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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 744.102, Florida
Statutes, is amended to read:

744.102 Definitions.—As used in this chapter, the term:

(2) "Audit" means a systematic review of financial and all
other documents to ensure compliance with s. 744.368, rules of
court, and local procedures using generally accepted accounting



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11 principles. The term includes various practices that meet
12 professional standards, such as verifications, reviews of
13 substantiating papers and accounts, interviews, inspections, and
14 investigations.

15 Section 2. Subsection (1) of section 744.3135, Florida
16 Statutes, is amended to read:

17 744.3135 Credit and criminal investigation.-

18 (1) The court shall require all guardians who are seeking
19 appointment by the court, other than a corporate guardian as
20 described in s. 744.309(4) may require a nonprofessional
21 guardian and shall require a professional or public guardian,
22 and all employees of a professional guardian, other than a
23 corporate guardian as described in s. 744.309(4), who have a
24 fiduciary responsibility to a ward, to submit, at their own
25 expense, to a an investigation of the guardian's credit history
26 investigation and to undergo level 2 background screening as
27 required under s. 435.04. If appointed, a nonprofessional
28 guardian may petition the court for reimbursement of the
29 reasonable expenses of the credit history investigation and
30 background screening. If a credit or criminal history record
31 check is required, The court must consider the results of any
32 investigation before appointing a guardian. At any time, the
33 court may require a guardian or the guardian's employees to
34 submit to an investigation of the person's credit history and
35 complete a level 1 background screening pursuant to as set forth
36 in s. 435.03. The court shall consider the results of any
37 investigation in determining whether to reappoint when
38 reappointing a guardian. The clerk of the court shall maintain a
39 file on each guardian appointed by the court and retain in the



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40 file documentation of the result of any investigation conducted
41 under this section. A professional guardian shall ~~must~~ pay the
42 clerk of the court a fee of up to \$7.50 for handling and
43 processing professional guardian files.

44 Section 3. Subsections (5) through (7) are added to section
45 744.368, Florida Statutes, to read:

46 744.368 Responsibilities of the clerk of the circuit
47 court.—

48 (5) If the clerk has reason to believe further review is
49 appropriate, the clerk may request and review records and
50 documents that reasonably impact guardianship assets, including,
51 but not limited to, the beginning inventory balance and any fees
52 charged to the guardianship.

53 (6) If a guardian fails to produce records and documents to
54 the clerk upon request, the clerk may request the court to enter
55 an order pursuant to s. 744.3685(2) by filing an affidavit that
56 identifies the records and documents requested and shows good
57 cause as to why the documents and records requested are needed
58 to complete the audit.

59 (7) Upon application to the court supported by an affidavit
60 pursuant to subsection (6), the clerk may issue subpoenas to
61 nonparties to compel production of books, papers, and other
62 documentary evidence. Before issuance of a subpoena by
63 affidavit, the clerk must serve notice on the guardian and the
64 ward, unless the ward is a minor or totally incapacitated, of
65 the intent to serve subpoenas to nonparties.

66 (a) The clerk must attach the affidavit and the proposed
67 subpoena to the notice to the guardian and, if appropriate, to
68 the ward, and must:



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69 1. State the time, place, and method for production of the
70 documents or items, and the name and address of the person who
71 is to produce the documents or items, if known, or if not known,
72 a general description sufficient to identify the person or the
73 particular class or group to which the person belongs;

74 2. Include a designation of the items to be produced; and

75 3. State that the person who will be asked to produce the
76 documents or items has the right to object to the production
77 under this section and that the person is not required to
78 surrender the documents or items.

79 (b) A copy of the notice and proposed subpoena may not be
80 furnished to the person upon whom the subpoena is to be served.

81 (c) If the guardian or ward serves an objection to
82 production under this subsection within 10 days after service of
83 the notice, the documents or items may not be required to be
84 produced until resolution of the objection. If an objection is
85 not made within 10 days after service of the notice, the clerk
86 may issue the subpoena to the nonparty. The court may shorten
87 the period within which a guardian or ward is required to file
88 an objection upon a showing by the clerk by affidavit that the
89 ward's property is in imminent danger of being wasted,
90 misappropriated, or lost unless immediate action is taken.

91 Section 4. Section 744.3685, Florida Statutes, is amended
92 to read:

93 744.3685 Order requiring guardianship report; contempt.—

94 (1) If ~~When~~ a guardian fails to file the guardianship
95 report, the court shall order the guardian to file the report
96 within 15 days after the service of the order upon her or him or
97 show cause why she or he ~~may should~~ not be compelled to do so.



