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CS/HB 635

2014 Legislature

1
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 provisions relating to the
5 requirements for and court authority concerning
6 requirements for specified guardians to submit to a
7 credit history investigation and background screening;
8 authorizing a nonprofessional guardian to petition the
9 court for reimbursement for the costs of a credit
10 history investigation and background screening;
11 amending s. 744.368, F.S.; authorizing a clerk of the
12 court to obtain and review records impacting
13 guardianship assets and to issue subpoenas to
14 nonparties upon application to the court; providing
15 requirements for affidavits, notice, and subpoenas;
16 providing for objection to a subpoena; amending s.
17 744.3685, F.S.; authorizing the court to require the
18 production of records and documents by a guardian who
19 fails to submit them during an audit; amending s.
20 744.474, F.S.; providing for the removal of a guardian
21 for a bad faith failure to submit guardianship records
22 during an audit; amending ss. 943.0585 and 943.059,
23 F.S.; providing that a person seeking an appointment
24 as guardian may not lawfully deny or fail to
25 acknowledge the arrests covered by an expunged or
26 sealed record; reenacting s. 943.0585(4)(c), F.S.,

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

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

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

39 744.102 Definitions.—As used in this chapter, the term:

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

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

49 744.3135 Credit and criminal investigation.—

50 (1) The court shall require all guardians who are seeking
 51 appointment by the court, other than a corporate guardian as
 52 described in s. 744.309(4), ~~may require a nonprofessional~~

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53 ~~guardian and shall require a professional or public guardian,~~
54 and all employees of a professional guardian, other than a
55 corporate guardian as described in s. 744.309(4), who have a
56 fiduciary responsibility to a ward, to submit, at their own
57 expense, to a ~~an investigation of the guardian's~~ credit history
58 investigation and to undergo level 2 background screening as
59 required under s. 435.04. On petition by any interested person
60 or on the court's own motion, the court may waive the
61 requirement of a credit history investigation or a level 2
62 background screening, or both. If appointed, a nonprofessional
63 guardian may petition the court for reimbursement of the
64 reasonable expenses of the credit history investigation and
65 background screening. ~~If a credit or criminal history record~~
66 ~~check is required,~~ The court must consider the results of any
67 investigation before appointing a guardian. At any time, the
68 court may require a guardian or the guardian's employees to
69 submit to an investigation of the person's credit history and
70 complete a level 1 or level 2 background screening pursuant to
71 ~~as set forth in~~ s. 435.03. The court shall consider the results
72 of any investigation in determining whether to reappoint ~~when~~
73 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
74 file on each guardian appointed by the court and retain in the
75 file documentation of the result of any investigation conducted
76 under this section. A professional guardian shall ~~must~~ pay the
77 clerk of the court a fee of up to \$7.50 for handling and
78 processing professional guardian files.

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

81 744.368 Responsibilities of the clerk of the circuit
82 court.—

83 (5) If the clerk has reason to believe further review is
84 appropriate, the clerk may request and review records and
85 documents that reasonably impact guardianship assets, including,
86 but not limited to, the beginning inventory balance and any fees
87 charged to the guardianship.

88 (6) If a guardian fails to produce records and documents
89 to the clerk upon request, the clerk may request the court to
90 enter an order pursuant to s. 744.3685(2) by filing an affidavit
91 that identifies the records and documents requested and shows
92 good cause as to why the documents and records requested are
93 needed to complete the audit.

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

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

104 1. State the time, place, and method for production of the

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105 documents or items, and the name and address of the person who
 106 is to produce the documents or items, if known, or, if not
 107 known, a general description sufficient to identify the person
 108 or the particular class or group to which the person belongs.

109 2. Include a designation of the items to be produced.

110 3. State that the person who will be asked to produce the
 111 documents or items has the right to object to the production
 112 under this section and that the person is not required to
 113 surrender the documents or items.

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

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

126 Section 4. Section 744.3685, Florida Statutes, is amended
 127 to read:

128 744.3685 Order requiring guardianship report; contempt.—

129 (1) If ~~When~~ a guardian fails to file the guardianship
 130 report, the court shall order the guardian to file the report

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131 within 15 days after the service of the order upon her or him or
 132 show cause why she or he may ~~should~~ not be compelled to do so.

