

1 A bill to be entitled
2 An act relating to guardianship; amending s. 737.2065,
3 F.S.; excepting the contesting of trust validity by
4 property guardians of incapacitated grantors from a
5 prohibition against commencing certain actions; amending
6 s. 744.107, F.S.; revising provisions relating to court
7 monitors; requiring orders of appointment and monitors'
8 reports to be served upon certain persons; authorizing the
9 court to determine which persons may inspect certain
10 orders or reports; authorizing the court to enter any
11 order necessary to protect a ward or ward's estate;
12 requiring notice and hearing; authorizing a court to
13 assess certain costs and attorney's fees under certain
14 circumstances; creating s. 744.1075, F.S.; authorizing a
15 court to appoint a court monitor on an emergency basis
16 under certain circumstances; requiring the court to make
17 certain findings; requiring the monitor to report findings
18 and recommendations; providing duties of the court
19 relating to probable cause for the emergency appointment;
20 authorizing the court to determine which persons may
21 inspect certain orders or reports; providing requirements
22 for a court order to show cause for the emergency
23 appointment; specifying a time period for a monitor's
24 authority; providing for extending such time period;
25 authorizing the court to issue certain injunctions or
26 orders for certain purposes; requiring the court to
27 provide copies of such injunctions or orders to all
28 parties; authorizing the court to impose sanctions or take

29 certain enforcement actions; providing for payment of
30 reasonable fees to the monitor; prohibiting certain
31 persons from receiving certain fees; authorizing a court
32 to assess certain costs and attorney's fees under certain
33 circumstances; amending s. 744.331, F.S.; requiring a
34 court to determine whether acceptable alternatives to
35 guardianship of incapacitated persons exist under certain
36 circumstances; requiring appointment of a guardian if no
37 alternative exists; prohibiting such appointment if an
38 alternative exists; specifying circumstances of
39 nonexistence of an alternative; preserving certain court
40 authority to determine exercise of certain powers of
41 attorney; amending s. 744.441, F.S.; requiring a court to
42 make certain findings in a ward's best interest before
43 authorizing a guardian to bring certain actions; requiring
44 a court to review certain continuing needs for guardians
45 and delegation of a ward's rights; creating s. 744.462,
46 F.S.; requiring guardians to immediately report certain
47 judicial determinations in certain guardianship
48 proceedings; requiring a court to review certain
49 continuing needs for guardians and delegation of a ward's
50 rights under certain circumstances; providing an effective
51 date.

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

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

57 737.2065 Trust contests.--An action to contest the
 58 validity of all or part of a trust may not be commenced until
 59 the trust becomes irrevocable, except this section shall not
 60 prohibit such action by the guardian of the property of an
 61 incapacitated grantor.

62 Section 2. Section 744.107, Florida Statutes, is amended
 63 to read:

64 744.107 Court monitors.--

65 (1) The court may, upon inquiry from any interested person
 66 or upon its own motion in any proceeding over which it has
 67 jurisdiction, appoint a monitor. The court shall not appoint as
 68 a monitor a family member or any person with a personal interest
 69 in the proceedings. The order of appointment shall be served
 70 upon the guardian, the ward, and such other persons as the court
 71 may determine.

72 (2) The monitor may investigate, seek information, examine
 73 documents, or interview the ward and shall report to the court
 74 his or her findings. The report shall be verified and shall be
 75 served on the guardian, the ward, and such other persons as the
 76 court may determine. ~~The court shall not appoint as a monitor a~~
 77 ~~family member or any person with a personal interest in the~~
 78 ~~proceedings.~~

79 (3) Unless otherwise ordered by the court, the order of
 80 appointment and the report are confidential as provided by s.
 81 744.1076 and subject to inspection only by the court, the clerk
 82 of the court, the clerk's representative, the guardian, the
 83 guardian's attorney, the ward, unless he or she is a minor or
 84 has been determined to be totally incapacitated, the ward's

85 attorney, and such other persons as the court may determine.

