

By Senator Rodriguez

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1                   A bill to be entitled  
2       An act relating to guardianship; amending s. 744.1097,  
3       F.S.; applying provisions relating to the  
4       determination of venue in proceedings for the  
5       appointment of a guardian to minors; amending s.  
6       744.331, F.S.; requiring that a court dismiss a  
7       petition for determination of incapacity if all  
8       members of the examining committee conclude that the  
9       person is not incapacitated, unless a certain motion  
10      is filed within a specified period; providing  
11      requirements for such motion; requiring the court to  
12      rule on the motion as soon as practicable; authorizing  
13      the court to impose sanctions under certain  
14      circumstances; amending s. 744.3701, F.S.; making  
15      technical revisions; providing for retroactive  
16      application; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20       Section 1. Section 744.1097, Florida Statutes, is amended  
21 to read:

22       744.1097 Venue.—

23       (1) The venue in proceedings for declaration of incapacity  
24 shall be where the alleged incapacitated person resides or is  
25 found. ~~The provisions of~~ This section does ~~de~~ not apply to  
26 veterans.

27       (2) The venue in proceedings for the appointment of a  
28 guardian is ~~shall be~~:

29       (a) If the incapacitated person or minor is a resident of

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30 this state, in the county where the incapacitated person or  
31 minor resides.

32 (b) If the incapacitated person or minor is not a resident  
33 of this state, in any county in this state where property of the  
34 incapacitated person or minor is located.

35 (c) If the incapacitated person or minor is not a resident  
36 of this state and owns no property in this state, in the county  
37 where any debtor of the incapacitated person or minor resides.

38 (3) When the residence of an incapacitated person or minor  
39 is changed to another county, the guardian shall petition to  
40 have the venue of the guardianship changed to the county of the  
41 acquired residence, except as provided in s. 744.1098.

42 (4) If an incapacitated person or minor is a resident of  
43 this state and is found in a county other than the county of  
44 residence, the venue for declaration of incapacity and for the  
45 appointment of a guardian may be the county where the  
46 incapacitated person or minor is found. Upon transfer of the  
47 incapacitated person or minor to the county of residence, the  
48 guardian may have the venue of the guardianship changed to the  
49 county of residence and a successor guardian may be appointed.

50 Section 2. Subsection (4) of section 744.331, Florida  
51 Statutes is amended to read:

52 744.331 Procedures to determine incapacity.—

53 (4) DISMISSAL OF PETITION.—If all three members of the  
54 examining committee conclude that the alleged incapacitated  
55 person is not incapacitated in any respect, the court must  
56 dismiss the petition unless a verified motion that challenges  
57 the examining committee's conclusion is filed no later than 10  
58 days after service of the last examining committee report. The

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59 verified motion must make a reasonable showing, by evidence in  
60 the record or proffered, that a hearing on the petition is  
61 necessary. The court shall rule on the verified motion as soon  
62 as is practicable. If the court finds that the verified motion  
63 is filed in bad faith, the court may impose sanctions under  
64 subparagraph (7)(c)2. ~~If a majority of the examining committee~~  
65 ~~members conclude that the alleged incapacitated person is not~~  
66 ~~incapacitated in any respect, the court shall dismiss the~~  
67 ~~petition.~~

68 Section 3. Subsection (1) of section 744.3701, Florida  
69 Statutes, is amended to read:

70 744.3701 Confidentiality.—

71 (1) Unless otherwise ordered by the court, upon a showing  
72 of good cause, or unless otherwise provided by this chapter, an  
73 initial, annual, or final guardianship report or amendment  
74 thereto, or a court record relating to the settlement of a  
75 claim, is subject to inspection only by any of the following:

76 (a) The court.

77 (b) The clerk or the clerk's representative.

78 (c) The guardian and the guardian's attorney.

79 (d) The guardian ad litem with regard to the settlement of  
80 the claim.

81 (e) The ward if he or she is at least 14 years of age and  
82 has not been determined to be totally incapacitated.

83 (f) The ward's attorney.

84 (g) The minor if he or she is at least 14 years of age. ~~or~~

85 (h) The attorney representing the minor with regard to the  
86 minor's claim, ~~or as otherwise provided by this chapter.~~

87 Section 4. This act applies retroactively to all

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88 proceedings pending before the effective date of this act and to  
89 all proceedings commenced on or after the effective date of this  
90 act.

91 Section 5. This act shall take effect upon becoming a law.