

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to guardianship; amending s. 737.2065,
7 F.S.; excepting the contesting of trust validity by
8 property guardians of incapacitated settlors from a
9 prohibition against commencing certain actions; amending
10 s. 744.107, F.S.; revising provisions relating to court
11 monitors; requiring orders of appointment and monitors'
12 reports to be served upon certain persons; authorizing the
13 court to determine which persons may inspect certain
14 orders or reports; authorizing the court to enter any
15 order necessary to protect a ward or ward's estate;
16 requiring notice and hearing; authorizing a court to
17 assess certain costs and attorney's fees under certain
18 circumstances; creating s. 744.1075, F.S.; authorizing a
19 court to appoint a court monitor on an emergency basis
20 under certain circumstances; requiring the court to make
21 certain findings; specifying a time period for a monitor's
22 authority; providing for extending such time period;
23 requiring the monitor to report findings and

24 recommendations; providing duties of the court relating to
25 probable cause for the emergency appointment; authorizing
26 the court to determine which persons may inspect certain
27 orders or reports; providing requirements for a court
28 order to show cause for the emergency appointment;
29 authorizing the court to issue certain injunctions or
30 orders for certain purposes; requiring the court to
31 provide copies of such injunctions or orders to all
32 parties; authorizing the court to impose sanctions or take
33 certain enforcement actions; providing for payment of
34 reasonable fees to the monitor; prohibiting certain
35 persons from receiving certain fees; authorizing a court
36 to assess certain costs and attorney's fees under certain
37 circumstances; amending s. 744.331, F.S.; requiring a
38 court to determine whether acceptable alternatives to
39 guardianship of incapacitated persons exist under certain
40 circumstances; requiring appointment of a guardian if no
41 alternative exists; prohibiting such appointment if an
42 alternative exists; specifying circumstances of
43 nonexistence of an alternative; preserving certain court
44 authority to determine exercise of certain powers of
45 attorney; amending s. 744.441, F.S.; requiring a court to
46 make certain findings in a ward's best interest before
47 authorizing a guardian to bring certain actions; requiring
48 a court to review certain continuing needs for guardians
49 and delegation of a ward's rights; creating s. 744.462,
50 F.S.; requiring guardians to immediately report certain
51 judicial determinations in certain guardianship

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52 proceedings; requiring a court to review certain
 53 continuing needs for guardians and delegation of a ward's
 54 rights under certain circumstances; providing an effective
 55 date.

56
 57 Be It Enacted by the Legislature of the State of Florida:

58
 59 Section 1. Section 737.2065, Florida Statutes, is amended
 60 to read:

61 737.2065 Trust contests.--An action to contest the
 62 validity of all or part of a trust may not be commenced until
 63 the trust becomes irrevocable, except this section does not
 64 prohibit such action by the guardian of the property of an
 65 incapacitated settlor.

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

68 744.107 Court monitors.--

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

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

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80 ~~court may determine. The court shall not appoint as a monitor a~~
81 ~~family member or any person with a personal interest in the~~
82 ~~proceedings.~~

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

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

98 Section 3. Section 744.1075, Florida Statutes, is created
99 to read:

100 744.1075 Emergency court monitor.--

101 (1)(a) A court, upon inquiry from any interested person or
102 upon its own motion, in any proceeding over which the court has
103 jurisdiction, may appoint a court monitor on an emergency basis
104 without notice. The court must specifically find that there
105 appears to be imminent danger that the physical or mental health
106 or safety of the ward will be seriously impaired or that the
107 ward's property is in danger of being wasted, misappropriated,

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108 or lost unless immediate action is taken. The scope of the
109 matters to be investigated and the powers and duties of the
110 monitor must be specifically enumerated by court order.

111 (b) The authority of a monitor appointed under this
112 section expires 60 days after the date of appointment or upon a
113 finding of no probable cause, whichever occurs first. The
114 authority of the monitor may be extended for an additional 30
115 days upon a showing that the emergency conditions still exist.

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

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

125 (4) (a) If the court finds probable cause, the court shall
126 issue an order to show cause directed to the guardian or other
127 respondent stating the essential facts constituting the conduct
128 charged and requiring the respondent to appear before the court
129 to show cause why the court should not take further action. The
130 order shall specify the time and place of the hearing with a
131 reasonable time to allow for the preparation of a defense after
132 service of the order.

