

1987

Session Law 87-317

Florida Senate & House of Representatives

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By Senator Kiser

This publication was produced at an approximate cost of 1.5 cents per page for the information of members of the Legislature and the public.

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A bill to be entitled

An act relating to guardianship; amending ss. 744.441, 744.457, F.S.; authorizing a guardian, with prior court approval, to execute, exercise, or release specified powers that the ward might have if competent, to create certain trusts of property of the ward's estate for purposes of tax or estate planning, to renounce or disclaim any interest by succession or inter vivos transfer, or to convey or release a contingent or expectant interest in property, including marital property rights or a right of survivorship; providing an effective date.

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

Section 1. Subsection (2) of section 744.441, Florida Statutes, 1986 Supplement, is amended, and subsections (19) and (20) are added to said section, to read:

744.441 Powers of guardian upon court approval.--After obtaining approval of the court in accordance with s. 744.447, a guardian of the property may:

(2) Execute, exercise, or release any powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if competent, if the best interest of the ward requires such execution, exercise, or release.

(19) Create revocable or irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate,

1 gift, income, or other tax planning or in connection with
2 estate planning.

3 (20) Renounce or disclaim any interest by testate or
4 intestate succession or by inter vivos transfer.

5 Section 2. Subsection (4) is added to section 744.457,
6 Florida Statutes, to read:

7 744.457 Conveyance of various property rights.--

8 (4) Any contingent or expectant interest in property,
9 including marital property rights and any right of
10 survivorship incident to joint tenancy or tenancy by the
11 entirety, may be conveyed or released in accordance with s.
12 744.447.

13 Section 3. This act shall take effect upon becoming a
14 law.

15 *****

16
17 SENATE SUMMARY

18 Allows a guardian, after obtaining court approval
19 pursuant to s. 744.447, F.S.:

20 (1) To execute, exercise, or release any powers as
21 trustee, personal representative, custodian for minors,
22 conservator, or donee of any power of appointment or
23 other power that the ward might have lawfully exercised,
consummated, or executed if competent, if the best
interest of the ward requires such execution, exercise,
or release;

24 (2) To create revocable or irrevocable trusts of
25 property of the ward's estate which may extend beyond the
disability or life of the ward for purposes of tax
planning or estate planning;

26 (3) To renounce or disclaim any interest by testate or
27 intestate succession or by inter vivos transfer; and

28 (4) To convey or release any contingent or expectant
29 interest in property, including marital property rights
30 and any right of survivorship incident to joint tenancy
31 or tenancy by the entirety.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Cochran <i>MC</i>	Lester <i>BL</i>	1. JCI	Favorable
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Guardians/Powers Increased

BILL NO. AND SPONSOR:

SB 541 by
Senator Kiser

I. SUMMARY:

A. Present Situation:

The "Florida Guardianship Law," ch. 744, F.S., provides a variety of definitions, rights and duties regarding the care and treatment of minors and their property. Section 744.441(2) F.S., allows guardians of property to execute powers of appointment or other powers on behalf of an incompetent ward provided the guardian has court approval per s. 744.447, F.S. Section 744.457, F.S., provides for the conveyance of property rights of incompetents by their guardians.

B. Effect of Proposed Changes:

Section 744.441, F.S., is amended broadening a guardian's powers to include the exercise or release of powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power the ward might have lawfully exercised. The guardian would also be allowed to create revocable or irrevocable trusts in connection with tax planning or estate planning and renounce or disclaim any interest by testate or intestate succession, or by inter vivos transfer.

18

1627

Section 744.457, F.S., is amended adding to that section which provides authorization of the conveyance of certain property rights, any contingent or expectant interest in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Indeterminate.

B. Government:

Indeterminate.

III. COMMENTS:

Similar to HB 617.

IV. AMENDMENTS:

None.

BILL VOTE SHEET

(VS-87: File with Secretary of Senate)

BILL NO. SB 541

COMMITTEE ON Judiciary-Civil

DATE April 22, 1987

FINAL ACTION:

TIME 2:00 - 5:00 P.M.

