

By Senator Campbell

32-1259A-04

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 737.2065, F.S.; authorizing the guardian of the
4 property of an incapacitated person to contest
5 the validity of a trust before it becomes
6 irrevocable; amending s. 744.311, F.S.;
7 requiring the court to determine whether there
8 is an alternative to guardianship if a person
9 is determined incapable of exercising his or
10 her delegable rights; authorizing an interested
11 person to file a verified statement indicating
12 a belief that an incapacitated person's trust,
13 trust amendment, or durable power of attorney
14 is invalid, in which case such instrument may
15 not be an alternative to the appointment of a
16 guardian; amending s. 744.441, F.S.; requiring
17 the court to determine whether an action
18 contesting the validity of a trust is in the
19 ward's best interests before authorizing a
20 guardian to bring such actions; creating s.
21 744.462, F.S.; requiring that the validity of a
22 ward's durable power of attorney, trust, or
23 trust amendment be reported in the guardianship
24 proceedings; requiring the court to review the
25 continued need for a guardian and delegation of
26 the ward's rights under certain conditions;
27 providing an effective date.

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

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1 Section 1. Section 737.2065, Florida Statutes, is
2 amended to read:

3 737.2065 Trust contests.--An action to contest the
4 validity of all or part of a trust may not be commenced until
5 the trust becomes irrevocable, except that this section shall
6 not prohibit such action by the guardian of the property of an
7 incapacitated grantor.

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

10 744.331 Procedures to determine incapacity.--

11 (6) ORDER DETERMINING INCAPACITY.--If, after making
12 findings of fact on the basis of clear and convincing
13 evidence, the court finds that a person is incapacitated with
14 respect to the exercise of a particular right, or all rights,
15 the court shall enter a written order determining such
16 incapacity. A person is determined to be incapacitated only
17 with respect to those rights specified in the order.

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

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

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

6 2. A reasonable factual basis for that belief,

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8 the trust, trust amendment, or durable power of attorney shall
9 not be deemed to be an alternative to the appointment of a
10 guardian. The appointment of a guardian shall not limit the
11 court's power to determine that certain authority granted by a
12 durable power of attorney is to remain exercisable by the
13 attorney in fact.~~When an order is entered which determines~~
14 ~~that a person is incapable of exercising delegable rights, a~~
15 ~~guardian must be appointed to exercise those rights.~~

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

18 744.441 Powers of guardian upon court approval.--After
19 obtaining approval of the court pursuant to a petition for
20 authorization to act, a plenary guardian of the property, or a
21 limited guardian of the property within the powers granted by
22 the order appointing the guardian or an approved annual or
23 amended guardianship report, may:

24 (11) Prosecute or defend claims or proceedings in any
25 jurisdiction for the protection of the estate and of the
26 guardian in the performance of his or her duties. Before
27 authorizing a guardian to bring an action described in s.
28 737.2065, the court shall first find that the action appears
29 to be in the ward's best interests during the ward's probable
30 lifetime. If the court denies a request that a guardian be
31 authorized to bring an action described in s. 737.2065, the

1 court shall review the continued need for a guardian and the
2 extent of the need for delegation of the ward's rights.

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

5 744.462 Determination regarding alternatives to
6 guardianship.--Any judicial determination concerning the
7 validity of the ward's durable power of attorney, trust, or
8 trust amendment shall be promptly reported in the guardianship
9 proceeding by the guardian of the property. If the instrument
10 has been judicially determined to be valid, or if after the
11 appointment of a guardian a petition is filed alleging that
12 there is an alternative to guardianship which will
13 sufficiently address the problems of the ward, the court shall
14 review the continued need for a guardian and the extent of the
15 need for delegation of the ward's rights.

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

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20 SENATE SUMMARY

21 Authorizes a guardian of property of an incapacitated
22 person to contest the validity of a trust before it
23 becomes irrevocable. Requires the court to find an
24 alternative to guardianship under certain circumstances.
25 Authorizes an interested person to file a verified
26 statement indicating a reasonable factual basis that the
27 incapacitated person's trust, trust amendment, or durable
28 power of attorney is invalid. Provides that the
29 appointment of a guardian does not limit the court's
30 power to determine certain authority granted by a durable
31 power of attorney. Requires the court to determine
whether an action contesting the validity of a trust is
in the ward's best interests before authorizing a
guardian to bring such action. Requires the validity of a
ward's durable power of attorney, trust, or trust
amendment to be reported in the guardianship proceedings.
Requires the court to review the continued need for a
guardian and delegation of the ward's rights under
certain conditions.