

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 258

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: Change of Name

DATE: February 6, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi/Maclure	Maclure	JU	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill, with some exceptions, requires persons seeking to change their names to have a state and national criminal history records check as a required element of the statutory name change petition process.

This bill substantially amends section 68.07, Florida Statutes.

II. Present Situation:

“At common law a person could adopt another name at will, absent a fraudulent, criminal, or wrongful purpose.”¹ That right is largely preserved in s. 68.07, F.S.² However, the statutory process provides the “advantage of a public record to document the [name] change.”³

¹ *Isom v. Circuit Court of the Tenth Judicial Circuit*, 437 So. 2d 732, 733 (Fla. 2d DCA 1983) (citing *Moskowitz v. Moskowitz*, 385 A.2d 120 (N.H. 1978)).

² See also Fla. Fam. L. Form 12.982(a)-(g).

³ *Isom*, 437 So. 2d at 733.

Under s. 68.07(2), F.S., a person, with some exceptions, who seeks to change his or her name must file with a court a petition under oath along with a set of fingerprints. The petition must show:

(a) That petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.

(b) If known, the date and place of birth of petitioner, petitioner's father's name, mother's maiden name, and where petitioner has resided since birth.

(c) If petitioner is married, the name of petitioner's spouse and if petitioner has children, the names and ages of each and where they reside.

(d) If petitioner's name has previously been changed and when and where and by what court.

(e) Petitioner's occupation and where petitioner is employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, the profession shall be stated, where the petitioner has practiced the profession and if a graduate of a school or schools, the name or names thereof, time of graduation, and degrees received.

(f) Whether the petitioner has been generally known or called by any other names and if so, by what names and where.

(g) Whether petitioner has ever been adjudicated a bankrupt and if so, where and when.

(h) Whether petitioner has ever been arrested for or charged with, pled guilty or nolo contendere to, or been found to have committed a criminal offense, regardless of adjudication, and if so, when and where.

(i) Whether any money judgment has ever been entered against petitioner and if so, the name of the judgment creditor, the amount and date thereof, the court by which entered, and whether the judgment has been satisfied.

(j) That the petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.

(k) That the petitioner's civil rights have never been suspended, or if the petitioner's civil rights have been suspended, that full restoration of civil rights has occurred.⁴

After a court rules on the name change petition, the clerk of court must send a report of the judgment, including the fingerprints, to the Florida Department of Law Enforcement (FDLE). A copy of the report must be sent by FDLE to the Department of Highway Safety and Motor Vehicles (DHSMV). The report will enable FDLE and DHSMV to revise their records to reflect the name change. With respect to a person convicted of a felony in another state or of a federal offense, FDLE must send the report to the respective state's office of law enforcement records or

⁴ This final element appears to be a dispositive factor under case law. See *In re Harris*, 976 So. 2d 668, 668 (Fla. 2d DCA 2008) ("The trial court determined that Harris lacked standing to seek a name change ... because his civil rights were suspended when he was incarcerated."). See also *Finfrock v. State*, 932 So. 2d 437, 439 (Fla. 4th DCA 2006) ("[I]t is unclear from this record whether subsection (k) applies and would preclude grant of appellant's petition for name change.").

to the office of the Federal Bureau of Investigation. The report may be forwarded by FDLE to any other law enforcement agency that may retain information related to the petitioner.⁵

Nothing in s. 68.07, F.S., provides for name change proceedings to be adversarial proceedings. As such, a court cannot always rely on another party to challenge the accuracy of the facts stated in a name change petition, including the petitioner's statements regarding his or her criminal history.⁶ In interpreting the name change statute, courts have said that if a petition "is facially sufficient, it should be granted so long as there is no evidence of a wrongful or fraudulent purpose."⁷

Section 68.07, F.S., expressly does not apply to name changes in connection with proceedings for adoptions or dissolutions of marriage.⁸ Section 68.07, F.S., does not appear to apply to name changes resulting from marriages.⁹ Moreover, individuals seeking a name change to restore a former name are not required to submit fingerprints as part of the petition.¹⁰

III. Effect of Proposed Changes:

This bill, except as provided by existing law, requires a person seeking to legally change his or her name to have both a state and national criminal history records check as a required element of the court name change petition process. Consistent with existing law, those seeking to restore a former name are exempt from the fingerprint requirement and therefore the criminal background check. In addition, the bill retains the exemption for name changes in connection with proceedings for adoptions and dissolutions of marriage from the petition procedures listed under s. 68.07, F.S.¹¹

Existing law provides that, before the court hearing on a name change, the petitioner must file a petition with the clerk for a name change. Under the bill, when the petition is filed, the clerk will instruct the petitioner on the fingerprint process and provide a list of entities authorized to take fingerprints. The authorized entity will submit the fingerprints electronically to the Florida

⁵ Section 68.07(5), F.S.