Favorably with amendments

PLACE Rm. B - Senate Office Bldg

Favorably with Committee Substitute

OTHER COMMITTEE REFERENCES:
(In order shown)

Unfavorably

OTHER: Temporarily Passed

Reconsidered

Not Considered

18 1627

THE VOTE WAS:

FINAL BILL VOTE		SENATORS										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
x		Crenshaw										
x		Dudley										
x		Frank										
		Jenne										
x		Weinstein										
x		VICE CHAIRMAN Grant										
x		CHAIRMAN Lanqley										
6	0	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (x)
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance (x)

By Representative Wallace

1 A bill to be entitled
 2 An act relating to guardianship; amending s.
 3 744.441, F.S., increasing the powers of the
 4 guardian upon court approval; amending s.
 5 744.457, F.S., providing for the conveyance or
 6 release of certain property rights; providing
 7 an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (2) of section 744.441, Florida
 12 Statutes, 1986 Supplement, is amended and subsections (19) and
 13 (20) are added to said section to read:

14 744.441 Powers of guardian upon court approval.--After
 15 obtaining approval of the court in accordance with s. 744.447,
 16 a guardian of the property may:

17 (2) Execute, exercise, or release any powers as
 18 trustee, personal representative, custodian for minors,
 19 conservator, or donee of any power of appointment or other
 20 power that the ward might have lawfully exercised,
 21 consummated, or executed if competent, if the best interest of
 22 the ward requires such execution, exercise, or release.

23 (19) Create revocable or irrevocable trusts of
 24 property of the estate which may extend beyond the disability
 25 or life of the ward in estate, gift, income, or other tax
 26 planning, or in connection with estate planning.

27 (20) Renounce or disclaim any interest by testate or
 28 intestate succession or by inter vivos transfer.

29 Section 2. Subsection (4) is added to section 744.457,
 30 Florida Statutes, to read:

31 744.457 Conveyance of various property rights.--

This publication was produced at an average cost of 15 cents per
 single page in compliance with the Rules and for the information
 of members of the Legislature and the public

1	<u>(4) All contingent and expectant interests in</u>	1:1us
2	<u>property, including marital property rights and any right of</u>	1.25
3	<u>survivorship incident to joint tenancy or tenancy by the</u>	
4	<u>entirety, may be conveyed or released in accordance with s.</u>	1.26
5	<u>744.447.</u>	

6	Section 3. This act shall take effect October 1, 1987.	1.27
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HOUSE SUMMARY

9	
10	Authorizes the guardian, upon approval of the court, to
11	execute, exercise, or release any powers as trustee,
12	personal representative, custodian for minors,
13	conservator, or donee of any power of appointment or
14	other power that the ward might have lawfully executed;
15	to create revocable or irrevocable trusts of property of
16	the estate; and to renounce or disclaim any interest by
17	testate or intestate succession or by inter vivos
18	transfer. Provides that all contingent and expectant
19	interests in property, including marital property rights
20	and any right of survivorship incident to joint tenancy
21	or tenancy by the entirety may be conveyed or released in
22	accordance with a petition for authorization to act by
23	the guardian.
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STORAGE NAME: 87 SS HB 0617

06/21/87

Date: April 25, 1987

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1602

BILL #: HB 617

RELATING TO: Guardianship

SPONSOR(S): Wallace

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): SB 541 (similar)

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Section 744.441, F.S., designates powers of a guardian of the property which may be exercised after obtaining approval of the court. One such power is the power to execute any power of appointment that the ward might have exercised, consummated or executed if competent. s. 744.441(2), F.S.

Section 744.457, F.S., relates to property held by a husband and wife, at least one of whom is incompetent, and provides for the conveyance of such property held by the entirety.

B. Effect of Proposed Changes:

Section 744.441(2), F.S., is amended to clearly give a guardian, upon court approval, the power not only to execute powers of the ward, but to exercise or release any powers the ward would have as trustee, personal representative, custodian, conservator or donee. The section is further amended to give the guardian the power to create trust (revocable or irrevocable) which could extend beyond the disability or life of the ward, and to renounce or disclaim any interests to which the ward is entitled through inheritance, devise or gift.

