

By Senator Brandes

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1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.102,
3 F.S.; redefining the term "audit"; amending s.
4 744.3135, F.S.; requiring a nonprofessional guardian
5 to submit to a credit history investigation and
6 background screening; amending s. 744.3678, F.S.;
7 authorizing the court to order an accounting of
8 property or a trust of which the ward is a beneficiary
9 but which is not under the administration or control
10 of the guardian; amending s. 744.368, F.S.;
11 authorizing the clerk to obtain and review records
12 impacting guardianship assets and to issue subpoenas
13 upon application to the court; amending s. 744.474,
14 F.S.; providing for the removal of a guardian for
15 failure to submit records during an audit; amending s.
16 943.059, F.S.; providing that a person seeking an
17 appointment as a guardian may not lawfully deny or
18 fail to acknowledge the arrests covered by a sealed
19 record; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (2) of section 744.102, Florida
24 Statutes, is amended to read:

25 744.102 Definitions.—As used in this chapter, the term:
26 (2) "Audit" means a systematic review of financial and ~~all~~
27 other documents to ensure compliance with s. 744.368, rules of
28 court, and local procedures using generally accepted accounting
29 principles. The term includes, but is not limited to, various

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30 practices that meet professional standards such as
31 verifications, reviews of substantiating papers and accounts,
32 interviews and hearings, inspections, and investigations.

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

35 744.3135 Credit and criminal investigation.—

36 (1) The court shall ~~may~~ require a nonprofessional guardian,
37 ~~and shall require~~ a professional guardian, or a public guardian,
38 and all employees of a professional guardian who have a
39 fiduciary responsibility to a ward, to submit, at their own
40 expense, to an investigation of the guardian's credit history
41 and to undergo level 2 background screening as required under s.
42 435.04. ~~If a credit or criminal history record check is~~
43 ~~required,~~ The court must consider the results of any
44 investigation before appointing a guardian. At any time, the
45 court may require a guardian or the guardian's employees to
46 submit to an investigation of the person's credit history and
47 complete a level 1 background screening pursuant to ~~as set forth~~
48 ~~in~~ s. 435.03. The court shall consider the results of any
49 investigation in determining whether to reappoint ~~when~~
50 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
51 file on each guardian appointed by the court and retain in the
52 file documentation of the result of any investigation conducted
53 under this section. A professional guardian shall ~~must~~ pay the
54 clerk of the court a fee of up to \$7.50 for handling and
55 processing professional guardian files.

56 Section 3. Paragraph (a) of subsection (2) of section
57 744.3678, Florida Statutes, is amended to read:

58 744.3678 Annual accounting.—

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59 (2) The annual accounting must include:

60 (a) A full and correct account of the receipts and
61 disbursements of all of the ward's property over which the
62 guardian has control and a statement of the ward's property on
63 hand at the end of the accounting period. This paragraph does
64 not apply to any property or any trust of which the ward is a
65 beneficiary but which is not under the control or administration
66 of the guardian unless an accounting is ordered by the court.

67 Section 4. Present subsections (2) through (4) of section
68 744.368, Florida Statutes, are redesignated as subsections (3)
69 through (5), respectively, and a new subsection (2) is added to
70 that section, to read:

71 744.368 Responsibilities of the clerk of the circuit
72 court.—

73 (2) The clerk may:

74 (a) At the direction of the court, obtain and review
75 records and documents that reasonably impact guardianship
76 assets, including, but not limited to, the beginning inventory
77 balance and any fees charged to the guardianship.

78 (b) Upon application to the court, exercise the power to
79 issue and serve subpoenas supported by affidavit to parties and
80 nonparties and compel the production of books, papers,
81 documents, and other evidence.

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

84 744.474 Reasons for removal of guardian.—A guardian may be
85 removed for any of the following reasons, and the removal shall
86 be in addition to any other penalties prescribed by law:

87 (21) Failure to submit guardianship records during the

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88 audit pursuant to s. 744.368.

