

By Representative Hafner

1 A bill to be entitled
2 An act relating to guardians; amending s.
3 744.3125, F.S.; providing an additional fee for
4 application for appointment as a guardian;
5 providing for disposition of the fee; amending
6 s. 744.3135, F.S.; directing the court to
7 require prospective guardians to submit to an
8 investigation on credit history or a criminal
9 records check; amending s. 744.351, F.S.;
10 revising language with respect to the bond of
11 the guardian; amending s. 744.361, F.S.;
12 providing an additional duty of the guardian;
13 requiring certain disclosure; amending s.
14 744.3675, F.S.; providing for an additional
15 fine for the late filing of certain reports;
16 providing for a guardian mediation project;
17 providing an effective date.

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

20
21 Section 1. Subsection (1) of section 744.3125, Florida
22 Statutes, is amended to read:

23 744.3125 Application for appointment.--

24 (1)(a) Every prospective guardian must complete an
25 application for appointment as guardian. The application must
26 list the person's qualifications to serve as a guardian.

27 (b) The clerk of the circuit court is hereby
28 authorized to charge an additional fee, above and beyond all
29 other fees now required for application for appointment as
30 guardian, to be used to employ an additional investigator or
31 to create a program to use volunteers to help monitor or

1 oversee guardian cases. This fee shall not exceed \$10 per
2 application for appointment as guardian.

3 Section 2. Section 744.3135, Florida Statutes, is
4 amended to read:

5 744.3135 Credit and criminal investigation.--The court
6 <U>shall ~~may~~ require a prospective guardian to submit, at his own
7 expense, to an investigation of the prospective guardian's
8 credit history or an investigatory check by the National Crime
9 Information Center and the Florida Crime Information Center
10 systems, or both. ~~The court may order these investigations if~~
11 ~~it deems it necessary.~~

12 Section 3. Section 744.351, Florida Statutes, 1996
13 Supplement, is amended to read:

14 744.351 Bond of guardian.--

15 (1) Before exercising his authority as guardian, every
16 person appointed a guardian of the property of a ward in this
17 state shall file a bond with surety as prescribed in s. 45.011
18 to be approved by the clerk. The bond shall be payable to the
19 Governor of the state and his successors in office,
20 conditioned on the faithful performance of all duties by the
21 guardian. In form the bond shall be joint and several. When
22 the petitioner or guardian presents compelling reasons, the
23 court may ~~waive a bond or~~ require the use of a designated
24 financial institution as defined in s. 655.005(1).

25 (2) When the sureties on a bond are natural persons,
26 the guardian shall be required to file with the annual
27 guardianship report proof satisfactory to the court that the
28 sureties are alive and solvent.

29 (3) The penal sum of a guardian's bond shall be fixed
30 by the court, and it must be in an amount not less than the
31 full amount of the cash on hand and on deposit belonging to

1 the ward and subject to the control of the guardian, plus the
2 value of the notes, stocks, bank accounts,and bonds owned by
3 the ward that are payable to bearer, and plus the value of all
4 other intangible personal property, in whatever form, owned by
5 the ward which has a market value which readily can be fixed
6 and which intangible personal property readily can be traded
7 for cash or its equivalent.

8 (4) For good cause, the court may require, or increase
9 ~~or reduce~~ the amount of, bond or change ~~or release~~ the surety.

10 (5) Financial institutions as defined in s. 744.309(4)
11 and public guardians authorized by law to be guardians shall
12 not be required to file bonds.

13 (6) When it is expedient and necessary in the judgment
14 of any court having jurisdiction of any guardianship property,
15 because the size of the bond required of the guardian is
16 burdensome, or for other cause, the court may order, in lieu
17 of a bond or in addition to a lesser bond, that the guardian
18 place all or part of the property of the ward in a designated
19 financial institution under the same conditions and
20 limitations as are contained in s. 69.031. A designated
21 financial institution shall also include a dealer, as defined
22 in s. 517.021(6), if the dealer is a member of the Security
23 Investment Protection Corporation and is doing business in the
24 state.

25 Section 4. Subsection (9) is added to section 744.361,
26 Florida Statutes, to read:

27 744.361 Powers and duties of guardian.--

28 (9) The guardian must disclose to the court as to
29 whether the guardian received any money or gifts in exchange
30 for being utilized as a guardian in the proceeding before the
31 court.

1 Section 5. Subsection (4) is added to section
2 744.3675, Florida Statutes, 1996 Supplement, to read:

3 744.3675 Annual guardianship plan.--Each guardian of
4 the person must file with the court an annual guardianship
5 plan which updates information about the condition of the
6 ward. The annual plan must specify the current needs of the
7 ward and how those needs are proposed to be met in the coming
8 year.

9 (4) In addition to any other fine required with
10 respect to the late filing of any annual report on the ward's
11 finances and required reports, whether narrative or written
12 describing the ward's medical needs and living conditions, the
13 court shall assess a fine in an amount not to exceed 10
14 percent of the bond of the guardian required by s. 744.351 for
15 such late filings.

16 Section 6. Guardian mediation pilot project.--The
17 Department of Children and Family Services is directed to
18 develop a pilot program on the use of mediation in adult
19 guardianship cases. Recognizing that guardianship is
20 appropriate and necessary in some cases, and in many cases it
21 could be avoided since full guardianship results in an almost
22 complete loss of rights by the incapacitated person,
23 guardianship is a remedy to use only if no other is available.
24 The department shall report to the Legislature on or before
25 January 1, 1998, selecting a circuit court in the state to
26 host the pilot project which shall:

27 (1) Demonstrate the usefulness of mediations in
28 guardianship cases.

29 (2) Provide for a mediator trained in guardianship
30 issues who would work with the petitioner for guardianship and
31 the proposed ward as well as family members of the ward to

1 arrive at a solution that would protect the proposed ward's
2 person and finances while still assuring his or her rights to
3 make personal decisions.

4 Section 7. This act shall take effect July 1, 1997.

5
6 *****

7 HOUSE SUMMARY

8 Revises provisions of law with respect to guardians to:

9 1. Authorize the clerk of the circuit court to charge
10 an additional fee, not to exceed \$10 per application for
11 appointment as guardian to be used to employ an additional
12 investigator or to create a program to use volunteers to help
13 monitor or oversee guardian cases.

14 2. Provide that the court shall require a prospective
15 guardian to submit to a credit history investigation or an
16 investigatory check by the National Crime Information Center
17 and the Florida Crime Information Center systems or both.

18 3. Revise language with respect to the bond of
19 guardians.

20 4. Require the guardian to disclose to the court as to
21 whether the guardian received any money or gifts in exchange
22 for being utilized as a guardian in the proceeding before the
23 court.

24 5. Provide an additional fine with respect to
25 described late filed reports.

26 6. Provide for a guardian mediation pilot project.
27
28
29
30
31