

By Representative Byrd

1 A bill to be entitled
2 An act relating to adoption; amending ss.
3 39.802, 39.806, 39.811, F.S., relating to the
4 petition and grounds for terminating parental
5 rights and powers of disposition; removing
6 provisions authorizing licensed child-placing
7 agencies to file actions to terminate parental
8 rights; amending s. 39.812, F.S.; providing
9 additional requirements for a petition for
10 adoption; prohibiting filing such petition
11 until the order terminating parental rights is
12 final; amending s. 63.022, F.S.; revising
13 legislative intent with respect to adoptions in
14 this state; amending s. 63.032, F.S.; revising
15 definitions; defining the term "adoption
16 entity"; creating s. 63.037, F.S.; exempting
17 adoption proceedings that result from a
18 termination of parental rights under ch. 39,
19 F.S., from certain provisions of ch. 63, F.S.;
20 creating s. 63.038, F.S.; providing criminal
21 penalties for committing certain fraudulent
22 acts; creating s. 63.039, F.S.; providing
23 sanctions and an award of attorney's fees under
24 certain circumstances; amending s. 63.052,
25 F.S.; providing for placement of a minor
26 pending adoption; specifying the jurisdiction
27 of the court over a minor who has been placed
28 for adoption; amending s. 63.062, F.S.;
29 specifying additional persons who must consent
30 to an adoption, execute an affidavit of
31 nonpaternity, or receive notice of proceedings

1 to terminate parental rights; permitting an
2 affidavit of nonpaternity under certain
3 circumstances; amending s. 63.082, F.S.;
4 revising requirements for executing a consent
5 to an adoption; providing a time period for
6 withdrawing consent; providing additional
7 disclosure requirements; amending s. 63.085,
8 F.S.; specifying information that must be
9 disclosed to persons seeking to adopt a minor
10 and to the birth parents; creating s. 63.087,
11 F.S.; requiring that a separate proceeding be
12 conducted by the court to determine whether a
13 birth parent's parental rights should be
14 terminated; providing for rules, jurisdiction,
15 and venue for such proceedings; providing
16 requirements for the petition and hearing;
17 creating s. 63.088, F.S.; providing
18 requirements for identifying and locating a
19 person who is required to consent to an
20 adoption or receive notice of proceedings to
21 terminate parental rights; providing
22 requirements for the notice; providing
23 requirements for conducting a diligent search
24 for such person whose location is unknown;
25 requiring that an unlocated or unidentified
26 person be served notice by constructive
27 service; providing that failure to respond or
28 appear constitutes grounds to terminate
29 parental rights pending adoption; creating s.
30 63.089, F.S.; providing procedures for the
31 proceeding to terminate parental rights pending

1 adoption; specifying the matters to be
2 determined; specifying grounds upon which
3 parental rights may be terminated; providing
4 for procedures following a judgment; providing
5 for records to be made part of the subsequent
6 adoption; amending s. 63.092, F.S.; providing
7 requirements to be met if a prospective
8 placement in an adoptive home is an at-risk
9 placement; defining at-risk placement; amending
10 s. 63.097, F.S.; revising requirements for the
11 court in approving specified fees and costs;
12 amending s. 63.102, F.S.; revising requirements
13 for filing a petition for adoption; providing
14 requirements for prior approval of fees and
15 costs; amending s. 63.112, F.S.; revising
16 requirements for the information that must be
17 included in a petition for adoption; amending
18 s. 63.122, F.S.; revising the time requirements
19 for hearing a petition for adoption; amending
20 s. 63.125, F.S., relating to the final home
21 investigation; conforming provisions to changes
22 made by the act; amending s. 63.132, F.S.;
23 revising requirements for the report of
24 expenditures and receipts which is filed with
25 the court; amending s. 63.142, F.S.; specifying
26 circumstances under which a judgment
27 terminating parental rights pending adoption is
28 voidable; providing for an evidentiary hearing
29 to determine the minor's placement following a
30 motion to void such a judgment; amending s.
31 63.152, F.S.; requiring that the clerk of the

1 court mail a copy of a new birth record to the
2 state registry of adoption information;
3 amending s. 63.165, F.S.; requiring that a copy
4 of the certified statement of final decree of
5 adoption be included in the state registry of
6 adoption information; requiring that the
7 Department of Children and Family Services
8 maintain such information for a specified
9 period; amending s. 63.182, F.S.; requiring
10 that an action to vacate an order of adoption
11 or an order terminating parental rights pending
12 adoption be filed within a specified period
13 after entry of the order; amending s. 63.207,
14 F.S.; revising provisions that limit the
15 placement of a minor in another state for
16 adoption; amending s. 63.212, F.S., relating to
17 prohibitions and penalties with respect to
18 adoptions; conforming provisions to changes
19 made by the act; repealing s. 63.072, F.S.,
20 relating to persons who may waive required
21 consent to an adoption; requiring that a
22 petition for adoption be governed by the law in
23 effect at the time the petition is filed;
24 providing an effective date.

25

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

27

28 Section 1. Subsections (1) and (2) of section 39.802,
29 Florida Statutes, 1998 Supplement, are amended to read:

30 39.802 Petition for termination of parental rights;
31 filing; elements.--

1 (1) All proceedings seeking an adjudication to
2 terminate parental rights pursuant to this chapter must be
3 initiated by the filing of an original petition by the
4 department, the guardian ad litem, ~~or a licensed child placing~~
5 ~~agency~~ or ~~by~~ any other person who has knowledge of the facts
6 alleged or is informed of them and believes that they are
7 true.

