child's guardian or appoint its own experts to assist
27 in the evaluations.

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29 The provisions of this section and s. 744.3215(4) are
30 procedural and do not establish any new or independent right
31 to or authority over the termination of parental rights,

1 dissolution of marriage, sterilization, abortion, or the
2 termination of life support systems.

3 Section 4. This act shall take effect July 1, 2004.

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6 SENATE SUMMARY

7 Defines the term "ward" to include an unborn child for
8 whom a guardian has been appointed. Provides procedures
9 for the appointment of a guardian of an unborn child.
10 Directs the court to receive as evidence the medical
11 evaluations or other reports, documents, or testimony by
12 competent professionals provided by the guardian of an
13 unborn child before authorizing the guardian to take
14 certain actions on behalf of the unborn child.

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