

By Senator Gainer

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1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.2001,
3 F.S.; deleting the requirement that the executive
4 director of the Office of Public and Professional
5 Guardians be a member of The Florida Bar; requiring
6 the executive director to offer and make certain
7 education courses available online; requiring the
8 executive director to produce and make available
9 information about alternatives to and types of
10 guardianship for dissemination by certain entities;
11 deleting obsolete language; amending s. 744.2003,
12 F.S.; revising continuing education requirements for
13 guardians; requiring professional guardians to submit
14 to and maintain with the office specified information;
15 amending s. 744.2004, F.S.; deleting obsolete
16 language; revising the office's disciplinary
17 procedures; requiring the office to notify parties to
18 the complaint of certain information within specified
19 timeframes; amending s. 744.3145, F.S.; authorizing
20 guardians to satisfy certain education requirements
21 through courses offered by the office; removing the
22 court's ability to waive education requirements for
23 guardians; amending s. 744.368, F.S.; requiring the
24 clerks of court to notify the office of any sanctions
25 imposed on professional guardians, within a specified
26 timeframe; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsections (1), (2), and (3) of section
31 744.2001, Florida Statutes, are amended to read:

32 744.2001 Office of Public and Professional Guardians.—There
33 is created the Office of Public and Professional Guardians
34 within the Department of Elderly Affairs.

35 (1) The Secretary of Elderly Affairs shall appoint the
36 executive director, who shall be the head of the Office of
37 Public and Professional Guardians. The executive director must
38 be ~~a member of The Florida Bar~~, knowledgeable of guardianship
39 law and of the social services available to meet the needs of
40 incapacitated persons, shall serve on a full-time basis, and
41 shall personally, or through a representative of the office,
42 carry out the purposes and functions of the Office of Public and
43 Professional Guardians in accordance with state and federal law.
44 The executive director shall serve at the pleasure of and report
45 to the secretary.

46 (2) The executive director shall, within available
47 resources:

48 (a) Have oversight responsibilities for all public and
49 professional guardians.

50 (b) Establish standards of practice for public and
51 professional guardians by rule, in consultation with
52 professional guardianship associations and other interested
53 stakeholders, ~~no later than October 1, 2016. The executive~~
54 ~~director shall provide a draft of the standards to the Governor,~~
55 ~~the Legislature, and the secretary for review by August 1, 2016.~~

56 (c) Review and approve the standards and criteria for the
57 education, registration, and certification of public and
58 professional guardians in Florida.

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59 (d) Offer and make available online an education course to
60 satisfy the requirements of s. 744.3145(2).

61 (e) Produce and make available information about
62 alternatives to and types of guardianship for dissemination by
63 area agencies on aging as defined in s. 430.203 and aging
64 resource centers as described in s. 430.2053.

65 (3) The executive director's oversight responsibilities of
66 professional guardians ~~must be finalized by October 1, 2016, and~~
67 shall include, but are not limited to:

68 (a) Developing and implementing a monitoring tool to ensure
69 compliance of professional guardians with the standards of
70 practice established by the Office of Public and Professional
71 Guardians. This monitoring tool may not include a financial
72 audit as required by the clerk of the circuit court under s.
73 744.368.

74 (b) Developing procedures, in consultation with
75 professional guardianship associations and other interested
76 stakeholders, for the review of an allegation that a
77 professional guardian has violated the standards of practice
78 established by the Office of Public and Professional Guardians
79 governing the conduct of professional guardians.

80 (c) Establishing disciplinary proceedings, conducting
81 hearings, and taking administrative action pursuant to chapter
82 120.

83 Section 2. Present subsection (10) of section 744.2003,
84 Florida Statutes, is redesignated as subsection (11), a new
85 subsection (10) is added to that section, and subsection (3) of
86 that section is amended, to read:

87 744.2003 Regulation of professional guardians; application;

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88 bond required; educational requirements.-

89 (3) (a) Each professional guardian as defined in s.
90 744.102(17) and public guardian must receive a minimum of 40
91 hours of instruction and training. Each professional guardian
92 must receive a minimum of 20 ~~16~~ hours of continuing education
93 every 2 calendar years after the year in which the initial 40-
94 hour educational requirement is met, which must include at least
95 2 hours each on fiduciary responsibilities and professional
96 ethics, respectively; 1 hour on advance directives; 3 hours on
97 abuse, neglect, and exploitation; and 4 hours on guardianship
98 law.