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98 (2) If a guardian fails to comply with the submission of
99 records and documents requested by the clerk during the audit,
100 upon a showing of good cause by affidavit of the clerk which
101 shows the reasons the records must be produced, the court may
102 order the guardian to produce the records and documents within a
103 period specified by the court unless the guardian shows good
104 cause as to why the guardian may not be compelled to do so
105 before the deadline specified by the court. The affidavit of the
106 clerk shall be served with the order.

107 (3) A copy of an ~~the~~ order entered pursuant to subsection
108 (1) or subsection (2) shall be served on the guardian or on the
109 guardian's resident agent. If the guardian fails to comply with
110 the order ~~file her or his report~~ within the time specified by
111 the order without good cause, the court may cite the guardian
112 for contempt of court and may fine her or him. The fine may not
113 be paid out of the ward's property.

114 Section 5. Subsection (21) is added to section 744.474,
115 Florida Statutes, to read:

116 744.474 Reasons for removal of guardian.—A guardian may be
117 removed for any of the following reasons, and the removal shall
118 be in addition to any other penalties prescribed by law:

119 (21) A bad faith failure to submit guardianship records
120 during the audit pursuant to s. 744.368.

121 Section 6. Paragraph (a) of subsection (4) of section
122 943.0585, Florida Statutes, is amended, and paragraph (c) of
123 that subsection is reenacted, to read:

124 943.0585 Court-ordered expunction of criminal history
125 records.—The courts of this state have jurisdiction over their
126 own procedures, including the maintenance, expunction, and



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127 correction of judicial records containing criminal history
128 information to the extent such procedures are not inconsistent
129 with the conditions, responsibilities, and duties established by
130 this section. Any court of competent jurisdiction may order a
131 criminal justice agency to expunge the criminal history record
132 of a minor or an adult who complies with the requirements of
133 this section. The court shall not order a criminal justice
134 agency to expunge a criminal history record until the person
135 seeking to expunge a criminal history record has applied for and
136 received a certificate of eligibility for expunction pursuant to
137 subsection (2). A criminal history record that relates to a
138 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
139 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
140 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
141 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
142 any violation specified as a predicate offense for registration
143 as a sexual predator pursuant to s. 775.21, without regard to
144 whether that offense alone is sufficient to require such
145 registration, or for registration as a sexual offender pursuant
146 to s. 943.0435, may not be expunged, without regard to whether
147 adjudication was withheld, if the defendant was found guilty of
148 or pled guilty or nolo contendere to the offense, or if the
149 defendant, as a minor, was found to have committed, or pled
150 guilty or nolo contendere to committing, the offense as a
151 delinquent act. The court may only order expunction of a
152 criminal history record pertaining to one arrest or one incident
153 of alleged criminal activity, except as provided in this
154 section. The court may, at its sole discretion, order the
155 expunction of a criminal history record pertaining to more than



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156 one arrest if the additional arrests directly relate to the
157 original arrest. If the court intends to order the expunction of
158 records pertaining to such additional arrests, such intent must
159 be specified in the order. A criminal justice agency may not
160 expunge any record pertaining to such additional arrests if the
161 order to expunge does not articulate the intention of the court
162 to expunge a record pertaining to more than one arrest. This
163 section does not prevent the court from ordering the expunction
164 of only a portion of a criminal history record pertaining to one
165 arrest or one incident of alleged criminal activity.

166 Notwithstanding any law to the contrary, a criminal justice
167 agency may comply with laws, court orders, and official requests
168 of other jurisdictions relating to expunction, correction, or
169 confidential handling of criminal history records or information
170 derived therefrom. This section does not confer any right to the
171 expunction of any criminal history record, and any request for
172 expunction of a criminal history record may be denied at the
173 sole discretion of the court.

174 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
175 criminal history record of a minor or an adult which is ordered
176 expunged by a court of competent jurisdiction pursuant to this
177 section must be physically destroyed or obliterated by any
178 criminal justice agency having custody of such record; except
179 that any criminal history record in the custody of the
180 department must be retained in all cases. A criminal history
181 record ordered expunged that is retained by the department is
182 confidential and exempt from the provisions of s. 119.07(1) and
183 s. 24(a), Art. I of the State Constitution and not available to
184 any person or entity except upon order of a court of competent



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185 jurisdiction. A criminal justice agency may retain a notation
186 indicating compliance with an order to expunge.

