

By Senator Campbell

32-520-06

See HB 191

1 A bill to be entitled

2 An act relating to guardianship; amending s.

3 737.2065, F.S.; excepting the contesting of

4 trust validity by property guardians of

5 incapacitated grantors from a prohibition

6 against commencing certain actions; amending s.

7 744.107, F.S.; revising provisions relating to

8 court monitors; requiring orders of appointment

9 and monitors' reports to be served upon certain

10 persons; authorizing the court to determine

11 which persons may inspect certain orders or

12 reports; authorizing the court to enter any

13 order necessary to protect a ward or ward's

14 estate; requiring notice and hearing;

15 authorizing a court to assess certain costs and

16 attorney's fees under certain circumstances;

17 creating s. 744.1075, F.S.; authorizing a court

18 to appoint a court monitor on an emergency

19 basis under certain circumstances; requiring

20 the court to make certain findings; specifying

21 a time period for a monitor's authority;

22 providing for extending such time period;

23 requiring the monitor to report findings and

24 recommendations; providing duties of the court

25 relating to probable cause for the emergency

26 appointment; authorizing the court to determine

27 which persons may inspect certain orders or

28 reports; providing requirements for a court

29 order to show cause for the emergency

30 appointment; authorizing the court to issue

31 certain injunctions or orders for certain

1 purposes; requiring the court to provide copies
2 of such injunctions or orders to all parties;
3 authorizing the court to impose sanctions or
4 take certain enforcement actions; providing for
5 payment of reasonable fees to the monitor;
6 prohibiting certain persons from receiving
7 certain fees; authorizing a court to assess
8 certain costs and attorney's fees under certain
9 circumstances; amending s. 744.331, F.S.;
10 requiring a court to determine whether
11 acceptable alternatives to guardianship of
12 incapacitated persons exist under certain
13 circumstances; requiring appointment of a
14 guardian if no alternative exists; prohibiting
15 such appointment if an alternative exists;
16 specifying circumstances of nonexistence of an
17 alternative; preserving certain court authority
18 to determine exercise of certain powers of
19 attorney; amending s. 744.441, F.S.; requiring
20 a court to make certain findings in a ward's
21 best interest before authorizing a guardian to
22 bring certain actions; requiring a court to
23 review certain continuing needs for guardians
24 and delegation of a ward's rights; creating s.
25 744.462, F.S.; requiring guardians to
26 immediately report certain judicial
27 determinations in certain guardianship
28 proceedings; requiring a court to review
29 certain continuing needs for guardians and
30 delegation of a ward's rights under certain
31 circumstances; providing an effective date.

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

2

3 Section 1. Section 737.2065, Florida Statutes, is
4 amended to read:

5 737.2065 Trust contests.--An action to contest the
6 validity of all or part of a trust may not be commenced until
7 the trust becomes irrevocable, except this section shall not
8 prohibit such action by the guardian of the property of an
9 incapacitated grantor.

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

12 744.107 Court monitors.--

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

20 (2) The monitor may investigate, seek information,
21 examine documents, or interview the ward and shall report to
22 the court his or her findings. The report shall be verified
23 and shall be served on the guardian, the ward, and such other
24 persons as the court may determine. ~~The court shall not~~
25 appoint as a monitor a family member or any person with a
26 personal interest in the proceedings.

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

1 accounting, ordering production of assets, freezing assets,
2 suspending a guardian, or initiating proceedings to remove a
3 guardian.

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

12 Section 3. Section 744.1075, Florida Statutes, is
13 created to read:

14 744.1075 Emergency court monitor.--

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

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

31

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

5 (3) Upon review of the report, the court shall
6 determine whether there is probable cause to take further
7 action to protect the person or property of the ward. If the
8 court finds no probable cause, the court shall issue an order
9 finding no probable cause and discharging the monitor.

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

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

27 (c) Following a hearing on the order to show cause,
28 the court may impose sanctions on the guardian or his or her
29 attorney or other respondent or take any other action
30 authorized by law, including entering a judgment of contempt,
31 ordering an accounting, freezing assets, referring the case to

1 local law enforcement agencies or the state attorney, filing
2 an abuse, neglect, or exploitation complaint with the
3 Department of Children and Family Services, or initiating
4 proceedings to remove the guardian.

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

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

15 744.331 Procedures to determine incapacity.--

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

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

1 ~~problems of the incapacitated person In any order declaring a~~
2 ~~person incapacitated the court must find that alternatives to~~
3 ~~guardianship were considered and that no alternative to~~
4 ~~guardianship will sufficiently address the problems of the~~
5 ~~ward.~~

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

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

11 2. A reasonable factual basis for that belief,

12
13 the trust, trust amendment, or durable power of attorney shall
14 not be deemed to be an alternative to the appointment of a
15 guardian. The appointment of a guardian shall not limit the
16 court's authority to determine that certain authority granted
17 by a durable power of attorney is to remain exercisable by the
18 attorney in fact ~~When an order is entered which determines~~
19 ~~that a person is incapable of exercising delegable rights, a~~
20 ~~guardian must be appointed to exercise those rights.~~

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

23 744.441 Powers of guardian upon court approval.--After
24 obtaining approval of the court pursuant to a petition for
25 authorization to act, a plenary guardian of the property, or a
26 limited guardian of the property within the powers granted by
27 the order appointing the guardian or an approved annual or
28 amended guardianship report, may:

29 (11) Prosecute or defend claims or proceedings in any
30 jurisdiction for the protection of the estate and of the
31 guardian in the performance of his or her duties. Before

1 authorizing a guardian to bring an action described in s.
2 737.2065, the court shall first find that the action appears
3 to be in the ward's best interests during the ward's probable
4 lifetime. If the court denies a request that a guardian be
5 authorized to bring an action described in s. 737.2065, the
6 court shall review the continued need for a guardian and the
7 extent of the need for delegation of the ward's rights.

8 Section 6. Section 744.462, Florida Statutes, is
9 created to read:

10 744.462 Determination regarding alternatives to
11 guardianship.--Any judicial determination concerning the
12 validity of the ward's trust, trust amendment, or durable
13 power of attorney shall be promptly reported in the
14 guardianship proceeding by the guardian of the property. If
15 the instrument has been judicially determined to be valid, or
16 if after the appointment of a guardian a petition is filed
17 alleging that there is an alternative to guardianship that
18 will sufficiently address the problems of the ward, the court
19 shall review the continued need for a guardian and the extent
20 of the need for delegation of the ward's rights.

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