133 (b) At any time prior to the hearing on the order to show
134 cause, the court may issue a temporary injunction, a restraining
135 order, or an order freezing assets, may suspend the guardian or

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136 appoint a guardian ad litem, or may issue any other appropriate
137 order to protect the physical or mental health or safety or
138 property of the ward. A copy of all such orders or injunctions
139 shall be transmitted by the court or under its direction to all
140 parties at the time of entry of the order or injunction.

141 (c) Following a hearing on the order to show cause, the
142 court may impose sanctions on the guardian or his or her
143 attorney or other respondent or take any other action authorized
144 by law, including entering a judgment of contempt, ordering an
145 accounting, freezing assets, referring the case to local law
146 enforcement agencies or the state attorney, filing an abuse,
147 neglect, or exploitation complaint with the Department of
148 Children and Family Services, or initiating proceedings to
149 remove the guardian.

150 (5) Unless otherwise prohibited by law, a monitor may be
151 allowed a reasonable fee as determined by the court and paid
152 from the property of the ward. No full-time state, county, or
153 municipal employee or officer shall be paid a fee for such
154 investigation and report. If the court finds the motion for a
155 court monitor to have been filed in bad faith, the costs of the
156 proceeding, including attorney's fees, may be assessed against
157 the movant.

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

160 744.331 Procedures to determine incapacity.--

161 (6) ORDER DETERMINING INCAPACITY.--If, after making
162 findings of fact on the basis of clear and convincing evidence,
163 the court finds that a person is incapacitated with respect to

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164 the exercise of a particular right, or all rights, the court
165 shall enter a written order determining such incapacity. A
166 person is determined to be incapacitated only with respect to
167 those rights specified in the order.

168 (b) When an order determines that a person is incapable of
169 exercising delegable rights, the court must consider and find
170 whether there is an alternative to guardianship that will
171 sufficiently address the problems of the incapacitated person. A
172 guardian must be appointed to exercise the incapacitated
173 person's delegable rights unless the court finds there is an
174 alternative. A guardian may not be appointed if the court finds
175 there is an alternative to guardianship which will sufficiently
176 address the problems of the incapacitated person ~~In any order~~
177 ~~declaring a person incapacitated the court must find that~~
178 ~~alternatives to guardianship were considered and that no~~
179 ~~alternative to guardianship will sufficiently address the~~
180 ~~problems of the ward.~~

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

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

186 2. A reasonable factual basis for that belief,
187
188 the trust, trust amendment, or durable power of attorney shall
189 not be deemed to be an alternative to the appointment of a
190 guardian. The appointment of a guardian does not limit the
191 court's power to determine that certain authority granted by a

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192 durable power of attorney is to remain exercisable by the
 193 attorney in fact ~~When an order is entered which determines that~~
 194 ~~a person is incapable of exercising delegable rights, a guardian~~
 195 ~~must be appointed to exercise those rights.~~

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

198 744.441 Powers of guardian upon court approval.--After
 199 obtaining approval of the court pursuant to a petition for
 200 authorization to act, a plenary guardian of the property, or a
 201 limited guardian of the property within the powers granted by
 202 the order appointing the guardian or an approved annual or
 203 amended guardianship report, may:

204 (11) Prosecute or defend claims or proceedings in any
 205 jurisdiction for the protection of the estate and of the
 206 guardian in the performance of his or her duties. Before
 207 authorizing a guardian to bring an action described in s.
 208 737.2065, the court shall first find that the action appears to
 209 be in the ward's best interests during the ward's probable
 210 lifetime. If the court denies a request that a guardian be
 211 authorized to bring an action described in s. 737.2065, the
 212 court shall review the continued need for a guardian and the
 213 extent of the need for delegation of the ward's rights.

214 Section 6. Section 744.462, Florida Statutes, is created
 215 to read:

216 744.462 Determination regarding alternatives to
 217 guardianship.--Any judicial determination concerning the
 218 validity of the ward's durable power of attorney, trust, or
 219 trust amendment shall be promptly reported in the guardianship

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220 proceeding by the guardian of the property. If the instrument
221 has been judicially determined to be valid or if, after the
222 appointment of a guardian, a petition is filed alleging that
223 there is an alternative to guardianship which will sufficiently
224 address the problems of the ward, the court shall review the
225 continued need for a guardian and the extent of the need for
226 delegation of the ward's rights.

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