

By Senator Mitchell

4-1619-00

See HB 933

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.3031, F.S.; requiring an emergency
4 temporary guardian to file certain information
5 under certain circumstances; amending s.
6 744.309, F.S.; prohibiting certain persons from
7 serving as professional guardians; amending s.
8 744.3135, F.S.; requiring guardians to submit
9 to a periodic credit and criminal
10 investigation; amending s. 744.3201, F.S.;
11 requiring a certain petition to contain
12 specified information; amending s. 744.331,
13 F.S.; specifying a time limit for a certain
14 petition for fees; amending s. 744.362, F.S.;
15 requiring the initial guardianship report to be
16 served on family members of the ward; amending
17 s. 744.3678, F.S.; specifying certain
18 information on statements relating to a ward's
19 liquid assets; requiring guardians to pay
20 certain fees; amending s. 744.368, F.S.;
21 requiring forms and audits used by guardians
22 and clerks of court to conform to certain
23 standards; authorizing clerks of court to
24 perform comprehensive audits; providing court
25 notification; creating s. 744.3691, F.S.;
26 providing penalties for certain failures to
27 comply; amending s. 744.3701, F.S.; permitting
28 unrestricted guardianship report access to
29 certain persons; providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Subsection (1) of section 744.3031, Florida
2 Statutes, is amended to read:

3 744.3031 Emergency temporary guardianship.--

4 (1) A court, prior to appointment of a guardian but
5 after a petition for determination of incapacity has been
6 filed pursuant to this chapter, may appoint an emergency
7 temporary guardian for the person or property, or both, of an
8 alleged incapacitated person. The court must specifically
9 find that there appears to be imminent danger that the
10 physical or mental health or safety of the person will be
11 seriously impaired or that the person's property is in danger
12 of being wasted, misappropriated, or lost unless immediate
13 action is taken. In any case in which an emergency temporary
14 guardian is appointed, such guardian must file an inventory of
15 the ward's property within 10 days after the appointment, and
16 a final report of such inventory upon the appointment of a
17 guardian unless the emergency temporary guardian is appointed
18 as guardian or upon dismissal of the petition.The subject of
19 the proceeding or any adult interested in the welfare of that
20 person may apply to the court in which the proceeding is
21 pending for the emergency appointment of a temporary guardian.
22 The powers and duties of the emergency temporary guardian must
23 be specifically enumerated by court order. The court shall
24 appoint counsel to represent the alleged incapacitated person
25 during any such summary proceedings, and such appointed
26 counsel may request that the proceeding be recorded and
27 transcribed.

28 Section 2. Subsection (3) of section 744.309, Florida
29 Statutes, is amended to read:

30 744.309 Who may be appointed guardian of a resident
31 ward.--

1 (3) DISQUALIFIED PERSONS.--No person who has a
2 criminal record ~~been convicted of a felony~~ or who, from any
3 incapacity or illness, is incapable of discharging the duties
4 of a guardian, or who holds a health care surrogate agreement
5 or power of attorney for the individual for whom such person
6 desires to serve as guardian, or who is otherwise unsuitable
7 to perform the duties of a guardian, shall be appointed to act
8 as guardian. Further, no person who has been judicially
9 determined to have committed abuse, abandonment, or neglect
10 against a child as defined in s. 39.01 or s. 984.03(2) and
11 (39), or who has a confirmed report of abuse, neglect, or
12 exploitation which has been uncontested or upheld pursuant to
13 the provisions of ss. 415.104 and 415.1075 shall be appointed
14 to act as a guardian. Except as provided in subsection (5) or
15 subsection (6), a person who provides substantial services to
16 the proposed ward in a professional or business capacity, or a
17 creditor of the proposed ward, may not be appointed guardian
18 and retain that previous professional or business
19 relationship. A person may not be appointed a guardian if he
20 or she is in the employ of any person, agency, government, or
21 corporation that provides service to the proposed ward in a
22 professional or business capacity, except that a person so
23 employed may be appointed if he or she is the spouse, adult
24 child, parent, or sibling of the proposed ward or the court
25 determines that the potential conflict of interest is
26 insubstantial and that the appointment would clearly be in the
27 proposed ward's best interest. The court may not appoint a
28 guardian in any other circumstance in which a conflict of
29 interest may occur.

30 Section 3. Section 744.3135, Florida Statutes, is
31 amended to read:

1 744.3135 Credit and criminal investigation.--The court
2 may require a nonprofessional guardian and shall require a
3 professional or public guardian, to submit, at his or her own
4 expense, to an investigation of the guardian's credit history
5 and an investigatory check by the National Crime Information
6 Center and the Florida Crime Information Center systems by
7 means of fingerprint checks by the Department of Law
8 Enforcement and the Federal Bureau of Investigation every 5
9 years. The clerk of the court shall obtain fingerprint cards
10 from the Federal Bureau of Investigation and make them
11 available to guardians. Any guardian who is so required shall
12 have his or her fingerprints taken and forward the proper
13 fingerprint card along with the necessary fee to the Florida
14 Department of Law Enforcement for processing. The professional
15 guardian shall pay to the clerk of the court a fee of \$5 for
16 handling and processing professional guardian files. The
17 results of the fingerprint checks shall be forwarded to the
18 clerk of court who shall maintain the results in a guardian
19 file and shall make the results available to the court. If
20 credit or criminal investigations are required, the court must
21 consider the results of the investigations in appointing a
22 guardian.