86 (4) If it appears from the monitor's report that further
 87 action by the court to protect the interests of the ward is
 88 necessary, the court shall, after a hearing with notice, enter
 89 any order necessary to protect the ward or the ward's estate,
 90 including amending the plan, requiring an accounting, ordering
 91 production of assets, freezing assets, suspending the guardian,
 92 or initiating proceedings to remove a guardian.

93 (5) Unless otherwise prohibited by law, a monitor may be
 94 allowed a reasonable fee as determined by the court and paid
 95 from the property of the ward. No full-time state, county, or
 96 municipal employee or officer shall be paid a fee for such
 97 investigation and report. If the court finds the motion for
 98 court monitor to have been filed in bad faith, the costs of the
 99 proceeding, including attorney's fees, may be assessed against
 100 the movant.

101 Section 3. Section 744.1075, Florida Statutes, is created
 102 to read:

103 744.1075 Emergency court monitor.--

104 (1) A court, upon inquiry from any interested person or
 105 upon its own motion, in any proceeding over which the court has
 106 jurisdiction, may appoint a court monitor on an emergency basis
 107 without notice. The court must specifically find that there
 108 appears to be imminent danger that the physical or mental health
 109 or safety of the ward will be seriously impaired or that the
 110 ward's property is in danger of being wasted, misappropriated,
 111 or lost unless immediate action is taken. The scope of the
 112 matters to be investigated and the powers and duties of the

113 monitor must be specifically enumerated by court order. Unless
114 otherwise provided by the court, the order of appointment is
115 confidential as provided in s. 744.1076 until a finding of
116 probable cause or no probable cause is established.

117 (2) Within 15 days after the entry of the order of
118 appointment, the monitor shall file his or her report of
119 findings and recommendations to the court. The report shall be
120 verified and may be supported by documents or other evidence.

121 (3) Upon review of the report, the court shall determine
122 whether there is probable cause to take further action to
123 protect the person or property of the ward. If the court finds
124 no probable cause, the court shall issue an order finding no
125 probable cause and discharging the monitor.

126 (4) Unless otherwise ordered by the court, the order of
127 appointment, the report, and the order finding no probable cause
128 are confidential as provided in s. 744.1076 and subject to
129 inspection only by the court, the clerk of the court, the
130 clerk's representative, the guardian, the guardian's attorney,
131 the ward unless he or she is a minor or has been determined to
132 be totally incapacitated, the ward's attorney, and such other
133 persons as the court may determine.

134 (5) If the court finds probable cause, the court shall
135 issue an order to show cause directed to the guardian or other
136 respondent stating the essential facts constituting the conduct
137 charged and requiring the respondent to appear before the court
138 to show cause why the court should not take further action. The
139 order shall specify the time and place of the hearing with a
140 reasonable time to allow for the preparation of a defense after

141 service of the order.

142 (6) The authority of a monitor appointed under this
143 section expires 60 days after the date of appointment or upon a
144 finding of no probable cause, whichever occurs first. The
145 authority of the monitor may be extended for an additional 30
146 days upon a showing that the emergency conditions still exist.

147 (7) At any time prior to the hearing on the order to show
148 cause, the court may issue a temporary injunction, a restraining
149 order, or an order freezing assets, may suspend a guardian or
150 appoint a guardian ad litem, or may issue any other appropriate
151 order to protect the physical or mental health or safety or
152 property of the ward. A copy of all such orders or injunctions
153 shall be transmitted by the court or under its direction to all
154 parties at the time of entry of the order or injunction.

155 (8) Following a hearing on the order to show cause, the
156 court may impose sanctions on the guardian or his or her
157 attorney or other respondent or take any other action authorized
158 by law, including entering a judgment of contempt, ordering an
159 accounting, freezing assets, referring the case to local law
160 enforcement agencies or the state attorney, filing an abuse,
161 neglect, or exploitation complaint with the Department of
162 Children and Family Services, or initiating proceedings to
163 remove a guardian.

