

By the Committees on Appropriations; Judiciary; and Children, Families, and Elder Affairs; and Senator Brandes

576-04543-14

2014634c3

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.; revising the requirements and
5 authorizations of the court to require specified
6 guardians to submit to a credit history investigation
7 and background screening; authorizing the court to
8 waive a credit history investigation, background
9 screening, or both under certain circumstances;
10 authorizing a nonprofessional guardian to petition the
11 court for reimbursement for the credit history
12 investigation and background screening; amending s.
13 744.368, F.S.; authorizing a clerk of the court to
14 obtain and review records and documents relating to
15 guardianship assets and to issue subpoenas to
16 nonparties upon application to the court; providing
17 requirements for affidavits, notice, and subpoenas;
18 providing for objection to a subpoena; amending s.
19 744.3685, F.S.; authorizing the court to require the
20 production of records and documents by a guardian who
21 fails to submit them during an audit; amending s.
22 744.474, F.S.; providing for the removal of a guardian
23 for a bad faith failure to submit records during an
24 audit; amending ss. 943.0585 and 943.059, F.S.;
25 providing that a person seeking an appointment as
26 guardian may not lawfully deny or fail to acknowledge
27 the arrests covered by an expunged or sealed record;
28 reenacting s. 943.0585(4)(c), F.S., relating to court-
29 ordered expunction of criminal history records, to

576-04543-14

2014634c3

30 incorporate the amendments made to s. 943.0585, F.S.,
31 in a reference thereto; reenacting s. 943.059(4)(c),
32 F.S., relating to court-ordered sealing of criminal
33 history records, to incorporate the amendments made to
34 s. 943.059, F.S., in a reference thereto; providing an
35 effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Subsection (2) of section 744.102, Florida
40 Statutes, is amended to read:

41 744.102 Definitions.—As used in this chapter, the term:

42 (2) "Audit" means a systematic review of financial and all
43 other documents to ensure compliance with s. 744.368, rules of
44 court, and local procedures using generally accepted accounting
45 principles. The term includes various practices that meet
46 professional audit standards, such as verifications, reviews of
47 substantiating papers and accounts, interviews, inspections, and
48 investigations.

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

51 744.3135 Credit and criminal investigation.—

52 (1) The court shall require all persons who are seeking
53 appointment by the court, other than a corporate guardian as
54 described in s. 744.309(4) ~~may require a nonprofessional~~
55 ~~guardian and shall require a professional or public guardian,~~
56 and all employees of a professional guardian, other than a
57 corporate guardian as described in s. 744.309(4), who have a
58 fiduciary responsibility to a ward, to submit, at their own

576-04543-14

2014634c3

59 expense, to a an investigation of the guardian's credit history
60 investigation and to undergo level 2 background screening as
61 required under s. 435.04. On petition by any interested person
62 or on the court's own motion, the court may waive the
63 requirement of a credit history investigation or a level 2
64 background screening, or both. If appointed, a nonprofessional
65 guardian may petition the court for reimbursement of the
66 reasonable expenses of the credit history investigation and
67 background screening. ~~If a credit or criminal history record~~
68 ~~check is required,~~ The court must consider the results of any
69 investigation before appointing a guardian. At any time, the
70 court may require a guardian or the guardian's employees to
71 submit to an investigation of the person's credit history and
72 complete a level 1 background screening pursuant to as set forth
73 ~~in~~ s. 435.03. The court shall consider the results of any
74 investigation in determining whether to reappoint when
75 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
76 file on each guardian appointed by the court and retain in the
77 file documentation of the result of any investigation conducted
78 under this section. A professional guardian shall ~~must~~ pay the
79 clerk of the court a fee of up to \$7.50 for handling and
80 processing professional guardian files.

81 Section 3. Subsections (5) through (7) are added to section
82 744.368, Florida Statutes, to read:

83 744.368 Responsibilities of the clerk of the circuit
84 court.—

85 (5) If the clerk has reason to believe further review is
86 appropriate, the clerk may request and review records and
87 documents that reasonably relate to the guardianship assets,

576-04543-14

2014634c3

88 including, but not limited to, the beginning inventory balance
89 and any fees charged to the guardianship.

90 (6) If a guardian fails to produce records or documents to
91 the clerk upon request, the clerk may request the court to enter
92 an order pursuant to s. 744.3685(2) by filing an affidavit that
93 identifies the records or documents requested and shows good
94 cause as to why the records or documents requested should be
95 produced.

96 (7) Upon application to the court supported by an affidavit
97 pursuant to subsection (6), the clerk may issue subpoenas to
98 nonparties to compel production of records or documents. Before
99 issuance of a subpoena by affidavit, the clerk must serve notice
100 on the guardian and the ward, unless the ward is a minor or
101 totally incapacitated, of the intent to serve subpoenas to
102 nonparties.