8 (2) The form of the petition is governed by the
9 Florida Rules of Juvenile Procedure. The petition must be in
10 writing and signed by the petitioner or, if the department is
11 the petitioner, by an employee of the department, under oath
12 stating the petitioner's good faith in filing the petition.

13 Section 2. Subsection (1) of section 39.806, Florida
14 Statutes, 1998 Supplement, is amended to read:

15 39.806 Grounds for termination of parental rights.--

16 (1) The department, the guardian ad litem, ~~a licensed~~
17 ~~child placing agency,~~ or any person related to the child who
18 has knowledge of the facts alleged or who is informed of said
19 facts and believes that they are true, may petition for the
20 termination of parental rights under any of the following
21 circumstances:

22 (a) When the parent or parents voluntarily executed a
23 written surrender of the child and consented to the entry of
24 an order giving custody of the child to the department ~~or to a~~
25 ~~licensed child placing agency~~ for subsequent adoption and the
26 department ~~or licensed child placing agency~~ is willing to
27 accept custody of the child.

28 1. The surrender document must be executed before two
29 witnesses and a notary public or other person authorized to
30 take acknowledgments.

31

1 2. The surrender and consent may be withdrawn after
2 acceptance by the department ~~or licensed child-placing agency~~
3 only after a finding by the court that the surrender and
4 consent were obtained by fraud or duress.

5 (b) When the identity or location of the parent or
6 parents is unknown and cannot be ascertained by diligent
7 search within 90 days.

8 (c) When the parent or parents engaged in conduct
9 toward the child or toward other children that demonstrates
10 that the continuing involvement of the parent or parents in
11 the parent-child relationship threatens the life, safety,
12 well-being, or physical, mental, or emotional health of the
13 child irrespective of the provision of services. Provision of
14 services may be evidenced by proof that services were provided
15 through a previous plan or offered as a case plan from a child
16 welfare agency.

17 (d) When the parent of a child is incarcerated in a
18 state or federal correctional institution and:

19 1. The period of time for which the parent is expected
20 to be incarcerated will constitute a substantial portion of
21 the period of time before the child will attain the age of 18
22 years;

23 2. The incarcerated parent has been determined by the
24 court to be a violent career criminal as defined in s.
25 775.084, a habitual violent felony offender as defined in s.
26 775.084, or a sexual predator as defined in s. 775.21; has
27 been convicted of first degree or second degree murder in
28 violation of s. 782.04 or a sexual battery that constitutes a
29 capital, life, or first degree felony violation of s. 794.011;
30 or has been convicted of an offense in another jurisdiction
31 which is substantially similar to one of the offenses listed

1 in this paragraph. As used in this section, the term
2 "substantially similar offense" means any offense that is
3 substantially similar in elements and penalties to one of
4 those listed in this paragraph, and that is in violation of a
5 law of any other jurisdiction, whether that of another state,
6 the District of Columbia, the United States or any possession
7 or territory thereof, or any foreign jurisdiction; and

8 3. The court determines by clear and convincing
9 evidence that continuing the parental relationship with the
10 incarcerated parent would be harmful to the child and, for
11 this reason, that termination of the parental rights of the
12 incarcerated parent is in the best interest of the child.

13 (e) A petition for termination of parental rights may
14 also be filed when a child has been adjudicated dependent, a
15 case plan has been filed with the court, and the child
16 continues to be abused, neglected, or abandoned by the
17 parents. In this case, the failure of the parents to
18 substantially comply for a period of 12 months after an
19 adjudication of the child as a dependent child constitutes
20 evidence of continuing abuse, neglect, or abandonment unless
21 the failure to substantially comply with the case plan was due
22 either to the lack of financial resources of the parents or to
23 the failure of the department to make reasonable efforts to
24 reunify the family. Such 12-month period may begin to run only
25 after the entry of a disposition order placing the custody of
26 the child with the department or a person other than the
27 parent and the approval by the court of a case plan with a
28 goal of reunification with the parent.

29 (f) When the parent or parents engaged in egregious
30 conduct or had the opportunity and capability to prevent and
31 knowingly failed to prevent egregious conduct that threatens

1 the life, safety, or physical, mental, or emotional health of
2 the child or the child's sibling.

3 1. As used in this subsection, the term "sibling"
4 means another child who resides with or is cared for by the
5 parent or parents regardless of whether the child is related
6 legally or by consanguinity.

7 2. As used in this subsection, the term "egregious
8 conduct" means abuse, abandonment, neglect, or any other
9 conduct of the parent or parents that is deplorable, flagrant,
10 or outrageous by a normal standard of conduct. Egregious
11 conduct may include an act or omission that occurred only once
12 but was of such intensity, magnitude, or severity as to
13 endanger the life of the child.

14 (g) When the parent or parents have subjected the
15 child to aggravated child abuse as defined in s. 827.03,
16 sexual battery or sexual abuse as defined in s. 39.01, or
17 chronic abuse.

18 (h) When the parent or parents have committed murder
19 or voluntary manslaughter of another child of the parent, or a
20 felony assault that results in serious bodily injury to the
21 child or another child of the parent, or aided or abetted,
22 attempted, conspired, or solicited to commit such a murder or
23 voluntary manslaughter or felony assault.

24 (i) When the parental rights of the parent to a
25 sibling have been terminated involuntarily.