Section 744.457, F.S., is amended to give the guardian the right to convey or release any contingent or expectant interests in property, including marital property rights, after petitioning the court for authorization to perform such an act.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. AMENDMENTS:

None

VI. PREPARED BY: Debby Kearney dk

VII. STAFF DIRECTOR: Richard Hixson rh

STORAGE NAME: 87 SS HB 0617

Date: April 25, 1987

Revised: May 8, 1987

Final: _____

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1602

BILL #: HB 617

RELATING TO: Guardianship

SPONSOR(S): Wallace

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): SB 541 (similar)

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Section 744.441, F.S., designates powers of a guardian of the property which may be exercised after obtaining approval of the court. One such power is the execution of any power of appointment that the ward might have exercised, consummated or executed if competent. s. 744.441(2), F.S.

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Section 744.457, F.S., is amended to give the guardian the right to convey or release any contingent or expectant interests in property, including marital property rights, after petitioning the court for authorization to perform such an act.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:


None

IV. COMMENTS:

None

V. AMENDMENTS:

The committee amendment would delete the provision which permits a guardian to exercise the ward's powers as a trustee, but would retain the guardian's ability to release such powers. The amendment also limits the grant of authority to a trustee to place assets of a ward in an irrevocable trust to those instances in which a court determines that a substantial tax benefit would occur, thus limiting the provisions to large estates.

VI. PREPARED BY: Debby Kearney 

VII. STAFF DIRECTOR: Richard Hixson 

HOUSE COMMITTEE AMENDMENT (in computer)

Amendment No. 1 (committee use only) Bill No. HB 617

Senate Action

House Action

AS REPORTED TO CLERK

19 1602

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If amendment is text of another bill insert:
Bill No. Draft No.

The Committee on Judiciary offered the following amendment:

Amendment

On page 1, line 15,

insert after the "comma":

and, as to subsections (17), (19), and (20), after a finding by the court that the action requested in the petition is likely to result in a significant saving of estate, gift or income tax liability in the ward's estate,

and

On page 1, line 17,

strike ", exercise,"

and

On page 1, line 22,

strike ", exercise,"

MEMBER AMENDMENT (in computer)

Bill No. HB 617 1

Senate Action

House Action

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19 1601

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If amendment is text of another bill insert:
Bill No. Draft No.

Representative Saunders.....

offered the following amendment:

Amendment

On page...1..., line..15...,

and insert: after the comma
and, as to subsections (17), (19) and (20), after a finding by
the court that the action requested in the petition is likely
to result in a significant saving of estate, gift or income
tax liability in the ward's estate,

and

On page...1..., line..17...,

strike "exercise,"

and

On page...1..., line..22...,

strike "exercise,"



AS REPORTED TO CLERK

SUBCOMMITTEE REPORT

House of Representatives

File with Parent Committee

To Chairman, Committee on Judiciary :

Subcommittee on Court Systems, Probate & Consumer Law

Date of meeting April 28, 1987

Time 1:15 p.m.

Place 16 HOB

Bill No. HB 617

FINAL ACTION: FAVORABLE
 FAVORABLE WITH AMENDMENTS
 UNFAVORABLE

VOTE:

19 1602

YEA	MEMBER	NAY
X	Cosgrove	
X	Davis	
X	Diaz-Balart	
X	Drage	
X	Lawson	
X	Press	

YEA	MEMBER	NAY
X	Saunders	
X	Webster	
X	Titone, Chmn.	
X	Upchurch	
	(Committee Chmn.)	

Total Yeas 10

Total Nays 0


 Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<u>Name</u>	<u>Representing</u>	<u>Address</u>

(If additional persons, enter on reverse side and check here)

NOTE. Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee:
 Date _____
 Received by _____

Extracts from, History of Legislation, 1987, by the Joint Legislative Management Committee. Legislative Information Division, pp. 105 and 293:

S 541 GENERAL BILL/ENG by Kiser (Compare H 617, H 817, ENG/S 475)

Guardians/Powers Increased; provides for liability of joint personal representatives; authorizes guardian, with prior court approval, to execute, exercise, or release specified powers that ward might have if competent, to renounce or disclaim any interest by succession or inter vivos transfer, or to convey or release a contingent or expectant interest in property, including marital property rights or right of survivorship, etc. Amends 733.615, 744.441, 457. Effective Date: 07/10/87.

