

A bill to be entitled

An act relating to guardianship; amending s. 744.102, F.S.; redefining the term "audit"; amending s. 744.3135, F.S.; requiring a nonprofessional guardian to submit to a credit history investigation and background screening; amending s. 744.3678, F.S.; authorizing the court to order an accounting of property or a trust of which the ward is a beneficiary but which is not under the administration or control of the guardian; amending s. 744.368, F.S.; authorizing the clerk to obtain and review records impacting guardianship assets and to issue subpoenas upon application to the court; amending s. 744.474, F.S.; providing for the removal of a guardian for failure to submit records during an audit; amending s. 943.059, F.S.; providing that a person seeking an appointment as a guardian may not lawfully deny or fail to acknowledge the arrests covered by a sealed record; providing an effective date.

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

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~~

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  
 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  
 37 guardian, ~~and shall require~~ a professional guardian, or a public  
 38 guardian, and all employees of a professional guardian who have  
 39 a 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.—

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  
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  
92 records.—The courts of this state shall continue to have  
93 jurisdiction over their own procedures, including the  
94 maintenance, sealing, and correction of judicial records  
95 containing criminal history information to the extent such  
96 procedures are not inconsistent with the conditions,  
97 responsibilities, and duties established by this section. Any  
98 court of competent jurisdiction may order a criminal justice  
99 agency to seal the criminal history record of a minor or an  
100 adult who complies with the requirements of this section. The  
101 court shall not order a criminal justice agency to seal a  
102 criminal history record until the person seeking to seal a  
103 criminal history record has applied for and received a  
104 certificate of eligibility for sealing pursuant to subsection

105 (2). A criminal history record that relates to a violation of s.  
106 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
107 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
108 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
109 916.1075, a violation enumerated in s. 907.041, or any violation  
110 specified as a predicate offense for registration as a sexual  
111 predator pursuant to s. 775.21, without regard to whether that  
112 offense alone is sufficient to require such registration, or for  
113 registration as a sexual offender pursuant to s. 943.0435, may  
114 not be sealed, without regard to whether adjudication was  
115 withheld, if the defendant was found guilty of or pled guilty or  
116 nolo contendere to the offense, or if the defendant, as a minor,  
117 was found to have committed or pled guilty or nolo contendere to  
118 committing the offense as a delinquent act. The court may only  
119 order sealing of a criminal history record pertaining to one  
120 arrest or one incident of alleged criminal activity, except as  
121 provided in this section. The court may, at its sole discretion,  
122 order the sealing of a criminal history record pertaining to  
123 more than one arrest if the additional arrests directly relate  
124 to the original arrest. If the court intends to order the  
125 sealing of records pertaining to such additional arrests, such  
126 intent must be specified in the order. A criminal justice agency  
127 may not seal any record pertaining to such additional arrests if  
128 the order to seal does not articulate the intention of the court  
129 to seal records pertaining to more than one arrest. This section  
130 does not prevent the court from ordering the sealing of only a

131 portion of a criminal history record pertaining to one arrest or  
132 one incident of alleged criminal activity. Notwithstanding any  
133 law to the contrary, a criminal justice agency may comply with  
134 laws, court orders, and official requests of other jurisdictions  
135 relating to sealing, correction, or confidential handling of  
136 criminal history records or information derived therefrom. This  
137 section does not confer any right to the sealing of any criminal  
138 history record, and any request for sealing a criminal history  
139 record may be denied at the sole discretion of the court.

140 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
141 history record of a minor or an adult which is ordered sealed by  
142 a court of competent jurisdiction pursuant to this section is  
143 confidential and exempt from the provisions of s. 119.07(1) and  
144 s. 24(a), Art. I of the State Constitution and is available only  
145 to the person who is the subject of the record, to the subject's  
146 attorney, to criminal justice agencies for their respective  
147 criminal justice purposes, which include conducting a criminal  
148 history background check for approval of firearms purchases or  
149 transfers as authorized by state or federal law, to judges in  
150 the state courts system for the purpose of assisting them in  
151 their case-related decisionmaking responsibilities, as set forth  
152 in s. 943.053(5), or to those entities set forth in  
153 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
154 licensing, access authorization, and employment purposes.

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

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

160 1. Is a candidate for employment with a criminal justice  
 161 agency;

162 2. Is a defendant in a criminal prosecution;

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

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

166 5. Is seeking to be employed or licensed by or to contract  
 167 with the Department of Children and Families, the Division of  
 168 Vocational Rehabilitation within the Department of Education,  
 169 the Agency for Health Care Administration, the Agency for  
 170 Persons with Disabilities, the Department of Health, the  
 171 Department of Elderly Affairs, or the Department of Juvenile  
 172 Justice or to be employed or used by such contractor or licensee  
 173 in a sensitive position having direct contact with children, the  
 174 disabled, or the elderly;

175 6. Is seeking to be employed or licensed by the Department  
 176 of Education, any district school board, any university  
 177 laboratory school, any charter school, any private or parochial  
 178 school, or any local governmental entity that licenses child  
 179 care facilities; ~~or~~

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

HB 635

2014

183 | or

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

185 | 744.3125.

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