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

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

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

151 744.474 Reasons for removal of guardian.—A guardian may be
 152 removed for any of the following reasons, and the removal shall
 153 be in addition to any other penalties prescribed by law:

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

156 Section 6. Paragraph (a) of subsection (4) of section

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157 943.0585, Florida Statutes, is amended, and paragraph (c) of
158 that subsection is reenacted, to read:

159 943.0585 Court-ordered expunction of criminal history
160 records.—The courts of this state have jurisdiction over their
161 own procedures, including the maintenance, expunction, and
162 correction of judicial records containing criminal history
163 information to the extent such procedures are not inconsistent
164 with the conditions, responsibilities, and duties established by
165 this section. Any court of competent jurisdiction may order a
166 criminal justice agency to expunge the criminal history record
167 of a minor or an adult who complies with the requirements of
168 this section. The court shall not order a criminal justice
169 agency to expunge a criminal history record until the person
170 seeking to expunge a criminal history record has applied for and
171 received a certificate of eligibility for expunction pursuant to
172 subsection (2). A criminal history record that relates to a
173 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
174 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
175 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
176 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
177 any violation specified as a predicate offense for registration
178 as a sexual predator pursuant to s. 775.21, without regard to
179 whether that offense alone is sufficient to require such
180 registration, or for registration as a sexual offender pursuant
181 to s. 943.0435, may not be expunged, without regard to whether
182 adjudication was withheld, if the defendant was found guilty of

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183 or pled guilty or nolo contendere to the offense, or if the
184 defendant, as a minor, was found to have committed, or pled
185 guilty or nolo contendere to committing, the offense as a
186 delinquent act. The court may only order expunction of a
187 criminal history record pertaining to one arrest or one incident
188 of alleged criminal activity, except as provided in this
189 section. The court may, at its sole discretion, order the
190 expunction of a criminal history record pertaining to more than
191 one arrest if the additional arrests directly relate to the
192 original arrest. If the court intends to order the expunction of
193 records pertaining to such additional arrests, such intent must
194 be specified in the order. A criminal justice agency may not
195 expunge any record pertaining to such additional arrests if the
196 order to expunge does not articulate the intention of the court
197 to expunge a record pertaining to more than one arrest. This
198 section does not prevent the court from ordering the expunction
199 of only a portion of a criminal history record pertaining to one
200 arrest or one incident of alleged criminal activity.
201 Notwithstanding any law to the contrary, a criminal justice
202 agency may comply with laws, court orders, and official requests
203 of other jurisdictions relating to expunction, correction, or
204 confidential handling of criminal history records or information
205 derived therefrom. This section does not confer any right to the
206 expunction of any criminal history record, and any request for
207 expunction of a criminal history record may be denied at the
208 sole discretion of the court.

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

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

- 228 1. Is a candidate for employment with a criminal justice
 229 agency;
- 230 2. Is a defendant in a criminal prosecution;
- 231 3. Concurrently or subsequently petitions for relief under
 232 this section, s. 943.0583, or s. 943.059;
- 233 4. Is a candidate for admission to The Florida Bar;
- 234 5. Is seeking to be employed or licensed by or to contract

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235 with the Department of Children and Families, the Division of
 236 Vocational Rehabilitation within the Department of Education,
 237 the Agency for Health Care Administration, the Agency for
 238 Persons with Disabilities, the Department of Health, the
 239 Department of Elderly Affairs, or the Department of Juvenile
 240 Justice or to be employed or used by such contractor or licensee
 241 in a sensitive position having direct contact with children, the
 242 disabled, or the elderly; ~~or~~

243 6. Is seeking to be employed or licensed by the Department
 244 of Education, any district school board, any university
 245 laboratory school, any charter school, any private or parochial
 246 school, or any local governmental entity that licenses child
 247 care facilities; or

248 7. Is seeking to be appointed as a guardian pursuant to s.
 249 744.3125.

250 (c) Information relating to the existence of an expunged
 251 criminal history record which is provided in accordance with
 252 paragraph (a) is confidential and exempt from the provisions of
 253 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 254 except that the department shall disclose the existence of a
 255 criminal history record ordered expunged to the entities set
 256 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 257 respective licensing, access authorization, and employment
 258 purposes, and to criminal justice agencies for their respective
 259 criminal justice purposes. It is unlawful for any employee of an
 260 entity set forth in subparagraph (a)1., subparagraph (a)4.,

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

270 Section 7. Paragraph (a) of subsection (4) of section
271 943.059, Florida Statutes, is amended, and paragraph (c) of that
272 subsection is reenacted, to read:

273 943.059 Court-ordered sealing of criminal history
274 records.—The courts of this state shall continue to have
275 jurisdiction over their own procedures, including the
276 maintenance, sealing, and correction of judicial records
277 containing criminal history information to the extent such
278 procedures are not inconsistent with the conditions,
279 responsibilities, and duties established by this section. Any
280 court of competent jurisdiction may order a criminal justice
281 agency to seal the criminal history record of a minor or an
282 adult who complies with the requirements of this section. The
283 court shall not order a criminal justice agency to seal a
284 criminal history record until the person seeking to seal a
285 criminal history record has applied for and received a
286 certificate of eligibility for sealing pursuant to subsection

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287 (2). A criminal history record that relates to a violation of s.
288 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
289 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
290 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
291 916.1075, a violation enumerated in s. 907.041, or any violation
292 specified as a predicate offense for registration as a sexual
293 predator pursuant to s. 775.21, without regard to whether that
294 offense alone is sufficient to require such registration, or for
295 registration as a sexual offender pursuant to s. 943.0435, may
296 not be sealed, without regard to whether adjudication was
297 withheld, if the defendant was found guilty of or pled guilty or
298 nolo contendere to the offense, or if the defendant, as a minor,
299 was found to have committed or pled guilty or nolo contendere to
300 committing the offense as a delinquent act. The court may only
301 order sealing of a criminal history record pertaining to one
302 arrest or one incident of alleged criminal activity, except as
303 provided in this section. The court may, at its sole discretion,
304 order the sealing of a criminal history record pertaining to
305 more than one arrest if the additional arrests directly relate
306 to the original arrest. If the court intends to order the
307 sealing of records pertaining to such additional arrests, such
308 intent must be specified in the order. A criminal justice agency
309 may not seal any record pertaining to such additional arrests if
310 the order to seal does not articulate the intention of the court
311 to seal records pertaining to more than one arrest. This section
312 does not prevent the court from ordering the sealing of only a

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313 portion of a criminal history record pertaining to one arrest or
314 one incident of alleged criminal activity. Notwithstanding any
315 law to the contrary, a criminal justice agency may comply with
316 laws, court orders, and official requests of other jurisdictions
317 relating to sealing, correction, or confidential handling of
318 criminal history records or information derived therefrom. This
319 section does not confer any right to the sealing of any criminal
320 history record, and any request for sealing a criminal history
321 record may be denied at the sole discretion of the court.

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

337 (a) The subject of a criminal history record sealed under
338 this section or under other provisions of law, including former

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339 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 340 deny or fail to acknowledge the arrests covered by the sealed
 341 record, except when the subject of the record:

342 1. Is a candidate for employment with a criminal justice
 343 agency;

344 2. Is a defendant in a criminal prosecution;

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

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

348 5. Is seeking to be employed or licensed by or to contract
 349 with the Department of Children and Families, the Division of
 350 Vocational Rehabilitation within the Department of Education,
 351 the Agency for Health Care Administration, the Agency for
 352 Persons with Disabilities, the Department of Health, the
 353 Department of Elderly Affairs, or the Department of Juvenile
 354 Justice or to be employed or used by such contractor or licensee
 355 in a sensitive position having direct contact with children, the
 356 disabled, or the elderly;

357 6. Is seeking to be employed or licensed by the Department
 358 of Education, any district school board, any university
 359 laboratory school, any charter school, any private or parochial
 360 school, or any local governmental entity that licenses child
 361 care facilities; ~~or~~

362 7. Is attempting to purchase a firearm from a licensed
 363 importer, licensed manufacturer, or licensed dealer and is
 364 subject to a criminal history check under state or federal law;

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365 or366 8. Is seeking to be appointed as a guardian pursuant to s.
367 744.3125.

368 (c) Information relating to the existence of a sealed
369 criminal record provided in accordance with the provisions of
370 paragraph (a) is confidential and exempt from the provisions of
371 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
372 except that the department shall disclose the sealed criminal
373 history record to the entities set forth in subparagraphs (a)1.,
374 4., 5., 6., and 8. for their respective licensing, access
375 authorization, and employment purposes. It is unlawful for any
376 employee of an entity set forth in subparagraph (a)1.,
377 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
378 subparagraph (a)8. to disclose information relating to the
379 existence of a sealed criminal history record of a person
380 seeking employment, access authorization, or licensure with such
381 entity or contractor, except to the person to whom the criminal
382 history record relates or to persons having direct
383 responsibility for employment, access authorization, or
384 licensure decisions. Any person who violates the provisions of
385 this paragraph commits a misdemeanor of the first degree,
386 punishable as provided in s. 775.082 or s. 775.083.

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