187 (a) The person who is the subject of a criminal history
188 record that is expunged under this section or under other
189 provisions of law, including former s. 893.14, former s. 901.33,
190 and former s. 943.058, may lawfully deny or fail to acknowledge
191 the arrests covered by the expunged record, except when the
192 subject of the record:

193 1. Is a candidate for employment with a criminal justice
194 agency;

195 2. Is a defendant in a criminal prosecution;

196 3. Concurrently or subsequently petitions for relief under
197 this section, s. 943.0583, or s. 943.059;

198 4. Is a candidate for admission to The Florida Bar;

199 5. Is seeking to be employed or licensed by or to contract
200 with the Department of Children and Families, the Division of
201 Vocational Rehabilitation within the Department of Education,
202 the Agency for Health Care Administration, the Agency for
203 Persons with Disabilities, the Department of Health, the
204 Department of Elderly Affairs, or the Department of Juvenile
205 Justice or to be employed or used by such contractor or licensee
206 in a sensitive position having direct contact with children, the
207 disabled, or the elderly; ~~or~~

208 6. Is seeking to be employed or licensed by the Department
209 of Education, any district school board, any university
210 laboratory school, any charter school, any private or parochial
211 school, or any local governmental entity that licenses child
212 care facilities; or

213 7. Is seeking to be appointed as a guardian pursuant to s.



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214 744.3125.

215 (c) Information relating to the existence of an expunged
216 criminal history record which is provided in accordance with
217 paragraph (a) is confidential and exempt from the provisions of
218 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
219 except that the department shall disclose the existence of a
220 criminal history record ordered expunged to the entities set
221 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
222 respective licensing, access authorization, and employment
223 purposes, and to criminal justice agencies for their respective
224 criminal justice purposes. It is unlawful for any employee of an
225 entity set forth in subparagraph (a)1., subparagraph (a)4.,
226 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
227 disclose information relating to the existence of an expunged
228 criminal history record of a person seeking employment, access
229 authorization, or licensure with such entity or contractor,
230 except to the person to whom the criminal history record relates
231 or to persons having direct responsibility for employment,
232 access authorization, or licensure decisions. Any person who
233 violates this paragraph commits a misdemeanor of the first
234 degree, punishable as provided in s. 775.082 or s. 775.083.

235 Section 7. Paragraph (a) of subsection (4) of section
236 943.059, Florida Statutes, is amended, and paragraph (c) of that
237 subsection is reenacted, to read:

238 943.059 Court-ordered sealing of criminal history records.—
239 The courts of this state shall continue to have jurisdiction
240 over their own procedures, including the maintenance, sealing,
241 and correction of judicial records containing criminal history
242 information to the extent such procedures are not inconsistent



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243 with the conditions, responsibilities, and duties established by
244 this section. Any court of competent jurisdiction may order a
245 criminal justice agency to seal the criminal history record of a
246 minor or an adult who complies with the requirements of this
247 section. The court shall not order a criminal justice agency to
248 seal a criminal history record until the person seeking to seal
249 a criminal history record has applied for and received a
250 certificate of eligibility for sealing pursuant to subsection
251 (2). A criminal history record that relates to a violation of s.
252 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
253 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
254 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
255 916.1075, a violation enumerated in s. 907.041, or any violation
256 specified as a predicate offense for registration as a sexual
257 predator pursuant to s. 775.21, without regard to whether that
258 offense alone is sufficient to require such registration, or for
259 registration as a sexual offender pursuant to s. 943.0435, may
260 not be sealed, without regard to whether adjudication was
261 withheld, if the defendant was found guilty of or pled guilty or
262 nolo contendere to the offense, or if the defendant, as a minor,
263 was found to have committed or pled guilty or nolo contendere to
264 committing the offense as a delinquent act. The court may only
265 order sealing of a criminal history record pertaining to one
266 arrest or one incident of alleged criminal activity, except as
267 provided in this section. The court may, at its sole discretion,
268 order the sealing of a criminal history record pertaining to
269 more than one arrest if the additional arrests directly relate
270 to the original arrest. If the court intends to order the
271 sealing of records pertaining to such additional arrests, such



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272 intent must be specified in the order. A criminal justice agency
273 may not seal any record pertaining to such additional arrests if
274 the order to seal does not articulate the intention of the court
275 to seal records pertaining to more than one arrest. This section
276 does not prevent the court from ordering the sealing of only a
277 portion of a criminal history record pertaining to one arrest or
278 one incident of alleged criminal activity. Notwithstanding any
279 law to the contrary, a criminal justice agency may comply with
280 laws, court orders, and official requests of other jurisdictions
281 relating to sealing, correction, or confidential handling of
282 criminal history records or information derived therefrom. This
283 section does not confer any right to the sealing of any criminal
284 history record, and any request for sealing a criminal history
285 record may be denied at the sole discretion of the court.