26 Section 3. Subsections (2) and (8) of section 39.811,
27 Florida Statutes, 1998 Supplement, are amended to read:

28 39.811 Powers of disposition; order of disposition.--

29 (2) If the child is in out-of-home care custody of the
30 department and the court finds that the grounds for
31 termination of parental rights have been established by clear

1 and convincing evidence, the court shall, by order, place the
2 child in the custody of the department for the purpose of
3 adoption ~~or place the child in the custody of a licensed~~
4 ~~child-placing agency for the purpose of adoption.~~

5 (8) If the court terminates parental rights, it shall,
6 in its order of disposition, provide for a hearing, to be
7 scheduled no later than 30 days after the date of disposition,
8 in which the department ~~or the licensed child-placing agency~~
9 shall provide to the court a plan for permanency for the
10 child. Reasonable efforts must be made to place the child in a
11 timely manner in accordance with the permanency plan and to
12 complete whatever steps are necessary to finalize the
13 permanent placement of the child. Thereafter, until the
14 adoption of the child is finalized or the child reaches the
15 age of 18 years, whichever occurs first, the court shall hold
16 hearings at 6-month intervals to review the progress being
17 made toward permanency for the child.

18 Section 4. Section 39.812, Florida Statutes, 1998
19 Supplement, is amended to read:

20 39.812 Postdisposition relief.--

21 (1) ~~A licensed child-placing agency or~~ The department
22 that ~~which~~ is given custody of a child for subsequent adoption
23 in accordance with this chapter may place the child in a
24 family home for prospective subsequent adoption, and ~~the~~
25 ~~licensed child-placing agency or~~ the department may thereafter
26 become a party to any proceeding for the legal adoption of the
27 child and appear in any court where the adoption proceeding is
28 pending and consent to the adoption; and that consent alone
29 shall in all cases be sufficient.

30 (2) In any subsequent adoption proceeding, the parents
31 are ~~shall not be~~ entitled to ~~any~~ notice of the proceeding and

1 ~~are not~~ thereof, ~~nor shall they be~~ entitled to knowledge at
2 any time after the order terminating parental rights is
3 entered of the whereabouts of the child or of the identity or
4 location of any person having the custody of or having adopted
5 the child, except as provided by order of the court pursuant
6 to this chapter or chapter 63; and in any habeas corpus or
7 other proceeding involving the child brought by any parent of
8 the child, an ~~no~~ agent or contract provider of the ~~licensed~~
9 ~~child-placing agency or department~~ may not ~~shall~~ be compelled
10 to divulge that information, but may be compelled to produce
11 the child before a court of competent jurisdiction if the
12 child is still subject to the guardianship of the ~~licensed~~
13 ~~child-placing agency or department~~.

14 (3) The entry of the custody order to the department
15 ~~does or licensed child-placing agency shall~~ not entitle the
16 ~~licensed child-placing agency or department~~ to guardianship of
17 the estate or property of the child, but the ~~licensed~~
18 ~~child-placing agency or department~~ shall be the guardian of
19 the person of the child.

20 (4) The court shall retain jurisdiction over any child
21 for whom custody is given to ~~a licensed child-placing agency~~
22 ~~or to~~ the department until the child is adopted. After custody
23 of a child for subsequent adoption has been given to ~~an agency~~
24 ~~or~~ the department, the court has jurisdiction for the purpose
25 of reviewing the status of the child and the progress being
26 made toward permanent adoptive placement. As part of this
27 continuing jurisdiction, for good cause shown by the guardian
28 ad litem for the child, the court may review the
29 appropriateness of the adoptive placement of the child. The
30 petition for adoption must be filed in the division of the
31 circuit court which issued the judgment terminating parental

1 rights. A copy of the consent required under s. 63.062(4) and
2 executed by the department must be attached to the petition
3 for adoption. The petition for adoption must be accompanied by
4 a form created by the department which details the social and
5 medical history of each birth parent and includes the social
6 security number and date of birth for each birth parent, if
7 such information is available or readily obtainable. The
8 person seeking to adopt the minor may not file a petition for
9 adoption until the order terminating parental rights becomes
10 final. An adoption proceeding under this subsection is
11 governed by chapter 63, as limited under s. 63.037.

12 Section 5. Section 63.022, Florida Statutes, 1998
13 Supplement, is amended to read:

14 63.022 Legislative intent.--

15 (1) It is the intent of the Legislature to protect and
16 promote the well-being of persons being adopted and their
17 birth and adoptive parents and to provide to all children who
18 can benefit by it a permanent family life, and, whenever
19 possible, to maintain sibling groups.

20 (2) The basic safeguards intended to be provided by
21 this chapter act are that:

22 (a) The minor child is legally free for adoption.

23 (b) The required persons consent to the adoption or
24 the parent-child relationship is terminated by judgment of the
25 court.

26 (c) The required social studies are completed and the
27 court considers the reports of these studies prior to judgment
28 on adoption petitions.

29 (d) All placements of minors for adoption are reported
30 to the Department of Children and Family Services.

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1 (e) A sufficient period of time elapses during which
2 the minor ~~child~~ has lived within the proposed adoptive home
3 under the guidance of the department or a licensed
4 child-placing agency.

5 (f) All expenditures by adoption entities
6 ~~intermediaries~~ placing, and persons independently adopting, a
7 minor are reported to the court and become a permanent record
8 in the file of the adoption proceedings.

9 (g) Social and medical information concerning the
10 minor child and the birth parents is furnished by the birth
11 parent when available and filed with the court before a final
12 hearing on a petition to terminate parental rights pending
13 adoption consent to the adoption when a minor is placed by an
14 intermediary.