89 Section 6. Paragraph (a) of subsection (4) of section
90 943.059, Florida Statutes, is amended to read:

91 943.059 Court-ordered sealing of criminal history records.-

92 The courts of this state shall continue to have jurisdiction
93 over their own procedures, including the maintenance, sealing,
94 and correction of judicial records containing criminal history
95 information to the extent such procedures are not inconsistent
96 with the conditions, responsibilities, and duties established by
97 this section. Any court of competent jurisdiction may order a
98 criminal justice agency to seal the criminal history record of a
99 minor or an adult who complies with the requirements of this
100 section. The court shall not order a criminal justice agency to
101 seal a criminal history record until the person seeking to seal
102 a criminal history record has applied for and received a
103 certificate of eligibility for sealing pursuant to subsection
104 (2). A criminal history record that relates to a violation of s.
105 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
106 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
107 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
108 916.1075, a violation enumerated in s. 907.041, or any violation
109 specified as a predicate offense for registration as a sexual
110 predator pursuant to s. 775.21, without regard to whether that
111 offense alone is sufficient to require such registration, or for
112 registration as a sexual offender pursuant to s. 943.0435, may
113 not be sealed, without regard to whether adjudication was
114 withheld, if the defendant was found guilty of or pled guilty or
115 nolo contendere to the offense, or if the defendant, as a minor,
116 was found to have committed or pled guilty or nolo contendere to

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117 committing the offense as a delinquent act. The court may only
118 order sealing of a criminal history record pertaining to one
119 arrest or one incident of alleged criminal activity, except as
120 provided in this section. The court may, at its sole discretion,
121 order the sealing of a criminal history record pertaining to
122 more than one arrest if the additional arrests directly relate
123 to the original arrest. If the court intends to order the
124 sealing of records pertaining to such additional arrests, such
125 intent must be specified in the order. A criminal justice agency
126 may not seal any record pertaining to such additional arrests if
127 the order to seal does not articulate the intention of the court
128 to seal records pertaining to more than one arrest. This section
129 does not prevent the court from ordering the sealing of only a
130 portion of a criminal history record pertaining to one arrest or
131 one incident of alleged criminal activity. Notwithstanding any
132 law to the contrary, a criminal justice agency may comply with
133 laws, court orders, and official requests of other jurisdictions
134 relating to sealing, correction, or confidential handling of
135 criminal history records or information derived therefrom. This
136 section does not confer any right to the sealing of any criminal
137 history record, and any request for sealing a criminal history
138 record may be denied at the sole discretion of the court.

139 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
140 history record of a minor or an adult which is ordered sealed by
141 a court of competent jurisdiction pursuant to this section is
142 confidential and exempt from the provisions of s. 119.07(1) and
143 s. 24(a), Art. I of the State Constitution and is available only
144 to the person who is the subject of the record, to the subject's
145 attorney, to criminal justice agencies for their respective

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146 criminal justice purposes, which include conducting a criminal
147 history background check for approval of firearms purchases or
148 transfers as authorized by state or federal law, to judges in
149 the state courts system for the purpose of assisting them in
150 their case-related decisionmaking responsibilities, as set forth
151 in s. 943.053(5), or to those entities set forth in
152 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
153 licensing, access authorization, and employment purposes.

154 (a) The subject of a criminal history record sealed under
155 this section or under other provisions of law, including former
156 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
157 deny or fail to acknowledge the arrests covered by the sealed
158 record, except when the subject of the record:

- 159 1. Is a candidate for employment with a criminal justice
160 agency;
- 161 2. Is a defendant in a criminal prosecution;
- 162 3. Concurrently or subsequently petitions for relief under
163 this section, s. 943.0583, or s. 943.0585;
- 164 4. Is a candidate for admission to The Florida Bar;
- 165 5. Is seeking to be employed or licensed by or to contract
166 with the Department of Children and Families, the Division of
167 Vocational Rehabilitation within the Department of Education,
168 the Agency for Health Care Administration, the Agency for
169 Persons with Disabilities, the Department of Health, the
170 Department of Elderly Affairs, or the Department of Juvenile
171 Justice or to be employed or used by such contractor or licensee
172 in a sensitive position having direct contact with children, the
173 disabled, or the elderly;
- 174 6. Is seeking to be employed or licensed by the Department

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175 of Education, any district school board, any university
176 laboratory school, any charter school, any private or parochial
177 school, or any local governmental entity that licenses child
178 care facilities; ~~or~~

179 7. Is attempting to purchase a firearm from a licensed
180 importer, licensed manufacturer, or licensed dealer and is
181 subject to a criminal history check under state or federal law;
182 or

183 8. Is seeking to be appointed as a guardian pursuant to s.
184 744.3125.

185 Section 7. This act shall take effect July 1, 2014.