

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 805 Change of Name
SPONSOR(S): Civil Justice & Courts Policy Committee; Clarke-Reed
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 258

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Civil Justice & Courts Policy Committee, Military & Local Affairs Policy Committee, and Criminal & Civil Justice Policy Council.

SUMMARY ANALYSIS

Florida law requires a person seeking a name change to file a verified petition with the court. This petition must include a set of the petitioner's fingerprints, except where a former name is being restored. Current law does not require a criminal background check to be performed prior to a hearing on the petition.

This bill provides that, before a hearing on a petition for a change of name, the petitioner must submit fingerprints for a state and national criminal history records check. The Florida Department of Law Enforcement must provide the results of the criminal history records check to the clerk of court, and the court must consider the results of the background checks in evaluating whether or not to grant the petition.

The bill appears to have a minimal positive recurring fiscal impact on state revenues, and no fiscal impact on local governments. This bill will increase the cost to persons filing a petition for a name change by \$43.25.

The bill has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Any person or family that wants to change their name must follow the procedural requirements established by s. 68.07, F.S.<sup>1</sup> The person seeking a name change files a petition with the court in the county in which he or she resides.

Section 68.07(2), F.S., provides that the petition must include a copy of the petitioner's fingerprints taken by a law enforcement agency, except where a former name is being restored.<sup>2</sup> Section 68.07(2), F.S., also provides that the petition must be verified and provide certain identifying and personal background information about the petitioner seeking the change of name.

A petition for change of name that meets the statutory requirements should be granted by the court in the absence of evidence of a wrongful or fraudulent purpose.<sup>3</sup> The court cannot deny a petition based solely on the fact that the petitioner is a felon. Convicted felons are free to seek a change of name as freely as any other citizen, and the court must grant the request unless the petition does not meet statutory requirements, or the name change is shown to be for fraudulent or other illegal purposes.

Upon entry of the final judgment, the clerk must send a report of the judgment to the Florida Department of Law Enforcement (FDLE). The FDLE is required to send a copy of the report to the Department of Highway Safety and Motor Vehicles. Any information retained by these agencies must be revised to reflect the change of name. If a person has been convicted of a felony in another state or of a federal offense, the FDLE must send the report to the respective state's office of law enforcement records or to the Federal Bureau of Investigation (FBI). The FDLE also may forward the report to any other law enforcement agency it believes may retain information related to the petitioner.<sup>4</sup>

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<sup>1</sup> This section does not apply to any change of name in proceedings for dissolution of marriage or for adoption of children. See, s. 68.07(8), F.S.

<sup>2</sup> A petitioner seeking to restore a former name is typically a divorced woman restoring a maiden name.

<sup>3</sup> *In re Name Change Petition of Mullin*, 892 So.2d 1214 (Fla. 2nd DCA 2005); see, also *Isom v. Circuit Court of the Tenth Judicial Circuit*, 437 So.2d 32, 733 (Fla. 2d DCA 1983) (interpreting an earlier version of the statute and holding that a petition "should generally be granted unless sought for a wrongful or fraudulent purpose.").

<sup>4</sup> Section 68.07(5), F.S.

Section 68.07(3), F.S., provides that a hearing on a change of name petition may occur immediately after the petition is filed.

### **Effect of Proposed Changes**

This bill amends s. 68.07(2), F.S., to require that, before a hearing on a change of name petition, the petitioner must submit fingerprints for a state and national criminal history records check, except where a former name is being restored. The cost of the fingerprinting and background check is the responsibility of the petitioner for the name change, or the petitioner's parent or guardian if the petitioner seeking the name change is a minor.

This bill requires that the fingerprints be taken in a manner approved by the Florida Department of Law Enforcement, and submitted electronically to the department for state processing of a criminal history records check. The FDLE must submit the fingerprints to the FBI for national processing, and the results of the state and national records checks to the clerk of the court. The court is required to consider the results of the background check in deciding whether or not to grant the petition for a name change.

This bill also amends s. 68.07(3), F.S., to provide that, where a criminal history records check is required, the hearing on the petition for a change of name may be held immediately after the results of the criminal history records check are returned to the clerk. This provision conforms to the changes made in the bill requiring a criminal background check before a hearing on the petition.

In addition, the bill provides that when a petition is filed that requires a criminal history records check, the clerk of court must instruct the petitioner on the process for taking and submitting fingerprints, including information on any law enforcement agencies or providers who are authorized to submit fingerprints electronically to the department.

The bill provides an effective date of July 1, 2009.

#### **B. SECTION DIRECTORY:**

Section 1: amends s. 68.07, F.S., relating to change of name.

Section 2: provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

This bill appears to have an estimated positive recurring fiscal impact of \$24,000 deposited into the FDLE Operating Trust Fund.<sup>5</sup>

##### **2. Expenditures:**

This bill increases the workload for FDLE; however, it is anticipated that such increase will be absorbed within existing operating expenses.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

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<sup>5</sup> Estimated values provided by the FDLE, February 19, 2009.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will increase the cost to a person seeking a change of name by \$43.25.<sup>6</sup>

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under this bill, the staff for the Office of the State Courts Administrator (OSCA) will have to amend the Florida Supreme Court Family Law Forms that pertain to name change. According to OSCA, staff will not be able to implement these changes by the effective date of July 1, 2009.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2009, the Civil Justice & Courts Policy Committee adopted a strike-all amendment to this bill. The amendment provided that the court must consider the results of the background check in evaluating whether or not to grant the petition for name change. In addition, the amendment required the clerk of court to instruct a petitioner on the process for submitting fingerprints, including providing information on law enforcement agencies or service providers authorized to submit fingerprints electronically to the department. The bill was then reported favorably. This analysis is drafted to the bill as amended.

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<sup>6</sup> As per the Florida Department of Law Enforcement bill analysis dated February 19, 2009, \$24 from each request is deposited into the FDLE Operating Trust Fund and \$19.25 is forwarded to the Federal Bureau of Investigation.