15 (h) A new birth certificate is issued after entry of
16 the adoption judgment.

17 (i) At the time of the hearing, the court may is
18 ~~authorized to~~ order temporary substitute care when it
19 determines that the minor is in an unsuitable home.

20 (j) The records of all proceedings concerning custody
21 and adoption of minor children are confidential and exempt
22 from ~~the provisions of~~ s. 119.07(1), except as provided in s.
23 63.162.

24 (k) The birth parent, the adoptive parent, and the
25 minor child receive the same or similar safeguards, guidance,
26 counseling, and supervision in an intermediary adoption as
27 they receive in an agency or department adoption.

28 (l) In all matters coming before the court under
29 ~~pursuant to this chapter act~~, the court shall enter such
30 orders as it deems necessary and suitable to promote and
31 protect the best interests of the person to be adopted.

1 (m) In dependency cases initiated by the department,
2 where termination of parental rights occurs, and siblings are
3 separated despite diligent efforts of the department,
4 continuing postadoption communication or contact among the
5 siblings may be ordered by the court if found to be in the
6 best interests of the children.

7 Section 6. Section 63.032, Florida Statutes, is
8 amended to read:

9 63.032 Definitions.--As used in this chapter act,
10 ~~unless the context otherwise requires~~, the term:

11 (1) "Department" means the Department of Children and
12 Family Services.

13 (2) "Child" means a son or daughter, whether by birth
14 or adoption.

15 (3) "Court" means any circuit court of this state and,
16 when the context requires, the court of any state that is
17 empowered to grant petitions for adoption.

18 (4) "Minor" means a person under the age of 18 years.

19 (5) "Adult" means a person who is not a minor.

20 (6) "Person" includes a natural person, corporation,
21 government or governmental subdivision or agency, business
22 trust, estate, trust, partnership, or association, and any
23 other legal entity.

24 (7) "Agency" means any child-placing agency licensed
25 by the department pursuant to s. 63.202 to place minors for
26 adoption.

27 (8) "Intermediary" means an attorney ~~or physician~~ who
28 is licensed or authorized to practice in this state and who
29 has reported the intended placement of a minor for adoption
30 under s. 63.092 or, for the purpose of adoptive placements of
31 children from out of state with citizens of this state, a

1 child-placing agency licensed in another state that is
2 qualified by the department.

3 (9) "To place" or "placement" means the process of a
4 person giving a child up for adoption and the prospective
5 parents receiving and adopting the child, and includes all
6 actions by any person or agency participating in the process.

7 (10) "Adoption" means the act of creating the legal
8 relationship between parent and child where it did not exist,
9 thereby declaring the child to be legally the child of the
10 adoptive parents and their heir at law and entitled to all the
11 rights and privileges and subject to all the obligations of a
12 child born to such adoptive parents in lawful wedlock.

13 (11) "Suitability of the intended placement" includes
14 the fitness of the intended placement, with primary
15 consideration being given to the welfare of the child; the
16 fitness and capabilities of the adoptive parent or parents to
17 function as parent or parents for a particular child; any
18 familial relationship between the child and the prospective
19 placement; and the compatibility of the child with the home in
20 which the child is intended to be placed.

21 (12) "Primary residence and place of employment in
22 Florida" means a person lives and works in this state at least
23 6 months of the year and intends to do so for the foreseeable
24 future or military personnel who designate Florida as their
25 place of residence in accordance with the Soldiers' and
26 Sailors' Civil Relief Act of 1940 or employees of the United
27 States Department of State living in a foreign country who
28 designate Florida as their place of residence.

29 (13) "Primarily lives and works outside Florida" means
30 anyone who does not meet the definition of "primary residence
31 and place of employment in Florida."

1 (14) "Abandoned" means a situation in which the parent
2 or legal custodian of a child, while being able, makes no
3 provision for the child's support and makes no effort to
4 communicate with the child, which situation is sufficient to
5 evince a willful rejection of parental obligations. If, in the
6 opinion of the court, the efforts of such parent or legal
7 custodian to support and communicate with the child are only
8 marginal efforts that do not evince a settled purpose to
9 assume all parental duties, the court may declare the child to
10 be abandoned. In making this decision, the court may consider
11 the conduct of a father towards the child's mother during her
12 pregnancy.

13 (15) "Adoption entity" means the department under
14 chapter 39; an agency under chapter 63 or, at the request of
15 the department, under chapter 39; a child-caring agency
16 registered pursuant to s. 409.176; or an intermediary under
17 chapter 63, placing a person for adoption.

18 Section 7. Section 63.037, Florida Statutes, is
19 created to read:

20 63.037 Proceedings applicable to cases resulting from
21 a termination of parental rights under chapter 39.--A case in
22 which a minor becomes available for adoption after the
23 parental rights of each parent have been terminated by a court
24 order issued pursuant to chapter 39 will be governed by s.
25 39.812 and this chapter. Adoption proceedings filed under
26 chapter 39 are exempt from the following provisions of this
27 chapter: disclosure requirements for the adoption entity
28 provided in s. 63.085; general provisions governing
29 termination of parental rights pending adoption provided in s.
30 63.087; notice and service provisions governing termination of
31 parental rights pending adoption provided in s. 63.088; and

1 procedures for terminating parental rights pending adoption
2 provided in s. 63.089.

