

House Bill No. 7111

An act relating to guardianship; amending s. 744.3135, F.S.; revising provisions relating to criminal history record checks for professional and nonprofessional guardians; granting rulemaking authority to the Statewide Public Guardianship Office; revising terminology; deleting obsolete language; revising language concerning investigations of credit histories of professional guardians and certain of their employees; providing an effective date.

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

Section 1. Section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.—

(1) The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening as required under s. 435.04. If a credit or criminal history record check is required, the court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening as set forth in s. 435.03. The court shall consider the results of any investigation when reappointing a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian must pay the clerk of the court a fee of up to \$7.50 for handling and processing professional guardian files.

(2) For nonprofessional guardians, the court and the Statewide Public Guardianship Office shall accept the satisfactory completion of a criminal history record check as by any method described in this subsection. A non-professional guardian satisfies the requirements of this section by undergoing a state and national criminal history record check using a fingerprint card. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to nonprofessional guardians. Any nonprofessional guardian who is so required shall have his or her fingerprints taken and forward the completed fingerprint card along with the necessary fee to the Department of Law Enforcement for processing. The results of the fingerprint card criminal history record check shall be forwarded to the clerk of the court, who shall maintain the results in the nonprofessional guardian's file and make the results available to the court.

(3) For professional guardians, the court and the Statewide Public Guardianship Office shall accept the satisfactory completion of a criminal history record check by any method described in this subsection. A professional guardian satisfies the requirements of this section by undergoing:

(a) An electronic fingerprint criminal history record check. A professional guardian may use any electronic fingerprinting equipment used for criminal history record checks of ~~public employees~~. The Statewide Public Guardianship Office shall adopt a rule detailing the acceptable methods for completing an electronic fingerprint criminal history record check under this section. The professional guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal history record check. ~~The agency that operates the equipment used by the guardian may charge the guardian an additional fee, not to exceed \$10, for the use of the equipment.~~ The entity agency completing the record check must immediately send the results of the criminal history record check to the clerk of the court and the Statewide Public Guardianship Office. The clerk of the court shall maintain the results in the professional guardian's file and shall make the results available to the court; or

(b) A criminal history record check using a fingerprint card. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the Department of Law Enforcement for processing. The results of the fingerprint card criminal history record checks shall be forwarded to the clerk of the court, who shall maintain the results in the guardian's file and make the results available to the court and the Statewide Public Guardianship Office.

(4)(3)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 2 background screening as set forth in s. 435.04 before and at least once every 5 years after the date the guardian is registered appointed. A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 1 background screening as set forth in s. 435.03 at least once every 2 years after the date the guardian is registered appointed. However, a professional guardian person is not required to resubmit fingerprints for a criminal history record check if he or she has been screened using electronic fingerprinting equipment and the fingerprints are retained by the Department of Law Enforcement in order to notify the clerk of the court of any crime charged against the person in this state or elsewhere, as appropriate.

(b) ~~Effective December 15, 2006,~~ All fingerprints electronically submitted to the Department of Law Enforcement under this section shall be retained by the Department of Law Enforcement in a manner provided by rule and entered in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered in the Criminal Justice Information Program under s. 943.051.

(c) ~~Effective December 15, 2006,~~ The Department of Law Enforcement shall search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b). Any arrest record that is identified with

the fingerprints of a person described in this paragraph must be reported to the clerk of court. The clerk of court must forward any arrest record received for a professional guardian to the Statewide Public Guardianship Office within 5 days. Each professional guardian who elects to submit fingerprint information electronically shall participate in this search process by paying an annual fee to the Statewide Public Guardianship Office of the Department of Elderly Affairs and by informing the clerk of court and the Statewide Public Guardianship Office of any change in the status of his or her guardianship appointment. The amount of the annual fee to be imposed for performing these searches and the procedures for the retention of professional guardian fingerprints and the dissemination of search results shall be established by rule of the Department of Law Enforcement. At least once every 5 years, the Statewide Public Guardianship Office must request that the Department of Law Enforcement forward the fingerprints maintained under this section to the Federal Bureau of Investigation.

(5)(4)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's registration with the Statewide Public Guardianship Office appointment.

(b) The Statewide Public Guardianship Office shall adopt a rule detailing the acceptable methods for completing a credit investigation under this section. If appropriate, the Statewide Public Guardianship Office may administer credit investigations. If the office chooses to administer the credit investigation, the office may adopt a rule setting a fee, not to exceed \$25, to reimburse the costs associated with the administration of a credit investigation.

(6)(5) The Statewide Public Guardianship Office may inspect at any time the results of any credit or criminal history record check of a public or professional guardian conducted under this section. The office shall maintain copies of the credit or criminal history record check results in the guardian's registration file. If the results of a credit or criminal investigation of a public or professional guardian have not been forwarded to the Statewide Public Guardianship Office by the investigating agency, the clerk of the court shall forward copies of the results of the investigations to the office upon receiving them.

(7)(6) The requirements of this section do not apply to a professional guardian, or to the employees of a professional guardian, that is a trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 2. This act shall take effect July 1, 2007.

Approved by the Governor June 12, 2007.

Filed in Office Secretary of State June 12, 2007.