164 (9) Unless otherwise prohibited by law, a monitor may be
165 allowed a reasonable fee as determined by the court and paid
166 from the property of the ward. No full-time state, county, or
167 municipal employee or officer shall be paid a fee for such
168 investigation and report. If the court finds the motion for a

169 court monitor to have been filed in bad faith, the costs of the
 170 proceeding, including attorney's fees, may be assessed against
 171 the movant.

172 Section 4. Paragraphs (b) and (f) of subsection (6) of
 173 section 744.331, Florida Statutes, are amended to read:

174 744.331 Procedures to determine incapacity.--

175 (6) ORDER DETERMINING INCAPACITY.--If, after making
 176 findings of fact on the basis of clear and convincing evidence,
 177 the court finds that a person is incapacitated with respect to
 178 the exercise of a particular right, or all rights, the court
 179 shall enter a written order determining such incapacity. A
 180 person is determined to be incapacitated only with respect to
 181 those rights specified in the order.

182 (b) When an order is entered which determines that a
 183 person is incapable of exercising delegable rights, the court
 184 must consider and find whether there is an alternative to
 185 guardianship that will sufficiently address the problems of the
 186 incapacitated person. A guardian must be appointed to exercise
 187 the incapacitated person's delegable rights unless the court
 188 finds that there is an alternative. A guardian shall not be
 189 appointed if the court finds that there is an alternative to
 190 guardianship that will sufficiently address the problems of the
 191 incapacitated person ~~In any order declaring a person~~
 192 ~~incapacitated the court must find that alternatives to~~
 193 ~~guardianship were considered and that no alternative to~~
 194 ~~guardianship will sufficiently address the problems of the ward.~~

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

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

200 2. A reasonable factual basis for that belief,
 201
 202 the trust, trust amendment, or durable power of attorney shall
 203 not be deemed to be an alternative to the appointment of a
 204 guardian. The appointment of a guardian shall not limit the
 205 court's authority to determine that certain authority granted by
 206 a durable power of attorney is to remain exercisable by the
 207 attorney in fact ~~When an order is entered which determines that~~
 208 ~~a person is incapable of exercising delegable rights, a guardian~~
 209 ~~must be appointed to exercise those rights.~~

210 Section 5. Subsection (11) of section 744.441, Florida
 211 Statutes, is amended to read:

212 744.441 Powers of guardian upon court approval.--After
 213 obtaining approval of the court pursuant to a petition for
 214 authorization to act, a plenary guardian of the property, or a
 215 limited guardian of the property within the powers granted by
 216 the order appointing the guardian or an approved annual or
 217 amended guardianship report, may:

218 (11) Prosecute or defend claims or proceedings in any
 219 jurisdiction for the protection of the estate and of the
 220 guardian in the performance of his or her duties. Before
 221 authorizing a guardian to bring an action described in s.
 222 737.2065, the court shall first find that the action appears to
 223 be in the ward's best interests during the ward's probable
 224 lifetime. If the court denies a request that a guardian be

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225 authorized to bring an action described in s. 737.2065, the
226 court shall review the continued need for a guardian and the
227 extent of the need for delegation of the ward's rights.

228 Section 6. Section 744.462, Florida Statutes, is created
229 to read:

230 744.462 Determination regarding alternatives to
231 guardianship.--Any judicial determination concerning the
232 validity of the ward's trust, trust amendment, or durable power
233 of attorney shall be promptly reported in the guardianship
234 proceeding by the guardian of the property. If the instrument
235 has been judicially determined to be valid, or if after the
236 appointment of a guardian a petition is filed alleging that
237 there is an alternative to guardianship that will sufficiently
238 address the problems of the ward, the court shall review the
239 continued need for a guardian and the extent of the need for
240 delegation of the ward's rights.

241 Section 7. This act shall take effect upon becoming a law.