

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 settlors 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; specifying a time period for a monitor's  
18 authority; providing for extending such time period;  
19 requiring the monitor to report findings and  
20 recommendations; providing duties of the court relating to  
21 probable cause for the emergency appointment; authorizing  
22 the court to determine which persons may inspect certain  
23 orders or reports; providing requirements for a court  
24 order to show cause for the emergency appointment;  
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.

52  
53 Be It Enacted by the Legislature of the State of Florida:  
54

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 does not  
 60 prohibit such action by the guardian of the property of an  
 61 incapacitated settlor.

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) If it appears from the monitor's report that further  
 80 action by the court to protect the interests of the ward is  
 81 necessary, the court shall, after a hearing with notice, enter

82 any order necessary to protect the ward or the ward's estate,  
83 including amending the plan, requiring an accounting, ordering  
84 production of assets, freezing assets, suspending a guardian, or  
85 initiating proceedings to remove a guardian.

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

94 Section 3. Section 744.1075, Florida Statutes, is created  
95 to read:

96 744.1075 Emergency court monitor.--

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

107 (b) The authority of a monitor appointed under this  
108 section expires 60 days after the date of appointment or upon a

109 finding of no probable cause, whichever occurs first. The  
110 authority of the monitor may be extended for an additional 30  
111 days upon a showing that the emergency conditions still exist.

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

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

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

129 (b) At any time prior to the hearing on the order to show  
130 cause, the court may issue a temporary injunction, a restraining  
131 order, or an order freezing assets, may suspend the guardian or  
132 appoint a guardian ad litem, or may issue any other appropriate  
133 order to protect the physical or mental health or safety or  
134 property of the ward. A copy of all such orders or injunctions

135 shall be transmitted by the court or under its direction to all  
136 parties at the time of entry of the order or injunction.

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

146  
147 Nothing in this subsection shall be construed to preclude the  
148 mandatory reporting requirements of chapter 39.

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

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

159 744.331 Procedures to determine incapacity.--

160 (6) ORDER DETERMINING INCAPACITY.--If, after making  
161 findings of fact on the basis of clear and convincing evidence,

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

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

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

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

185 2. A reasonable factual basis for that belief,  
186  
187 the trust, trust amendment, or durable power of attorney shall  
188 not be deemed to be an alternative to the appointment of a

189 guardian. The appointment of a guardian does not limit the  
190 court's power to determine that certain authority granted by a  
191 durable power of attorney is to remain exercisable by the  
192 attorney in fact ~~When an order is entered which determines that~~  
193 ~~a person is incapable of exercising delegable rights, a guardian~~  
194 ~~must be appointed to exercise those rights.~~

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

197 744.441 Powers of guardian upon court approval.--After  
198 obtaining approval of the court pursuant to a petition for  
199 authorization to act, a plenary guardian of the property, or a  
200 limited guardian of the property within the powers granted by  
201 the order appointing the guardian or an approved annual or  
202 amended guardianship report, may:

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

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

215           744.462 Determination regarding alternatives to  
216 guardianship.--Any judicial determination concerning the  
217 validity of the ward's durable power of attorney, trust, or  
218 trust amendment shall be promptly reported in the guardianship  
219 proceeding by the guardian of the property. If the instrument  
220 has been judicially determined to be valid or if, after the  
221 appointment of a guardian, a petition is filed alleging that  
222 there is an alternative to guardianship which will sufficiently  
223 address the problems of the ward, the court shall review the  
224 continued need for a guardian and the extent of the need for  
225 delegation of the ward's rights.

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