

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1431 Adult Guardianship
SPONSOR(S): Schwartz
TIED BILLS: HB 1433, HB 1435 IDEN./SIM. BILLS: SB 2626

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, Bond, De La Paz.

SUMMARY ANALYSIS

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her one behalf due to minority or due to physical or mental incapacity.

This bill provides a means to determine jurisdiction in guardianship cases that involve multiple states. It provides that a court must accept jurisdiction over an alleged incapacitated person who has resided in Florida for the past 6 months, may accept jurisdiction over any alleged incapacitated person if Florida is an appropriate forum, and may decline jurisdiction where another state is appropriate. The bill also allows Florida courts to request assistance from courts in other states regarding a guardianship case. The bill allows a court to assess costs and fees against a person who has wrongfully attempted to file a guardianship case in Florida.

The bill also amends guardianship law to prohibit inclusion of confidential information in a petition for guardianship, and to require jurisdictional information in the petition.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her one behalf due to minority or due to physical or mental incapacity. The Uniform Law Commissions have described what they believe are problems regarding jurisdiction over guardianship cases when a ward may have contacts with multiple states¹:

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently problems arise because the individual has contacts with more than one American state. In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.

Current statutory law does not specifically address jurisdiction over a person for purposes of guardianship. Current law recognizes that a ward may be moved into Florida², and that a guardian from another state may manage Florida property of a nonresident ward.³ A court may appoint a Florida guardian to manage Florida property of a ward located in another state.⁴

Effect of the Bill

This bill provides for jurisdiction in guardianship cases, effective October 1, 2010. The bill provides that the purpose of the act is to:

- Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship that have in the past resulted in the relocation of alleged incapacitated persons from state to state with harmful effects on their well-being.

¹ http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-agppja.asp

² Section 744.306, F.S.

³ Section 744.307, F.S.

⁴ Section 744.308, F.S.

- Promote cooperation with the courts of other states so that guardianship proceedings are heard by the state that can best decide if a person is incapacitated and in need of the appointment of a guardian.
- Deter relocations of alleged incapacitated persons to avoid this state from determining if a person is incapacitated and needs a guardian.
- Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same alleged incapacitated person.

The bill applies to guardianships involving adults and that may involve another state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. A court may treat a foreign country as if it were a state for the purpose of applying this bill.

This bill allows a court to communicate with a court in another state concerning a guardianship proceeding, and must allow interested persons to participate in the communication. A Florida court may also request the appropriate court of another state to enter orders necessary to assist the Florida court in making a guardianship determination.

This bill provides that a Florida court has jurisdiction to determine incapacity or appoint a guardian for an alleged incapacitated person if Florida is the home state of the alleged incapacitated person. Home state is defined as the state in which the alleged incapacitated person was domiciled or resided for at least 6 consecutive months immediately prior to the filing of the guardianship case.

A Florida court may also have jurisdiction if the court determines that Florida is an appropriate forum and any of the following apply:

- The alleged incapacitated person does not have a home state.
- A court of the alleged incapacitated person's home state has declined to exercise jurisdiction because Florida is a more appropriate forum.
- There is no petition for determination of incapacity or for appointment of a guardian pending in the home state and no interested person objects to Florida jurisdiction.
- The home state of the alleged incapacitated person has declined jurisdiction in favor of jurisdiction in Florida.

A Florida court may decline jurisdiction over a guardianship case at any time if it finds that a court of another state is a more appropriate forum. Upon such determination, the court must stay the guardianship and require that a proceeding be filed in another state within 30 days after entering the stay. If a proceeding is not filed in another state within 30 days, the court must remove the stay and assume jurisdiction of the proceeding. When examining whether to decline jurisdiction, the court may look to the following:

- Any expressed preference of the alleged incapacitated person.
- Whether abuse, neglect, or exploitation of the alleged incapacitated person has occurred or is likely to occur and which state could best protect the alleged incapacitated person from the abuse, neglect, or exploitation.
- The length of time the alleged incapacitated person was physically present in or was a legal resident of this or another state.

- The state in which the alleged incapacitated person has established a domicile or intended to establish a domicile.
- The distance of the alleged incapacitated person from the court in each state.
- The financial circumstances of the alleged incapacitated person's estate.
- The nature and location of the evidence.

A Florida court may examine whether its jurisdiction was acquired because of unjustifiable conduct, the court may decline to exercise jurisdiction or may exercise limited jurisdiction for the purpose of protecting the alleged incapacitated person or his or her property. The court may assess against a person committing unjustifiable conduct the necessary and reasonable expenses of the case, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. However, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state.

If a guardianship proceeding is filed in this state and in another state and neither proceeding is dismissed or withdrawn, the court must determine which state has priority and must enter any order necessary to protect the alleged incapacitated person pending final determination of which state should assume jurisdiction. This provision does not affect the jurisdiction of the court for appointment of an emergency temporary guardian under s. 744.3031, F.S.

Changes to Guardianship Procedure

This bill amends s. 744.202, F.S., to require a guardianship court to make a jurisdictional finding in every case.

This bill amends current law requiring certain information in a petition to determine incapacity to:

- Prohibit inclusion of confidential information
- Additionally require the petition to list of all of the addresses of the alleged incapacitated person for the previous 6 months.
- Additionally require the petitioner to list whether he or she has participated in any other guardianship proceeding regarding the alleged incapacitated person.
- Additionally require the petitioner to list whether there is any other pending guardianship case regarding the alleged incapacitated person.

This bill also provides that any person interested in a guardianship proceeding has a continuing duty to inform the guardianship court of any other guardianship case filed.

B. SECTION DIRECTORY:

Section 1 changes the name of Part II of ch. 744, F.S., to "Venue and Jurisdiction".

Section 2 creates ss. 744.211, 744.2112, 744.2113, 744.2114, 744.2115, 744.2123, 744.2126, 744.2127, and 744.2129, F.S., to be appended into Part II of ch. 744, F.S., related to jurisdiction of a guardianship court.

Section 3 provides that the statutes created in Section 2 applies to cases filed after October 1, 2010.

Section 4 amends. s. 744.202, F.S., to require a guardianship court to make a jurisdictional finding.

Section 5 amends s. 744.3201, F.S., to add additional requirements for petitions for guardianship.

Section 6 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a