

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

1 payment of reasonable fees to the monitor;
2 prohibiting certain persons from receiving
3 certain fees; authorizing a court to assess
4 certain costs and attorney's fees under certain
5 circumstances; amending s. 744.331, F.S.;
6 requiring the court to determine whether there
7 is an alternative to guardianship if a person
8 is determined incapable of exercising his or
9 her delegable rights; authorizing an interested
10 person to file a verified statement indicating
11 a belief that an incapacitated person's trust,
12 trust amendment, or durable power of attorney
13 is invalid, in which case such instrument may
14 not be an alternative to the appointment of a
15 guardian; amending s. 744.387, F.S.; providing
16 that the present value or future benefits of a
17 structured settlement may not be included in
18 determining the net settlement to a ward for
19 guardianship purposes if the settlement
20 includes a structured settlement that does not
21 pay benefits to the minor until the minor
22 reaches the age of majority; amending s.
23 744.441, F.S.; requiring the court to determine
24 whether an action contesting the validity of a
25 trust is in the ward's best interests before
26 authorizing a guardian to bring such actions;
27 creating s. 744.462, F.S.; requiring that the
28 validity of a ward's durable power of attorney,
29 trust, or trust amendment be reported in the
30 guardianship proceedings; requiring the court
31 to review the continued need for a guardian and

1 delegation of the ward's rights under certain
2 conditions; providing an effective date.

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

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

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

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

15 744.107 Court monitors.--

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

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

28 (3) If it appears from the monitor's report that
29 further action by the court to protect the interests of the
30 ward is necessary, the court shall, after a hearing with
31 notice, enter any order necessary to protect the ward or the

1 ward's estate, including an order amending the plan, requiring
2 an accounting, requiring the production of assets, freezing
3 assets, suspending the guardian, or removing a guardian. The
4 ~~court shall not appoint as a monitor a family member or any~~
5 ~~person with a personal interest in the proceedings.~~

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

14 Section 3. Section 744.1075, Florida Statutes, is
15 created to read:

16 744.1075 Emergency court monitor.--

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

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

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

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

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

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

29 (7) Following a hearing on the order to show cause,
30 the court may impose sanctions on the guardian or his or her
31 attorney or other respondent or take any other action

1 authorized by law, including entering a judgment of contempt,
2 ordering an accounting, freezing assets, referring the case to
3 local law enforcement agencies or the state attorney, filing a
4 complaint for abuse, neglect, or exploitation with the
5 Department of Children and Family Services, or initiating
6 proceedings to remove a guardian.

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

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

17 744.331 Procedures to determine incapacity.--

18 (6) ORDER DETERMINING INCAPACITY.--If, after making
19 findings of fact on the basis of clear and convincing
20 evidence, the court finds that a person is incapacitated with
21 respect to the exercise of a particular right, or all rights,
22 the court shall enter a written order determining such
23 incapacity. A person is determined to be incapacitated only
24 with respect to those rights specified in the order.

25 (b) When an order determines that a person is
26 incapable of exercising delegable rights, the court must
27 consider and find whether there is an alternative to
28 guardianship which will sufficiently address the problems of
29 the incapacitated person. A guardian must be appointed to
30 exercise the incapacitated person's delegable rights unless
31 the court finds there is an alternative. A guardian may not be

1 appointed if the court finds there is an alternative to
2 guardianship which will sufficiently address the problems of
3 the incapacitated person. In any order declaring a person
4 incapacitated the court must find that alternatives to
5 guardianship were considered and that no alternative to
6 guardianship will sufficiently address the problems of the
7 ward.

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

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

13 2. A reasonable factual basis for that belief,
14
15 the trust, trust amendment, or durable power of attorney shall
16 not be deemed to be an alternative to the appointment of a
17 guardian. The appointment of a guardian does not limit the
18 court's power to determine that certain authority granted by a
19 durable power of attorney is to remain exercisable by the
20 attorney in fact. When an order is entered which determines
21 that a person is incapable of exercising delegable rights, a
22 guardian must be appointed to exercise those rights.

23 Section 5. Subsection (2) of section 744.387, Florida
24 Statutes, is amended to read:

25 744.387 Settlement of claims.--

26 (2) In the same manner as provided in subsection (1)
27 or as authorized by s. 744.301, the natural guardians or
28 guardian of a minor may settle any claim by or on behalf of a
29 minor that does not exceed \$15,000 without bond. A legal
30 guardianship shall be required when the amount of the net
31 settlement to the ward exceeds \$15,000. The present value or

1 future benefits of a structured settlement may not be included
2 in determining the net settlement to a ward for guardianship
3 purposes if the settlement includes a structured settlement
4 that does not pay benefits to the minor until the minor
5 reaches the age of majority.

6 Section 6. Subsection (11) of section 744.441, Florida
7 Statutes, is amended to read:

8 744.441 Powers of guardian upon court approval.--After
9 obtaining approval of the court pursuant to a petition for
10 authorization to act, a plenary guardian of the property, or a
11 limited guardian of the property within the powers granted by
12 the order appointing the guardian or an approved annual or
13 amended guardianship report, may:

14 (11) Prosecute or defend claims or proceedings in any
15 jurisdiction for the protection of the estate and of the
16 guardian in the performance of his or her duties. Before
17 authorizing a guardian to bring an action described in s.
18 737.2065, the court shall first find that the action appears
19 to be in the ward's best interests during the ward's probable
20 lifetime. If the court denies a request that a guardian be
21 authorized to bring an action described in s. 737.2065, the
22 court shall review the continued need for a guardian and the
23 extent of the need for delegation of the ward's rights.

24 Section 7. Section 744.462, Florida Statutes, is
25 created to read:

26 744.462 Determination regarding alternatives to
27 guardianship.--Any judicial determination concerning the
28 validity of the ward's durable power of attorney, trust, or
29 trust amendment shall be promptly reported in the guardianship
30 proceeding by the guardian of the property. If the instrument
31 has been judicially determined to be valid, or if after the

1 appointment of a guardian a petition is filed alleging that
2 there is an alternative to guardianship which will
3 sufficiently address the problems of the ward, the court shall
4 review the continued need for a guardian and the extent of the
5 need for delegation of the ward's rights.

6 Section 8. This act shall take effect upon becoming a
7 law.

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