⁶ Although the existing name change statute requires a person to include a set of fingerprints with the petition, the statute does not explicitly prescribe a pre-hearing criminal history records check. The FDLE noted that, as a result of legislative amendments in 2006 to another statute, state judges do have online access to Florida criminal justice information through the Florida Crime Information Center for their various "case-related decisionmaking responsibilities." See s. 943.053(5), F.S. The extent to which judges are currently using this resource in name change proceedings is not known by professional staff of the committee.

⁷ *Finfrock*, 932 So. 2d at 438 (Fla. 4th DCA 2006); see also *Isom*, 437 So. 2d at 733 (interpreting an earlier version of the statute and holding that a petition "should generally be granted unless sought for a wrongful or fraudulent purpose").

⁸ Section 68.07(8), F.S.

⁹ No Florida statute has been located that expressly authorizes or creates a process for name changes upon marriage. Several statutes, however, recognize that such name changes occur. See, e.g., s. 97.1031(2), F.S. (requiring voters to change their registrations to reflect name changes upon marriage); s. 775.21(6)(g), F.S. (requiring sexual predators to register name changes upon marriage at a driver's license office). See also 14 C.F.R. s. 61.25 (permitting name changes on certain certificates issued to pilots and others by the Federal Aviation Administration); Florida Department of Highway Safety and Motor Vehicles, Name Changes, available at <http://www.flhsmv.gov/ddl/namechange.html> (last visited January 31, 2009) (stating that "[a] name change may be handled at any driver license office by presenting an original or certified marriage certificate or court order, the incorrect license and paying the \$10 fee").

¹⁰ Section 68.07(2), F.S.

¹¹ As noted in the "Present Situation" section of this bill analysis, s. 68.07, F.S., does not appear to apply to name changes resulting from marriages. See note 9.

Department of Law Enforcement (FDLE or the department) to perform a state criminal history records check. In turn, FDLE will forward the prints to the Federal Bureau of Investigation (FBI) for a national criminal history records check. The department will then send the results of the state and national criminal history check to the clerk of court, and the court will use the results to review the information filed by petitioner and to evaluate whether to grant the petition.

The petitioner for the name change, or the parent or guardian of a minor for whom a name change is being sought, shall bear the cost of processing fingerprints and conducting this criminal history records check.

As a result of the bill, the hearing on a petition for a name change may only be held after the clerk receives the results of the criminal history check. However, as under existing law, a hearing on a petition for restoring a former name may be held immediately after the petition is filed.¹²

Following the name change hearing, the clerk will send a final report of the judgment to FDLE along with the results of the criminal history check.

The bill takes effect on July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See discussion in the “Private Sector Impact” section below.

B. Private Sector Impact:

Persons seeking to legally change their names, or the names of their minor children, will incur increased costs resulting from the requirement for a state and national criminal history records check. According to the Florida Department of Law Enforcement (FDLE), each criminal history records request costs \$43.25, \$24 of which goes into the FDLE Operating Trust Fund and \$19.25 of which is forwarded to the Federal Bureau of Investigation (FBI) to cover the cost of the criminal history records check. Law

¹² Section 68.07(2) and (3), F.S. (2008). (The bill renumbers s. 68.07(3), F.S., as subsection (4).)

enforcement agencies and approved service providers are authorized to submit fingerprints to FDLE electronically. The department reports that service providers may assess a fee for the service in addition to the records check fee. Persons who seek to restore a former name are exempt from the fingerprint and criminal background check procedures. Further, individuals seeking to change a name in connection with adoption and dissolution of marriage proceedings are exempt from the provisions of s. 68.07, F.S., entirely.

C. Government Sector Impact:

According to FDLE, the bill is expected to generate approximately 2,000 additional background checks per year.

In keeping with the existing statute, uniform family law forms and instructions approved by the Florida Supreme Court currently require a name change petitioner to attach a set of fingerprints to the petition.¹³ However, the bill envisions that fingerprints will be submitted electronically to FDLE and that FDLE will submit the results of the criminal history records check to the clerk of court. Thus, the petitioner will no longer be required to attach a set of fingerprints to the petition under the statute as revised by the bill. Consequently, the Supreme Court may incur some costs in revising the forms and instructions consistent with the proposed statutory changes. To the extent clerks have produced their own forms or instructions, they may also incur costs to revise them. These costs are not expected to be significant.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 4, 2009:

The committee substitute:

- Makes a distinction between hearings on petitions that require a criminal history records check versus petitions for restoring a former name, which do not require the check.
- Directs the clerk of court to provide the petitioner with instructions on the electronic fingerprint process and information on entities that are authorized to conduct and submit prints to FDLE.

¹³ See Fla. Fam. L. Form 12.982(a)-(g).

- Clarifies that an authorized entity, rather than the petitioner, will electronically submit the fingerprints to FDLE for state processing and that FDLE will then forward them to the FBI for a national criminal history records check.
- Specifies that FDLE will submit the results of the criminal history check to the court clerk.
- Explains that the court will use the results of the criminal history check to review the petition and decide whether to grant the name change.
- Amends the content of the final judgment report, so that the records check information will be attached to the petition, rather than the fingerprints.

B. Amendments:

None.