23 Section 4. Paragraph (h) is added to subsection (2) of
24 section 744.3201, Florida Statutes, to read:

25 744.3201 Petition to determine incapacity.--

26 (2) The petition must be verified and must:

27 (h) Contain all information, if any, compiled after a
28 diligent search by the petitioner, relating to advance
29 directives as established in s. 744.3115.

30 Section 5. Paragraph (a) of subsection (7) of section
31 744.331, Florida Statutes, is amended to read:

1 744.331 Procedures to determine incapacity.--

2 (7) FEES.--

3 (a) The examining committee and any attorney appointed
4 under subsection (2) are entitled to reasonable fees to be
5 determined by the court, provided the petition for fees is
6 submitted within 30 days after the court approves the initial
7 guardianship report.

8 Section 6. Subsection (1) of section 744.362, Florida
9 Statutes, is amended to read:

10 744.362 Initial guardianship report.--

11 (1) Each guardian shall file with the court and with
12 the ward's next of kin an initial guardianship report within
13 60 days after her or his letters of guardianship are signed.
14 The initial guardianship report for a guardian of the property
15 must consist of a verified inventory. The initial report for a
16 guardian of the person must consist of an initial guardianship
17 plan. The initial report shall be served on the ward, unless
18 the ward is a minor under the age of 14 years or is totally
19 incapacitated, the ward's next of kin,and the attorney for
20 the ward. Either the ward or the ward's attorney may request a
21 hearing concerning the adequacy of the report.

22 Section 7. Subsections (2), (3), and (4) of section
23 744.3678, Florida Statutes, are amended to read:

24 744.3678 Annual accounting.--

25 (2) The annual accounting must include:

26 (a) A full and correct account of the receipts and
27 disbursements of all of the ward's property over which the
28 guardian has control and a statement of the ward's property on
29 hand at the end of the accounting period, which statement
30 shall include the beginning and ending dates of the accounting
31 period.

1 (b) A copy of the ~~annual or year-end~~ statement of all
2 of the ward's cash accounts from each of the institutions
3 where the cash is deposited, which statement shall include the
4 beginning and ending dates of the accounting period.

5 (3) The guardian must obtain a receipt or canceled
6 check for all expenditures and disbursements made on behalf of
7 the ward. The guardian must preserve the receipts and
8 canceled checks, along with other substantiating papers, for a
9 period of 3 years after his or her discharge. The receipts,
10 checks, and substantiating papers need not be filed with the
11 court but shall be made available for inspection and review at
12 such time and in such place and before such persons as the
13 court may from time to time order. This subsection shall not
14 prohibit the clerk from conducting his or her audit.

15 (4) The guardian shall pay from the ward's estate to
16 the clerk of the circuit court a fee based upon the following
17 graduated fee schedule, upon the filing of the annual
18 financial return, for the auditing of the return, for the
19 amended return, or for addenda to the return:

20 (a) For estates with a value of \$25,000 or less the
21 fee shall be \$10.

22 (b) For estates with a value of more than \$25,000 up
23 to and including \$100,000 the fee shall be \$50.

24 (c) For estates with a value of more than \$100,000 up
25 to and including \$500,000 the fee shall be \$100.

26 (d) For estates with a value in excess of \$500,000 the
27 fee shall be \$150.

28
29 Any guardian unable to pay the auditing fee may petition the
30 court for a waiver of the fee. The court may waive the fee
31 after it has reviewed the documentation filed by the guardian

1 in support of the waiver. Upon such waiver, the clerk of the
2 circuit court shall bill the board of county commissioners for
3 the auditing fee.

4 Section 8. Subsection (3) of section 744.368, Florida
5 Statutes, is amended, and subsection (5) is added to that
6 section, to read:

7 744.368 Responsibilities of the clerk of the circuit
8 court.--

9 (3) Within 90 days after the filing of the initial or
10 annual guardianship report by a guardian of the property, the
11 clerk shall audit the verified inventory or the annual
12 accounting. The guardian and the clerk shall use forms adopted
13 by the clerk, and such forms and the audit shall conform to
14 generally accepted accounting and auditing standards.The
15 clerk shall advise the court of the results of the audit.

16 (5) The clerk may perform a comprehensive audit in
17 guardianship cases whenever the clerk deems it necessary.
18 Once the clerk has determined which guardianship cases are to
19 receive a comprehensive audit, those guardians shall be given
20 a 30-day notice to file all original financial documents that
21 pertain to the accounting under review. Once the audit is
22 completed, all documents filed for the comprehensive audit
23 shall be returned to the guardian.

24 Section 9. Section 744.3691, Florida Statutes, is
25 created to read:

26 744.3691 Penalties.--

27 (1) Any guardian who fails to comply with any of the
28 provisions enumerated in this chapter is subject to the
29 following penalties:

30 (a) For the first offense, a penalty of \$500.

31 (b) For the second offense, a penalty of \$1,500.