3 Section 8. Section 63.038, Florida Statutes, is
4 created to read:

5 63.038 Prohibited acts.--A person who knowingly and
6 willfully provides false information under this chapter or
7 who, with the intent to defraud, accepts benefits related to
8 the same pregnancy from more than one agency or intermediary
9 without disclosing that fact to each entity commits a
10 misdemeanor of the second degree, punishable as provided in s.
11 775.082 or s. 775.083. In addition to any other penalty or
12 liability allowed by law, a person who knowingly and willfully
13 provides false information under this chapter or who, with
14 intent to defraud, accepts benefits related to the same
15 pregnancy from more than one agency or intermediary without
16 disclosing that fact to each entity and to any prospective
17 adoptive parent providing sums for the payment of the benefits
18 is liable for sums paid by anyone who paid sums permitted
19 under this chapter in anticipation of or in connection with an
20 adoption. A person seeking to collect moneys under this
21 section may do so by filing a civil action or may be awarded
22 restitution in a criminal prosecution.

23 Section 9. Section 63.039, Florida Statutes, is
24 created to read:

25 63.039 Duty of adoption entity to prospective adoptive
26 parents; sanctions.--

27 (1) An adoption entity placing a minor for adoption
28 has an affirmative duty to follow the requirements of this
29 chapter, specifically the following provisions, which protect
30 and promote the well-being of persons being adopted and their
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- 1 birth and adoptive parents by promoting certainty, finality,
2 and permanency for such persons:
- 3 (a) Provide written initial disclosure to the adoptive
4 parent at the time and in the manner required under s.
5 63.085(1);
- 6 (b) Obtain a written statement by the adoptive parent
7 acknowledging receipt of the written initial disclosure and
8 distribute copies of that acknowledgment at the time and in
9 the manner required under s. 63.085(3);
- 10 (c) Provide written initial and postbirth disclosure
11 to the birth parent at the time and in the manner required
12 under s. 63.085;
- 13 (d) Obtain a written statement by the birth parent
14 acknowledging receipt of the written initial and postbirth
15 disclosure and distribute copies of that acknowledgment at the
16 time and in the manner required under s. 63.085(3);
- 17 (e) When a written consent for adoption is obtained,
18 obtain the consent at the time and in the manner required
19 under s. 63.082;
- 20 (f) When a written consent or affidavit of
21 nonpaternity for adoption is obtained, obtain a consent or
22 affidavit of nonpaternity that contains the language required
23 under s. 63.062 or s. 63.082;
- 24 (g) Include in the petition to terminate parental
25 rights pending adoption all information required under s.
26 63.087(6)(e);
- 27 (h) Obtain and file the affidavit of inquiry required
28 under s. 63.088(3);
- 29 (i) When the identity of a person whose consent to
30 adoption is necessary under this chapter is known but the
31 location of such a person is unknown, conduct the

1 due-diligence search and file the affidavit required under s.
2 63.088(4);

3 (j) Serve the petition and notice of hearing to
4 terminate parental rights pending adoption at the time and in
5 the manner required by s. 63.088; and

6 (k) Hold the hearings required under this chapter no
7 sooner than permitted by this chapter.

8 (2) An adoption entity that materially fails to meet a
9 duty specified in subsection (1), may be liable to the
10 prospective adoptive parents for all sums paid by the
11 prospective adoptive parents or on their behalf in
12 anticipation of or in connection with an adoption.

13 (3) If a court finds that a consent taken under this
14 chapter was obtained by fraud or duress attributable to the
15 adoption entity, the court must award all sums paid by the
16 prospective adoptive parents or on their behalf in
17 anticipation of or in connection with the adoption. The court
18 may also award reasonable attorney's fees and costs incurred
19 by the prospective adoptive parents in connection with the
20 adoption and any litigation related to placement or adoption
21 of a minor. An award under this subsection must be paid
22 directly to the prospective adoptive parents by the adoption
23 entity.

24 (4) If a person whose consent to an adoption is
25 necessary under s. 63.062 prevails in an action to set aside a
26 consent to adoption, a judgment terminating parental rights
27 pending adoption, or a judgment of adoption, the court must
28 award a reasonable attorney's fee to the prevailing party. An
29 award under this subsection is to be paid by the adoption
30 entity if the court finds that the acts or omissions of the
31

1 entity were the basis for the court's order granting relief to
2 the prevailing party.

3 (5) The court must provide to The Florida Bar any
4 order that imposes sanctions under this section against an
5 attorney, whether acting as an adoption agency or as an
6 intermediary. The court must provide to the Department of
7 Children and Family Services any order that imposes sanctions
8 under this section against an agency. The order must be
9 provided within 30 days after the date that the order was
10 issued.

11 Section 10. Section 63.052, Florida Statutes, 1998
12 Supplement, is amended to read:

13 63.052 Guardians designated; proof of commitment.--

14 (1) For minors who have been placed for adoption with
15 and permanently committed to an agency, the agency shall be
16 the guardian of the person of the minor ~~child~~; for those who
17 have been placed for adoption with and permanently committed
18 to the department, the department shall be the guardian of the
19 person of the minor ~~child~~.

20 (2) For minors who have been voluntarily surrendered
21 to an intermediary through an execution of consent to
22 adoption, the intermediary shall be responsible for the child
23 until the time a court orders preliminary approval of
24 placement of the child in the prospective adoptive home, at
25 which time the prospective adoptive parents become guardians
26 pending finalization of adoption. Until a court has terminated
27 parental rights pending adoption and has ordered preliminary
28 approval of placement of the minor in the adoptive home, the
29 minor must be placed in the care of a birth relative, placed
30 in foster care, or placed in the care of a prospective
31 adoptive home that has received a favorable home study by a

1 licensed child-placing agency, a licensed professional, or an
2 agency described in s. 61.20(2) within 1 year before such
3 placement of the minor with the prospective adoptive parents.
4 The fact that a minor is temporarily placed with the
5 prospective adoptive parents does not give rise to a
6 presumption that the parental rights of the birth parents will
7 subsequently be terminated.