286 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
287 history record of a minor or an adult which is ordered sealed by
288 a court of competent jurisdiction pursuant to this section is
289 confidential and exempt from the provisions of s. 119.07(1) and
290 s. 24(a), Art. I of the State Constitution and is available only
291 to the person who is the subject of the record, to the subject's
292 attorney, to criminal justice agencies for their respective
293 criminal justice purposes, which include conducting a criminal
294 history background check for approval of firearms purchases or
295 transfers as authorized by state or federal law, to judges in
296 the state courts system for the purpose of assisting them in
297 their case-related decisionmaking responsibilities, as set forth
298 in s. 943.053(5), or to those entities set forth in
299 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
300 licensing, access authorization, and employment purposes.



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301 (a) The subject of a criminal history record sealed under
302 this section or under other provisions of law, including former
303 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
304 deny or fail to acknowledge the arrests covered by the sealed
305 record, except when the subject of the record:

306 1. Is a candidate for employment with a criminal justice
307 agency;

308 2. Is a defendant in a criminal prosecution;

309 3. Concurrently or subsequently petitions for relief under
310 this section, s. 943.0583, or s. 943.0585;

311 4. Is a candidate for admission to The Florida Bar;

312 5. Is seeking to be employed or licensed by or to contract
313 with the Department of Children and Families, the Division of
314 Vocational Rehabilitation within the Department of Education,
315 the Agency for Health Care Administration, the Agency for
316 Persons with Disabilities, the Department of Health, the
317 Department of Elderly Affairs, or the Department of Juvenile
318 Justice or to be employed or used by such contractor or licensee
319 in a sensitive position having direct contact with children, the
320 disabled, or the elderly;

321 6. Is seeking to be employed or licensed by the Department
322 of Education, any district school board, any university
323 laboratory school, any charter school, any private or parochial
324 school, or any local governmental entity that licenses child
325 care facilities; ~~or~~

326 7. Is attempting to purchase a firearm from a licensed
327 importer, licensed manufacturer, or licensed dealer and is
328 subject to a criminal history check under state or federal law;
329 or-



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330 8. Is seeking to be appointed as a guardian pursuant to s.
331 744.3125.

332 (c) Information relating to the existence of a sealed
333 criminal record provided in accordance with the provisions of
334 paragraph (a) is confidential and exempt from the provisions of
335 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
336 except that the department shall disclose the sealed criminal
337 history record to the entities set forth in subparagraphs (a)1.,
338 4., 5., 6., and 8. for their respective licensing, access
339 authorization, and employment purposes. It is unlawful for any
340 employee of an entity set forth in subparagraph (a)1.,
341 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
342 subparagraph (a)8. to disclose information relating to the
343 existence of a sealed criminal history record of a person
344 seeking employment, access authorization, or licensure with such
345 entity or contractor, except to the person to whom the criminal
346 history record relates or to persons having direct
347 responsibility for employment, access authorization, or
348 licensure decisions. Any person who violates the provisions of
349 this paragraph commits a misdemeanor of the first degree,
350 punishable as provided in s. 775.082 or s. 775.083.

351 Section 8. This act shall take effect July 1, 2014.

352
353 ===== T I T L E A M E N D M E N T =====

354 And the title is amended as follows:

355 Delete everything before the enacting clause
356 and insert:

357 A bill to be entitled

358 An act relating to guardianship; amending s. 744.102,



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359 F.S.; redefining the term "audit"; amending s.
360 744.3135, F.S.; revising the requirements and
361 authorizations of the court to require specified
362 guardians to submit to a credit history investigation
363 and background screening; authorizing a
364 nonprofessional guardian to petition the court for
365 reimbursement for the credit history investigation and
366 background screening; amending s. 744.368, F.S.;
367 authorizing a clerk of the court to obtain and review
368 records impacting guardianship assets and to issue
369 subpoenas to nonparties upon application to the court;
370 providing requirements for affidavits, notice, and
371 subpoenas; providing for objection to a subpoena;
372 amending s. 744.3685, F.S.; authorizing the court to
373 require the production of records and documents by a
374 guardian who fails to submit them during an audit;
375 amending s. 744.474, F.S.; providing for the removal
376 of a guardian for a bad faith failure to submit
377 records during an audit; amending ss. 943.0585 and
378 943.059, F.S.; providing that a person seeking an
379 appointment as guardian may not lawfully deny or fail
380 to acknowledge the arrests covered by an expunged or
381 sealed record; reenacting s. 943.0585(4)(c), F.S.,
382 relating to court-ordered expunction of criminal
383 history records, to incorporate the amendments made to
384 s. 943.0585, F.S., in a reference thereto; reenacting
385 s. 943.059(4)(c), relating to court-ordered sealing of
386 criminal history records, to incorporate the
387 amendments made to s. 943.059, F.S., in a reference



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thereto; providing an effective date.