99 (b) The instruction, training, and education required under
100 paragraph (a) must be completed through a course approved or
101 offered by the Office of Public and Professional Guardians. The
102 expenses incurred to satisfy the educational requirements
103 prescribed in this section may not be paid with the assets of
104 any ward.

105 (c) This subsection does not apply to any attorney who is
106 licensed to practice law in this state or an institution acting
107 as guardian under s. 744.2002(7).

108 (10) Each professional guardian shall submit to and
109 maintain with the Office of Public and Professional Guardians
110 all of the following information:

111 (a) The names and position titles of all employees of the
112 professional guardian.

113 (b) The counties in which the professional guardian is
114 appointed to any ward.

115 Section 3. Subsections (1) and (6) of section 744.2004,
116 Florida Statutes, are amended to read:

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117 744.2004 Complaints; disciplinary proceedings; penalties;
118 enforcement.—

119 (1) ~~By October 1, 2016,~~ The Office of Public and
120 Professional Guardians shall establish procedures to:

121 (a) Review and, if determined legally sufficient, initiate
122 an investigation of ~~investigate~~ any complaint that a
123 professional guardian has violated the standards of practice
124 established by the Office of Public and Professional Guardians
125 governing the conduct of professional guardians within 10
126 business days after receipt of the complaint. A complaint is
127 legally sufficient if it contains ultimate facts that show a
128 violation of a standard of practice by a professional guardian
129 has occurred.

130 (b) Notify the complainant no later than 10 business days
131 after the Office of Public and Professional Guardians determines
132 that a complaint is not legally sufficient ~~Initiate an~~
133 ~~investigation no later than 10 business days after the Office of~~
134 ~~Public and Professional Guardians receives a complaint.~~

135 (c) Complete and provide initial investigative findings and
136 recommendations, if any, to the professional guardian and the
137 person who filed the complaint within 45 business ~~60~~ days after
138 receipt of a complaint.

139 (d) Obtain supporting information or documentation to
140 determine the legal sufficiency of a complaint.

141 (e) Interview a ward, family member, or interested party to
142 determine the legal sufficiency of a complaint.

143 (f) Dismiss any complaint if, at any time after legal
144 sufficiency is determined, it is found there is insufficient
145 evidence to support the allegations contained in the complaint.

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146 (g) Within 10 business days after completing an
147 investigation, provide to the complainant and the professional
148 guardian a written statement specifying any finding of a
149 violation of a standard of practice by a professional guardian
150 and any actions taken or specifying that no such violation was
151 found.

152 (h)~~(g)~~ Coordinate, to the greatest extent possible, with
153 the clerks of court to avoid duplication of duties with regard
154 to the financial audits prepared by the clerks pursuant to s.
155 744.368.

156 ~~(6) By October 1, 2016,~~ The Department of Elderly Affairs
157 shall adopt rules to implement ~~the provisions of~~ this section.

158 Section 4. Subsections (4) and (6) of section 744.3145,
159 Florida Statutes, are amended to read:

160 744.3145 Guardian education requirements.—

161 (4) Each person appointed by the court to be a guardian
162 must complete the required number of hours of instruction and
163 education within 4 months after his or her appointment as
164 guardian. The instruction and education must be completed
165 through a course approved by the chief judge of the circuit
166 court and taught by a court-approved organization or through a
167 course offered by the Office of Public and Professional
168 Guardians under s. 744.2001. Court-approved organizations may
169 include, but are not limited to, community or junior colleges,
170 guardianship organizations, and the local bar association or The
171 Florida Bar.

172 ~~(6) The court may, in its discretion, waive some or all of~~
173 ~~the requirements of this section or impose additional~~
174 ~~requirements. The court shall make its decision on a case-by-~~

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175 ~~ease basis and, in making its decision, shall consider the~~
176 ~~experience and education of the guardian, the duties assigned to~~
177 ~~the guardian, and the needs of the ward.~~

178 Section 5. Subsection (8) is added to section 744.368,
179 Florida Statutes, to read:

180 744.368 Responsibilities of the clerk of the circuit
181 court.-

182 (8) Within 10 business days after the court imposes any
183 sanctions on a professional guardian, including, but not limited
184 to, contempt of the court or removal of the professional
185 guardian, the clerk shall report such actions to the Office of
186 Public and Professional Guardians.

187 Section 6. This act shall take effect July 1, 2020.