8 (2) For minors who have been placed for adoption with
9 or voluntarily surrendered to an agency, but have not been
10 permanently committed to the agency, the agency shall have the
11 responsibility and authority to provide for the needs and
12 welfare for such minors. For those minors placed for adoption
13 with or voluntarily surrendered to the department, but not
14 permanently committed to the department, the department shall
15 have the responsibility and authority to provide for the needs
16 and welfare for such minors. The adoption entity may
17 ~~department, an intermediary, or a licensed child-placing~~
18 ~~agency has the authority to~~ authorize all appropriate medical
19 care for a minor ~~the children~~ who has ~~have~~ been placed for
20 adoption with or voluntarily surrendered to them. The
21 provisions of s. 627.6578 shall remain in effect
22 notwithstanding the guardianship provisions in this section.

23 (3) If a minor is surrendered to an intermediary for
24 subsequent adoption and a suitable prospective adoptive home
25 is not available under s. 63.092 at the time the minor is
26 surrendered to the intermediary or, if the minor is a newborn
27 admitted to a licensed hospital or birth center, at the time
28 the minor is discharged from the hospital or birth center the
29 minor must be placed in licensed foster care, ~~the intermediary~~
30 ~~shall be responsible for the child~~ until a suitable
31 prospective adoptive home is available under s. 63.092.

1 (4) If a minor ~~child~~ is voluntarily surrendered to an
2 intermediary for subsequent adoption and the adoption does not
3 become final within 180 days, the intermediary must report to
4 the court on the status of the minor ~~child~~ and the court may
5 at that time proceed under s. 39.701 or take action reasonably
6 necessary to protect the best interest of the minor ~~child~~.

7 (5) The recital in the written consent given by the
8 department that the minor ~~child~~ sought to be adopted has been
9 permanently committed to the department shall be prima facie
10 proof of such commitment. The recital in the written consent
11 given by a licensed child-placing agency or the declaration in
12 an answer or recommendation filed by a licensed child-placing
13 agency that the minor ~~child~~ has been permanently committed and
14 the child-placing agency is duly licensed by the department
15 shall be prima facie proof of such commitment and of such
16 license.

17 (6) Unless otherwise authorized by law, the department
18 is not responsible for expenses incurred by licensed
19 child-placing agencies or intermediaries participating in
20 placement of a minor ~~child~~ for the purposes of adoption.

21 (7) The court retains jurisdiction over a minor who
22 has been placed for adoption until the adoption is final.
23 After a minor is placed with an adoption entity or prospective
24 adoptive parent, the court has jurisdiction for the purpose of
25 reviewing the status of the minor and the progress being made
26 toward permanent adoptive placement. As part of this
27 continuing jurisdiction, for good cause shown by a person
28 whose consent to an adoption is required under s. 63.062, by a
29 party to any proceeding involving the minor, or upon the
30 court's own motion, the court may review the appropriateness
31 of the adoptive placement of the minor.

1 Section 11. Section 63.062, Florida Statutes, is
2 amended to read:

3 63.062 Persons required to consent to adoption.--

4 (1) Unless supported by one or more of the grounds
5 enumerated under s. 63.089(3) ~~consent is excused by the court,~~
6 a petition to terminate parental rights pending adoption ~~adopt~~
7 ~~a minor~~ may be granted only if written consent has been
8 executed as provided in s. 63.082 after the birth of the minor
9 or notice has been served under s. 63.088 to ~~by~~:

10 (a) The mother of the minor.

11 (b) The father of the minor, if:

12 1. The minor was conceived or born while the father
13 was married to the mother; ~~or-~~

14 2. The minor is his child by adoption; ~~or-~~

15 3. The minor has been established by court proceeding
16 to be his child.

17 (c) If there is no father as set forth in subsection
18 (b), any man for whom the minor has been established to be his
19 child by scientific tests that are generally acceptable within
20 the scientific community to show a probability of paternity.

21 (d) If there is no father as set forth in subsection
22 (b) or subsection (c), any man who:

23 1.4. He Has acknowledged in writing, signed in the
24 presence of a competent witness, that he is the father of the
25 minor and has filed such acknowledgment with the Office of
26 Vital Statistics of the Department of Health; ~~or-~~

27 2.5. He Has provided the child or the mother during
28 her pregnancy with support in a repetitive, customary manner; ~~or-~~

29 3. Has been identified by the birth mother as a person
30 she has reason to believe may be the father of the minor in an

31

1 action to terminate parental rights pending adoption pursuant
2 to this chapter; or

3 4. Is a party in any pending proceeding in which
4 paternity, custody, or termination of parental rights
5 regarding the minor is at issue.

6 (e)(c) The minor, if more than 12 years of age, unless
7 the court in the best interest of the minor dispenses with the
8 minor's consent.