103 (a) The clerk must attach the affidavit and the proposed
104 subpoena to the notice to the guardian and, if appropriate, to
105 the ward. The notice must:

106 1. State the time, place, and method for production of the
107 records or documents, and the name and address of the person who
108 is to produce the documents or items, if known, or if not known,
109 a general description sufficient to identify the person or the
110 particular class or group to which the person belongs;

111 2. Include a designation of the records or documents to be
112 produced; and

113 3. State that the person who will be asked to produce the
114 records or documents has the right to object to the production
115 under this section and that the person is not required to
116 surrender the records or documents.

576-04543-14

2014634c3

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

119 (c) If the guardian or ward serves an objection to
120 production under this subsection within 10 days after service of
121 the notice, the records or documents may not be required to be
122 produced until resolution of the objection. If an objection is
123 not made within 10 days after service of the notice, the clerk
124 may issue the subpoena to the nonparty. The court may shorten
125 the period within which a guardian or ward must file an
126 objection if the clerk's affidavit shows that the ward's
127 property is in danger of being wasted, misappropriated, or lost
128 unless immediate action is taken.

129 Section 4. Section 744.3685, Florida Statutes, is amended
130 to read:

131 744.3685 Order requiring guardianship report; contempt.—

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

136 (2) If a guardian fails to comply with the submission of
137 records or documents requested by the clerk during the audit,
138 upon a showing of good cause by affidavit of the clerk which
139 shows the reasons the records must be produced, the court may
140 order the guardian to produce the records or documents within a
141 period specified by the court unless the guardian shows good
142 cause as to why the guardian may not be compelled to do so
143 before the deadline specified by the court. The affidavit of the
144 clerk shall be served with the order.

145 (3) A copy of an ~~the~~ order entered pursuant to subsection

576-04543-14

2014634c3

146 (1) or subsection (2) shall be served on the guardian or on the
147 guardian's resident agent. If the guardian fails to comply with
148 the order file her or his report within the time specified by
149 the order without good cause, the court may cite the guardian
150 for contempt of court and may fine her or him. The fine may not
151 be paid out of the ward's property.

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

154 744.474 Reasons for removal of guardian.—A guardian may be
155 removed for any of the following reasons, and the removal shall
156 be in addition to any other penalties prescribed by law:

157 (21) The failure in bad faith to submit a guardianship
158 record during the audit pursuant to s. 744.368.

159 Section 6. Paragraph (a) of subsection (4) of section
160 943.0585, Florida Statutes, is amended, and paragraph (c) of
161 that subsection is reenacted, to read:

162 943.0585 Court-ordered expunction of criminal history
163 records.—The courts of this state have jurisdiction over their
164 own procedures, including the maintenance, expunction, and
165 correction of judicial records containing criminal history
166 information to the extent such procedures are not inconsistent
167 with the conditions, responsibilities, and duties established by
168 this section. Any court of competent jurisdiction may order a
169 criminal justice agency to expunge the criminal history record
170 of a minor or an adult who complies with the requirements of
171 this section. The court shall not order a criminal justice
172 agency to expunge a criminal history record until the person
173 seeking to expunge a criminal history record has applied for and
174 received a certificate of eligibility for expunction pursuant to

576-04543-14

2014634c3

175 subsection (2). A criminal history record that relates to a
176 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
177 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
178 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
179 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
180 any violation specified as a predicate offense for registration
181 as a sexual predator pursuant to s. 775.21, without regard to
182 whether that offense alone is sufficient to require such
183 registration, or for registration as a sexual offender pursuant
184 to s. 943.0435, may not be expunged, without regard to whether
185 adjudication was withheld, if the defendant was found guilty of
186 or pled guilty or nolo contendere to the offense, or if the
187 defendant, as a minor, was found to have committed, or pled
188 guilty or nolo contendere to committing, the offense as a
189 delinquent act. The court may only order expunction of a
190 criminal history record pertaining to one arrest or one incident
191 of alleged criminal activity, except as provided in this
192 section. The court may, at its sole discretion, order the
193 expunction of a criminal history record pertaining to more than
194 one arrest if the additional arrests directly relate to the
195 original arrest. If the court intends to order the expunction of
196 records pertaining to such additional arrests, such intent must
197 be specified in the order. A criminal justice agency may not
198 expunge any record pertaining to such additional arrests if the
199 order to expunge does not articulate the intention of the court
200 to expunge a record pertaining to more than one arrest. This
201 section does not prevent the court from ordering the expunction
202 of only a portion of a criminal history record pertaining to one
203 arrest or one incident of alleged criminal activity.

