

By Senator Latvala

19-1666-02

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 an inventory of the
5 ward's property under certain circumstances;
6 amending s. 744.309, F.S.; prohibiting a person
7 convicted of a crime involving moral turpitude
8 from serving as a professional guardian;
9 amending s. 744.3135, F.S.; requiring guardians
10 to submit to a periodic credit and criminal
11 investigation; amending s. 744.3201, F.S.;
12 requiring that a petition to determine
13 incapacity contain information concerning
14 advance directives; amending s. 744.331, F.S.;
15 requiring that a petition for fees be submitted
16 within a specified period; amending s.
17 744.3678, F.S.; providing additional
18 requirements for the annual accounting;
19 amending s. 744.368, F.S.; requiring forms and
20 audits used by guardians and clerks of court to
21 conform to certain standards; authorizing the
22 clerk of court or the court to order a
23 comprehensive audit; creating s. 744.3691,
24 F.S.; providing civil penalties for certain
25 failures to comply with provisions governing
26 guardians and guardianship; amending s.
27 744.3701, F.S.; authorizing law enforcement
28 agencies and certain other agencies to have
29 access to guardianship reports; amending s.
30 744.446, F.S.; providing that the attorney of
31 record in a guardianship has a duty to protect

1 the ward and preserve the guardianship estate;
2 providing an effective date.

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

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

8 744.3031 Emergency temporary guardianship.--

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

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

5 744.309 Who may be appointed guardian of a resident
6 ward.--

7 (3) DISQUALIFIED PERSONS.--A ~~No~~ person who has been
8 convicted of a felony or a crime involving moral turpitude or
9 who, from any incapacity or illness, is incapable of
10 discharging the duties of a guardian, or who is otherwise
11 unsuitable to perform the duties of a guardian, may not ~~shall~~
12 be appointed to act as guardian. Further, a ~~no~~ person who has
13 been judicially determined to have committed abuse,
14 abandonment, or neglect against a child as defined in s. 39.01
15 or s. 984.03(1), (2), and (37), or who has been found guilty
16 of, regardless of adjudication, or entered a plea of nolo
17 contendere or guilty to, any offense prohibited under s.
18 435.03 or under any similar statute of another jurisdiction,
19 may not ~~shall~~ be appointed to act as a guardian. Except as
20 provided in subsection (5) or subsection (6), a person who
21 provides substantial services to the proposed ward in a
22 professional or business capacity, or a creditor of the
23 proposed ward, may not be appointed guardian and retain that
24 previous professional or business relationship. A person may
25 not be appointed a guardian if he or she is in the employ of
26 any person, agency, government, or corporation that provides
27 service to the proposed ward in a professional or business
28 capacity, except that a person so employed may be appointed if
29 he or she is the spouse, adult child, parent, or sibling of
30 the proposed ward or the court determines that the potential
31 conflict of interest is insubstantial and that the appointment

1 would clearly be in the proposed ward's best interest. The
2 court may not appoint a guardian in any other circumstance in
3 which a conflict of interest may occur.

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

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

28 Section 4. Subsection (2) of section 744.3201, Florida
29 Statutes, is amended to read:

30 744.3201 Petition to determine incapacity.--

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

1 (a) State the name, age, and present address of the
2 petitioner and his or her relationship to the alleged
3 incapacitated person;

4 (b) State the name, age, county of residence, and
5 present address of the alleged incapacitated person;

6 (c) Specify the primary language spoken by the alleged
7 incapacitated person, if known;

8 (d) Allege that the petitioner believes the alleged
9 incapacitated person to be incapacitated and specify the
10 factual information on which such belief is based and the
11 names and addresses of all persons known to the petitioner who
12 have knowledge of such facts through personal observations;

13 (e) State the name and address of the alleged
14 incapacitated person's attending or family physician, if
15 known;

16 (f) State which rights enumerated in s. 744.3215 the
17 alleged incapacitated person is incapable of exercising, to
18 the best of petitioner's knowledge. If the petitioner has
19 insufficient experience to make such judgments, the petition
20 must so state; ~~and~~

21 (g) State the names, relationships, and addresses of
22 the next of kin of the alleged incapacitated person, so far as
23 are known, specifying the dates of birth of any who are
24 minors; ~~and-~~

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

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

31 744.331 Procedures to determine incapacity.--

1 (7) FEES.--

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

7 Section 6. Subsections (2), (3), and (4) of section
8 744.3678, Florida Statutes, are amended to read:

9 744.3678 Annual accounting.--

10 (2) The annual accounting must include:

11 (a) A full and correct account of the receipts and
12 disbursements of all of the ward's property over which the
13 guardian has control and a statement of the ward's property on
14 hand at the end of the accounting period, which statement must
15 include the beginning and ending dates of the accounting
16 period.