9 (2) Any person whose consent is required under
10 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) may
11 execute an affidavit of nonpaternity in lieu of a consent
12 under this section and by doing so waives notice to all court
13 proceedings after the date of execution. An affidavit of
14 nonpaternity must be executed under s. 63.082 and the person
15 executing the affidavit must receive disclosure under s.
16 63.085 prior to signing the affidavit. An affidavit of
17 nonpaternity must be in substantially the following form:

18
19 AFFIDAVIT OF NONPATERNITY
20

21 1. I have personal knowledge of the facts
22 stated in this affidavit.

23 2. I have been told that has a child. I
24 shall not establish or claim paternity for this
25 child.

26 3. The child referenced in this affidavit was
27 not conceived or born while the birth mother
28 was married to me. I AM NOT MARRIED TO THE
29 BIRTH MOTHER, nor do I intend to marry the
30 birth mother.
31

1 4. With respect to the child referenced in
2 this affidavit, I have not provided the birth
3 mother with child support or prebirth support;
4 I have not provided her with prenatal care nor
5 assisted her with medical expenses; I have not
6 provided the birth mother or her child or
7 unborn child with support of any kind, nor do I
8 intend to do so.

9 5. I have no interest in assuming the
10 responsibilities of parenthood for this child.
11 I will not acknowledge in writing to be the
12 father of this child nor institute court
13 proceedings to establish the child to be mine.

14 6. I do not object to any decision or
15 arrangements makes regarding this child,
16 including adoption.

17
18 I WAIVE NOTICE OF ANY AND ALL PROCEEDINGS TO
19 TERMINATE PARENTAL RIGHTS OR FINALIZE AN
20 ADOPTION UNDER THIS CHAPTER.

21
22 ~~(3)~~⁽²⁾ The court may require that consent be executed
23 by:

24 (a) Any person lawfully entitled to custody of the
25 minor; or

26 (b) The court having jurisdiction to determine custody
27 of the minor, if the person having physical custody of the
28 minor has no authority to consent to the adoption.

29 ~~(4)~~⁽³⁾ The petitioner must make good faith and
30 diligent efforts as provided under s. 63.088 to notify, and
31 obtain written consent from, the persons required to consent

1 to adoption under s. 63.062 ~~within 60 days after filing the~~
2 ~~petition. These efforts may include conducting interviews and~~
3 ~~record searches to locate those persons, including verifying~~
4 ~~information related to location of residence, employment,~~
5 ~~service in the Armed Forces, vehicle registration in this~~
6 ~~state, and corrections records.~~

7 ~~(5)(4)~~ If parental rights to the minor have previously
8 been terminated, a licensed child-placing agency or the
9 department with which the minor child has been placed for
10 subsequent adoption may provide consent to the adoption. In
11 such case, no other consent is required.

12 ~~(6)(5)~~ A petition to adopt an adult may be granted if:

13 (a) Written consent to adoption has been executed by
14 the adult and the adult's spouse, if any.

15 (b) Written consent to adoption has been executed by
16 the birth parents, if any, or proof of service of process has
17 been filed, showing notice has been served on the parents as
18 provided in this chapter section.

19 Section 12. Section 63.082, Florida Statutes, is
20 amended to read:

21 63.082 Execution of consent or affidavit of
22 nonpaternity; family medical history; withdrawal of consent.--

23 (1) Consent or an affidavit of nonpaternity shall be
24 executed as follows:

25 (a) If by the person to be adopted, by oral or written
26 statement in the presence of the court or by being
27 acknowledged before a notary public.

28 (b) If by an agency, by affidavit from its authorized
29 representative.

30 (c) If by any other person, in the presence of the
31 court or by affidavit.

1 (d) If by a court, by an appropriate order or
2 certificate of the court.

3 (2) A consent that does not name or otherwise identify
4 the adopting parent is valid if the consent contains a
5 statement by the person consenting that the consent was
6 voluntarily executed and that identification of the adopting
7 parent is not required for granting the consent.

8 (3)(a) The department must provide a consent form and
9 a family social and medical history form to an adoption entity
10 that intermediary who intends to place a child for adoption.
11 The forms completed by the birth parents must be attached to
12 the petition to terminate parental rights pending adoption and
13 must contain such biological and sociological information, or
14 such information as to the family medical history, regarding
15 the minor child and the birth parents as is required by the
16 department. The information must be incorporated into the
17 final home investigation report specified in s. 63.125. The
18 court may also require that the birth mother and birth father
19 must be interviewed by a representative of the department, a
20 licensed child-placing agency, or a professional pursuant to
21 s. 63.092 before the consent is executed, unless the birth
22 parent cannot be located or identified. A summary of each
23 interview, or a statement that the parent is unlocated or
24 unidentified, must be filed with the petition to terminate
25 parental rights pending adoption and included in the final
26 home investigation report filed under s. 63.125.

27 (b) Consent executed by ~~the department, by a licensed~~
28 ~~child-placing agency, or by~~ an appropriate order or
29 certificate of the court under s. 63.062(3)(b) must be
30 attached to the petition to terminate parental rights pending
31 adoption and must be accompanied by a family medical history

1 ~~that includes such information concerning the medical history~~
2 ~~of the child and the birth parents as is available or readily~~
3 ~~obtainable.~~

4 (c) If any executed consent or social and medical
5 history is unavailable because the person whose consent is
6 required cannot be located or identified, the petition must be
7 accompanied by the affidavit of due diligence required under
8 s. 63.088.

9 (4)(a) The consent to an adoption or affidavit of
10 nonpaternity shall not for voluntary surrender must be
11 executed before after the birth of the minor.