576-04543-14

2014634c3

204 Notwithstanding any law to the contrary, a criminal justice
205 agency may comply with laws, court orders, and official requests
206 of other jurisdictions relating to expunction, correction, or
207 confidential handling of criminal history records or information
208 derived therefrom. This section does not confer any right to the
209 expunction of any criminal history record, and any request for
210 expunction of a criminal history record may be denied at the
211 sole discretion of the court.

212 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
213 criminal history record of a minor or an adult which is ordered
214 expunged by a court of competent jurisdiction pursuant to this
215 section must be physically destroyed or obliterated by any
216 criminal justice agency having custody of such record; except
217 that any criminal history record in the custody of the
218 department must be retained in all cases. A criminal history
219 record ordered expunged that is retained by the department is
220 confidential and exempt from the provisions of s. 119.07(1) and
221 s. 24(a), Art. I of the State Constitution and not available to
222 any person or entity except upon order of a court of competent
223 jurisdiction. A criminal justice agency may retain a notation
224 indicating compliance with an order to expunge.

225 (a) The person who is the subject of a criminal history
226 record that is expunged under this section or under other
227 provisions of law, including former s. 893.14, former s. 901.33,
228 and former s. 943.058, may lawfully deny or fail to acknowledge
229 the arrests covered by the expunged record, except when the
230 subject of the record:

231 1. Is a candidate for employment with a criminal justice
232 agency;

576-04543-14

2014634c3

- 233 2. Is a defendant in a criminal prosecution;
- 234 3. Concurrently or subsequently petitions for relief under
235 this section, s. 943.0583, or s. 943.059;
- 236 4. Is a candidate for admission to The Florida Bar;
- 237 5. Is seeking to be employed or licensed by or to contract
238 with the Department of Children and Families, the Division of
239 Vocational Rehabilitation within the Department of Education,
240 the Agency for Health Care Administration, the Agency for
241 Persons with Disabilities, the Department of Health, the
242 Department of Elderly Affairs, or the Department of Juvenile
243 Justice or to be employed or used by such contractor or licensee
244 in a sensitive position having direct contact with children, the
245 disabled, or the elderly; ~~or~~
- 246 6. Is seeking to be employed or licensed by the Department
247 of Education, any district school board, any university
248 laboratory school, any charter school, any private or parochial
249 school, or any local governmental entity that licenses child
250 care facilities; or.
- 251 7. Is seeking to be appointed as a guardian pursuant to s.
252 744.3125.
- 253 (c) Information relating to the existence of an expunged
254 criminal history record which is provided in accordance with
255 paragraph (a) is confidential and exempt from the provisions of
256 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
257 except that the department shall disclose the existence of a
258 criminal history record ordered expunged to the entities set
259 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
260 respective licensing, access authorization, and employment
261 purposes, and to criminal justice agencies for their respective

576-04543-14

2014634c3

262 criminal justice purposes. It is unlawful for any employee of an
263 entity set forth in subparagraph (a)1., subparagraph (a)4.,
264 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
265 disclose information relating to the existence of an expunged
266 criminal history record of a person seeking employment, access
267 authorization, or licensure with such entity or contractor,
268 except to the person to whom the criminal history record relates
269 or to persons having direct responsibility for employment,
270 access authorization, or licensure decisions. Any person who
271 violates this paragraph commits a misdemeanor of the first
272 degree, punishable as provided in s. 775.082 or s. 775.083.

273 Section 7. Paragraph (a) of subsection (4) of section
274 943.059, Florida Statutes, is amended, and paragraph (c) of that
275 subsection is reenacted, to read:

276 943.059 Court-ordered sealing of criminal history records.-
277 The courts of this state shall continue to have jurisdiction
278 over their own procedures, including the maintenance, sealing,
279 and correction of judicial records containing criminal history
280 information to the extent such procedures are not inconsistent
281 with the conditions, responsibilities, and duties established by
282 this section. Any court of competent jurisdiction may order a
283 criminal justice agency to seal the criminal history record of a
284 minor or an adult who complies with the requirements of this
285 section. The court shall not order a criminal justice agency to
286 seal a criminal history record until the person seeking to seal
287 a criminal history record has applied for and received a
288 certificate of eligibility for sealing pursuant to subsection
289 (2). A criminal history record that relates to a violation of s.
290 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.

