

Bill No. SB 64

Barcode 883104

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Campbell) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 2, between lines 7 and 8,

insert:

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

744.107 Court monitors.--

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

(2) The monitor may investigate, seek information, examine documents, or interview the ward and shall report to the court his or her findings. The report shall be verified and shall be served on the guardian, the ward, and such other

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1 persons as the court may determine.

2       (3) If it appears from the monitor's report that  
3 further action by the court to protect the interests of the  
4 ward is necessary, the court shall, after a hearing with  
5 notice, enter any order necessary to protect the ward or the  
6 ward's estate, including an order amending the plan, requiring  
7 an accounting, requiring the production of assets, freezing  
8 assets, suspending the guardian, or removing a guardian. The  
9 court shall not appoint as a monitor a family member or any  
10 person with a personal interest in the proceedings.

11       (4) Unless otherwise prohibited by law, a monitor may  
12 be allowed a reasonable fee as determined by the court and  
13 paid from the property of the ward. A ~~no~~ full-time state,  
14 county, or municipal employee or officer ~~may not shall~~ be paid  
15 a fee for such investigation and report. If the court finds  
16 the motion for court monitor to have been filed in bad faith,  
17 the costs of the proceeding, including attorney's fees, may be  
18 assessed against the movant.

19       Section 3. Section 744.1075, Florida Statutes, is  
20 created to read:

21       744.1075 Emergency court monitor.--

22       (1) A court, upon inquiry from any interested person  
23 or upon its own motion in any proceeding over which it has  
24 jurisdiction, may appoint a court monitor on an emergency  
25 basis without notice. The court must specifically find that  
26 there appears to be imminent danger that the physical or  
27 mental health or safety of the ward will be seriously impaired  
28 or that the ward's property is in danger of being wasted,  
29 misappropriated, or lost unless immediate action is taken. The  
30 scope of the matters to be investigated and the powers and  
31 duties of the monitor must be specifically enumerated by court

1 order.

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

6 (3) Upon review of the report, the court shall  
7 determine whether there is probable cause to take further  
8 action to protect the person or property of the ward. If the  
9 court does not find any probable cause, the court shall issue  
10 an order finding no probable cause and discharge the monitor.

11 (4) If the court finds probable cause, it shall issue  
12 an order to show cause directed to the guardian or other  
13 respondent stating the essential facts constituting the  
14 conduct charged and requiring the respondent to appear before  
15 the court to show cause why the court should not take further  
16 action. The order shall specify the time and place of the  
17 hearing allowing a reasonable period of time for the  
18 preparation of a defense after service of the order.

19 (5) The authority of a monitor appointed under this  
20 section expires 60 days after the date of appointment or upon  
21 a finding of no probable cause, whichever occurs first. The  
22 authority of the monitor may be extended for an additional 30  
23 days upon a showing that the emergency conditions continue to  
24 exist.

25 (6) At any time before the hearing on the order to  
26 show cause, the court may issue a temporary injunction, a  
27 restraining order, an order freezing assets, an order  
28 suspending a guardian, an order appointing a guardian ad  
29 litem, or other appropriate order to protect the physical or  
30 mental health or safety or property of the ward. A copy of all  
31 such orders or injunctions shall be transmitted by the court

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1 or under its direction to all parties at the time of entry of  
2 the order or injunction.

3 (7) Following a hearing on the order to show cause,  
4 the court may impose sanctions on the guardian or his or her  
5 attorney or other respondent or take any other action  
6 authorized by law, including entering a judgment of contempt,  
7 ordering an accounting, freezing assets, referring the case to  
8 local law enforcement agencies or the state attorney, filing a  
9 complaint for abuse, neglect, or exploitation with the  
10 Department of Children and Family Services, or initiating  
11 proceedings to remove a guardian.

12 (8) Unless otherwise prohibited by law, a court  
13 monitor may receive a reasonable fee as determined by the  
14 court and paid from the property of the ward. A full-time  
15 state, county, or municipal employee or officer may not be  
16 paid a fee for such investigation and report. If the court  
17 finds the motion for court monitor to have been filed in bad  
18 faith, the cost of the proceeding, including attorney's fees,  
19 may be assessed against the movant.

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21 (Redesignate subsequent sections.)

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

25 And the title is amended as follows:

26 On page 1, line 6, after first the semicolon,  
27  
28 insert:  
29 amending s. 744.107, F.S.; revising provisions  
30 relating to court monitors; requiring orders of  
31 appointment and monitors' reports to be served

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1 upon certain persons; authorizing the court to  
2 determine which persons may inspect certain  
3 orders or reports; authorizing the court to  
4 enter any order necessary to protect a ward or  
5 ward's estate; requiring notice and a hearing;  
6 authorizing a court to assess certain costs and  
7 attorney's fees under certain circumstances;  
8 creating s. 744.1075, F.S.; authorizing a court  
9 to appoint a court monitor on an emergency  
10 basis under certain circumstances; requiring  
11 the court to make certain findings; requiring  
12 the monitor to report findings and  
13 recommendations; providing duties of the court  
14 relating to probable cause for the emergency  
15 appointment; authorizing the court to determine  
16 which persons may inspect certain orders or  
17 reports; providing requirements for a court  
18 order to show cause for the emergency  
19 appointment; specifying a time period for a  
20 monitor's authority; providing for extending  
21 such time period; authorizing the court to  
22 issue certain injunctions or orders for certain  
23 purposes; requiring the court to provide copies  
24 of such injunctions or orders to all parties;  
25 authorizing the court to impose sanctions or  
26 take certain enforcement actions; providing for  
27 payment of reasonable fees to the monitor;  
28 prohibiting certain persons from receiving  
29 certain fees; authorizing a court to assess  
30 certain costs and attorney's fees under certain  
31 circumstances;