17 (b) A copy of the ~~annual or year-end~~ statement of all
18 of the ward's cash accounts from each of the institutions
19 where the cash is deposited, which statement must include the
20 beginning and ending dates of the accounting period.

21 (3) The guardian must obtain a receipt or canceled
22 check for all expenditures and disbursements made on behalf of
23 the ward. The guardian must preserve the receipts and
24 canceled checks, along with other substantiating papers, for a
25 period of 3 years after his or her discharge. The receipts,
26 checks, and substantiating papers need not be filed with the
27 court but shall be made available for inspection and review at
28 such time and in such place and before such persons as the
29 court may from time to time order. This subsection does not
30 prohibit the clerk from conducting his or her audit.

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

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

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

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

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

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15 Any guardian unable to pay the auditing fee may petition the
16 court for a waiver of the fee. The court may waive the fee
17 after it has reviewed the documentation filed by the guardian
18 in support of the waiver. Upon such waiver, the clerk of the
19 circuit court shall bill the board of county commissioners for
20 the auditing fee.

21 Section 7. Subsection (3) of section 744.368, Florida
22 Statutes, is amended, and subsection (5) is added to that
23 section, to read:

24 744.368 Responsibilities of the clerk of the circuit
25 court.--

26 (3) Within 90 days after the filing of the initial or
27 annual guardianship report by a guardian of the property, the
28 clerk shall audit the verified inventory or the annual
29 accounting. The guardian and the clerk shall use forms adopted
30 by the court, and such forms and the audit shall conform to

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1 generally accepted accounting principals.The clerk shall
2 advise the court of the results of the audit.

3 (5) The clerk may perform a comprehensive audit of any
4 guardianship case in which the clerk or court finds it
5 necessary. If the clerk or court determines a guardianship
6 case should receive a comprehensive audit, the guardian shall
7 be given a 30-day notice to file all original financial
8 documents that pertain to the accounting under review. Once
9 the audit is completed, all documents filed for the
10 comprehensive audit shall be returned to the guardian.

11 Section 8. Section 744.3691, Florida Statutes, is
12 created to read:

13 744.3691 Penalties.--

14 (1) Any guardian who fails to comply with any of the
15 provisions enumerated in this chapter is subject to the
16 following civil penalties:

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

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

19 (c) For the third offense, a penalty of \$2,500 per
20 occurrence.

21 (2)(a) All subsequent offenses may result, at the
22 discretion of the court, in the disqualification of the
23 guardian from acting as a guardian for any incapacitated
24 person.

25 (b) Second and subsequent offenses may be for the same
26 type of offense or for a different type and may be perpetrated
27 upon the same or a different ward.

28 (3) The penalties provided for in this section are in
29 addition to any other penalties prescribed by law. Imposition
30 of a penalty under this section does not preclude removal of a
31 guardian under s. 744.474.

1 Section 9. Subsection (1) of section 744.3701, Florida
2 Statutes, is amended to read:

3 744.3701 Inspection of report.--

4 (1) Unless otherwise ordered by the court, any
5 initial, annual, or final guardianship report or amendment
6 thereto is subject to inspection only by the court, the clerk
7 or the clerk's representative, all law enforcement agencies
8 and agencies with direct affiliation to the court acting in an
9 official capacity, the guardian and the guardian's attorney,
10 and the ward, unless he or she is a minor or has been
11 determined to be totally incapacitated, and the ward's
12 attorney.

13 Section 10. Subsection (4) is added to section
14 744.446, Florida Statutes, to read:

15 744.446 Conflicts of interest; prohibited activities;
16 court approval.--

17 (4) Any attorney who undertakes to provide services as
18 the attorney of record in the guardianship of an incapacitated
19 person or ward owes a duty to the ward, as does the guardian,
20 to protect the ward and preserve the guardianship estate for
21 the benefit of the ward. If the guardian breaches his or her
22 fiduciary duty to the ward, the attorney may take any action
23 necessary to protect the ward and preserve the guardianship
24 estate.

25 Section 11. This act shall take effect October 1,
26 2002.

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SENATE SUMMARY

Revises various provisions governing guardianship.
Provides requirements for an emergency temporary
guardian. Revises the qualifications for serving as a
professional guardian. Requires a credit check and
criminal investigation of a guardian every 5 years.
Provides civil penalties for violations of ch. 744, F.S.
(See bill for details.)