576-04543-14

2014634c3

291 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
292 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
293 916.1075, a violation enumerated in s. 907.041, or any violation
294 specified as a predicate offense for registration as a sexual
295 predator pursuant to s. 775.21, without regard to whether that
296 offense alone is sufficient to require such registration, or for
297 registration as a sexual offender pursuant to s. 943.0435, may
298 not be sealed, without regard to whether adjudication was
299 withheld, if the defendant was found guilty of or pled guilty or
300 nolo contendere to the offense, or if the defendant, as a minor,
301 was found to have committed or pled guilty or nolo contendere to
302 committing the offense as a delinquent act. The court may only
303 order sealing of a criminal history record pertaining to one
304 arrest or one incident of alleged criminal activity, except as
305 provided in this section. The court may, at its sole discretion,
306 order the sealing of a criminal history record pertaining to
307 more than one arrest if the additional arrests directly relate
308 to the original arrest. If the court intends to order the
309 sealing of records pertaining to such additional arrests, such
310 intent must be specified in the order. A criminal justice agency
311 may not seal any record pertaining to such additional arrests if
312 the order to seal does not articulate the intention of the court
313 to seal records pertaining to more than one arrest. This section
314 does not prevent the court from ordering the sealing of only a
315 portion of a criminal history record pertaining to one arrest or
316 one incident of alleged criminal activity. Notwithstanding any
317 law to the contrary, a criminal justice agency may comply with
318 laws, court orders, and official requests of other jurisdictions
319 relating to sealing, correction, or confidential handling of

576-04543-14

2014634c3

320 criminal history records or information derived therefrom. This
321 section does not confer any right to the sealing of any criminal
322 history record, and any request for sealing a criminal history
323 record may be denied at the sole discretion of the court.

324 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
325 history record of a minor or an adult which is ordered sealed by
326 a court of competent jurisdiction pursuant to this section is
327 confidential and exempt from the provisions of s. 119.07(1) and
328 s. 24(a), Art. I of the State Constitution and is available only
329 to the person who is the subject of the record, to the subject's
330 attorney, to criminal justice agencies for their respective
331 criminal justice purposes, which include conducting a criminal
332 history background check for approval of firearms purchases or
333 transfers as authorized by state or federal law, to judges in
334 the state courts system for the purpose of assisting them in
335 their case-related decisionmaking responsibilities, as set forth
336 in s. 943.053(5), or to those entities set forth in
337 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
338 licensing, access authorization, and employment purposes.

339 (a) The subject of a criminal history record sealed under
340 this section or under other provisions of law, including former
341 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
342 deny or fail to acknowledge the arrests covered by the sealed
343 record, except when the subject of the record:

- 344 1. Is a candidate for employment with a criminal justice
345 agency;
- 346 2. Is a defendant in a criminal prosecution;
- 347 3. Concurrently or subsequently petitions for relief under
348 this section, s. 943.0583, or s. 943.0585;

576-04543-14

2014634c3

- 349 4. Is a candidate for admission to The Florida Bar;
- 350 5. Is seeking to be employed or licensed by or to contract
351 with the Department of Children and Families, the Division of
352 Vocational Rehabilitation within the Department of Education,
353 the Agency for Health Care Administration, the Agency for
354 Persons with Disabilities, the Department of Health, the
355 Department of Elderly Affairs, or the Department of Juvenile
356 Justice or to be employed or used by such contractor or licensee
357 in a sensitive position having direct contact with children, the
358 disabled, or the elderly;
- 359 6. Is seeking to be employed or licensed by the Department
360 of Education, any district school board, any university
361 laboratory school, any charter school, any private or parochial
362 school, or any local governmental entity that licenses child
363 care facilities; ~~or~~
- 364 7. Is attempting to purchase a firearm from a licensed
365 importer, licensed manufacturer, or licensed dealer and is
366 subject to a criminal history check under state or federal law;
367 or
- 368 8. Is seeking to be appointed as a guardian pursuant to s.
369 744.3125.
- 370 (c) Information relating to the existence of a sealed
371 criminal record provided in accordance with the provisions of
372 paragraph (a) is confidential and exempt from the provisions of
373 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
374 except that the department shall disclose the sealed criminal
375 history record to the entities set forth in subparagraphs (a)1.,
376 4., 5., 6., and 8. for their respective licensing, access
377 authorization, and employment purposes. It is unlawful for any

576-04543-14

2014634c3

378 employee of an entity set forth in subparagraph (a)1.,
379 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
380 subparagraph (a)8. to disclose information relating to the
381 existence of a sealed criminal history record of a person
382 seeking employment, access authorization, or licensure with such
383 entity or contractor, except to the person to whom the criminal
384 history record relates or to persons having direct
385 responsibility for employment, access authorization, or
386 licensure decisions. Any person who violates the provisions of
387 this paragraph commits a misdemeanor of the first degree,
388 punishable as provided in s. 775.082 or s. 775.083.

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