03/24/87 SENATE Prefiled
04/07/87 SENATE Introduced, referred to Judiciary-Civil -SJ 49
04/20/87 SENATE On Committee agenda—Judiciary-Civil, 04/22/87, 2:00 pm, Room-B
04/22/87 SENATE Comm Report. Favorable by Judiciary-Civil, placed on Calendar -SJ 141
04/30/87 SENATE Placed on Special Order Calendar -SJ 232
05/06/87 SENATE Placed on Special Order Calendar -SJ 254, Passed as amended, YEAS 39 NAYS 0 -SJ 265
05/12/87 HOUSE In Messages
05/19/87 HOUSE Received, placed on Calendar -HJ 479
05/27/87 HOUSE Placed on Special Order Calendar
05/28/87 HOUSE Substituted for HB 617; Read second time; Amendments adopted; Read third time; Passed as amended; YEAS 117 NAYS 0 -HJ 749
05/28/87 SENATE In Messages
06/04/87 SENATE Message was taken up -SJ 715; Concurred; Passed as amended; YEAS 37 NAYS 0 -SJ 716
06/04/87 Ordered engrossed, then enrolled -SJ 716
06/25/87 Signed by Officers and presented to Governor
07/10/87 Approved by Governor; Chapter No. 87-317

H 617 GENERAL BILL by Wallace (Compare ENG/S 541)

Guardians/Powers Increased; increases powers of guardian upon court approval; provides for conveyance or release of certain property rights. Amends 744.441, 457. Effective Date. 10/01/87

03/24/87 HOUSE Prefiled
04/02/87 HOUSE Referred to Judiciary
04/07/87 HOUSE Introduced, referred to Judiciary -HJ 57
04/21/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law; On Committee agenda—Judiciary, 04/23/87, 10:00 am, 214C, for ratification of subreferral
04/24/87 HOUSE On subcommittee agenda—Judiciary, 04/28/87, 1:15 pm, 16 HOB
05/05/87 HOUSE On Committee agenda—Judiciary, 05/07/87, 8:00 am, 214C
05/18/87 HOUSE Comm. Report. Favorable with 1 amendment(s) by Judiciary, placed on Calendar -HJ 477
05/27/87 HOUSE Placed on Special Order Calendar
05/28/87 HOUSE Ident./Sim. Senate Bill substituted; Laid on Table under Rule. Ident./Sim./Compare Bill passed, refer to SB 541 (Ch. 87-317) -HJ 749

Extracts from, History of Legislation, 1987, by the Joint Legislative Management Committee. Legislative Information Division, pp. 105 and 293:

S 541 GENERAL BILL/ENG by Kiser (Compare H 617, H 817, ENG/S 475)

Guardians/Powers Increased, provides for liability of joint personal representatives; authorizes guardian, with prior court approval, to execute, exercise, or release specified powers that ward might have if competent, to renounce or disclaim any interest by succession or inter vivos transfer, or to convey or release a contingent or expectant interest in property, including marital property rights or right of survivorship, etc Amends 733.615, 744.441, 457 Effective Date. 07/10/87.

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05/19/87 HOUSE Received, placed on Calendar -HJ 479
05/27/87 HOUSE Placed on Special Order Calendar
05/28/87 HOUSE Substituted for HB 617, Read second time; Amendments adopted; Read third time, Passed as amended; YEAS 117 NAYS 0 -HJ 749
05/28/87 SENATE In Messages
06/04/87 SENATE Message was taken up -SJ 715; Concurred, Passed as amended, YEAS 37 NAYS 0 -SJ 716
06/04/87 Ordered engrossed, then enrolled -SJ 716
06/25/87 Signed by Officers and presented to Governor
07/10/87 Approved by Governor; Chapter No 87-317

H 617 GENERAL BILL by Wallace (Compare ENG/S 541)

Guardians/Powers Increased, increases powers of guardian upon court approval, provides for conveyance or release of certain property rights Amends 744 441, 457 Effective Date 10/01 87

03/24/87 HOUSE Prefiled
04/02/87 HOUSE Referred to Judiciary
04/07/87 HOUSE Introduced, referred to Judiciary -HJ 57
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05/05/87 HOUSE On Committee agenda—Judiciary, 05/07/87, 8 00 am, 214C
05/18/87 HOUSE Comm Report Favorable with 1 amendment(s) by Judiciary, placed on Calendar -HJ 477
05 27/87 HOUSE Placed on Special Order Calendar
05/28/87 HOUSE Iden /Sim Senate Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to SB 541 (Ch. 87-317) -HJ 749