12 (b) A consent to adoption of a minor who is to be
13 placed for adoption under s. 63.052 upon the minor's release
14 following birth from a licensed hospital or birth center,
15 shall not be executed sooner than:

16 1. Forty-eight hours after the time of the minor's
17 birth; or

18 2. The day the birth mother is determined in writing,
19 either on a patient chart or in release paperwork, to be fit
20 for release from a licensed hospital or birth center;
21 whichever is sooner.

22
23 A consent executed under this paragraph is valid upon
24 execution and thereafter may only be withdrawn when the court
25 finds that it was obtained by fraud or under duress.

26 (c) When the minor to be adopted is not placed under
27 s. 63.052 upon the minor's release following birth from a
28 licensed hospital or birth center, the consent may be executed
29 at any time after the birth of the minor. While such consent
30 is valid upon execution, it is subject to a 3-day revocation
31 period under subsection (7).

1 (d) The consent or affidavit of nonpaternity must be
2 signed ~~child~~, in the presence of two witnesses, and be
3 acknowledged before a notary public who is not signing as one
4 of the witnesses. The notary public must legibly note on the
5 consent or affidavit of nonpaternity the date and time the
6 consent or affidavit of nonpaternity was executed.The
7 witnesses' names must be typed or printed underneath their
8 signatures. The witnesses', ~~and their~~ home or business
9 addresses and social security numbers, driver's license
10 numbers, or state identification card numbers must be
11 included. The absence of a social security number, driver's
12 license number, or state identification card number shall not
13 be deemed to invalidate the consent. The person who signs the
14 consent or affidavit has the right to have at least one of the
15 witnesses be an individual who does not have a partnership,
16 employment, agency, or other professional or personal
17 relationship with the adoption entity or the prospective
18 adoptive parents. The person who signs the consent or
19 affidavit of nonpaternity must be given reasonable notice of
20 the right to select a witness of his or her own choosing. The
21 person who signs the consent or affidavit of nonpaternity must
22 acknowledge in writing on the consent or affidavit that such
23 notice was given and indicate the witness, if any, who was
24 selected by the person signing the consent or affidavit. A
25 consent to adoption must contain, in at least 16-point
26 boldfaced type, an acknowledgement of the birth parent's
27 rights in substantially the following form:

28
29 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU
30 HAVE THE RIGHT TO DO ANY OF THE FOLLOWING
31

1 INSTEAD OF SIGNING THIS CONSENT OR BEFORE
2 SIGNING THIS CONSENT:
3
4 (A) CONSULT WITH AN ATTORNEY;
5 (B) HOLD, CARE FOR, AND FEED THE CHILD;
6 (C) PLACE THE CHILD IN FOSTER CARE OR WITH ANY
7 FRIEND OR FAMILY MEMBER YOU CHOOSE WHO IS
8 WILLING TO CARE FOR YOUR CHILD;
9 (D) TAKE THE CHILD HOME; AND
10 (E) FIND OUT ABOUT THE COMMUNITY RESOURCES
11 THAT ARE AVAILABLE TO YOU IF YOU DO NOT GO
12 THROUGH WITH THE ADOPTION.
13
14 IF YOU DO SIGN THIS CONSENT, YOU ARE
15 RELINQUISHING ALL RIGHTS TO YOUR CHILD. YOUR
16 CONSENT IS VALID AND BINDING UNLESS WITHDRAWN
17 AS PERMITTED BY LAW. WHEN RELINQUISHING YOUR
18 RIGHTS TO A CHILD WHO IS TO BE PLACED FOR
19 ADOPTION UNDER SECTION 63.052, FLORIDA
20 STATUTES, UPON THE MINOR'S RELEASE FOLLOWING
21 BIRTH FROM A LICENSED HOSPITAL OR BIRTH CENTER,
22 A WAITING PERIOD WILL BE IMPOSED BEFORE YOU MAY
23 SIGN THE CONSENT FOR ADOPTION. YOU WILL BE
24 REQUIRED TO WAIT 48 HOURS FROM THE TIME OF
25 BIRTH, OR UNTIL THE BIRTH MOTHER HAS BEEN
26 NOTIFIED IN WRITING, EITHER ON HER CHART OR IN
27 RELEASE PAPERS THAT SHE IS FIT TO BE RELEASED
28 FROM A LICENSED HOSPITAL OR BIRTHING CENTER,
29 WHICHEVER IS SOONER, BEFORE YOU MAY SIGN THE
30 CONSENT FOR ADOPTION. ONCE YOU HAVE SIGNED THE
31 CONSENT, IT IS VALID AND BINDING AND CANNOT BE

1 WITHDRAWN UNLESS A COURT FINDS THAT IT WAS
2 OBTAINED THROUGH FRAUD OR UNDER DURESS. IF YOU
3 ARE RELINQUISHING YOUR RIGHTS TO A CHILD WHO IS
4 NOT PLACED UNDER SECTION 63.052, FLORIDA
5 STATUTES, UPON THE MINOR'S RELEASE FOLLOWING
6 BIRTH FROM A LICENSED HOSPITAL OR BIRTH CENTER,
7 THE CONSENT MAY BE EXECUTED AT ANY TIME AFTER
8 THE BIRTH OF THE MINOR. WHILE SUCH CONSENT IS
9 VALID UPON EXECUTION, IT IS SUBJECT TO A 3-DAY
10 REVOCAION PERIOD.

11
12 WHEN THE REVOCATION PERIOD APPLIES, YOU MAY
13 WITHDRAW YOUR CONSENT FOR ANY REASON IF YOU DO
14 SO WITHIN 3 BUSINESS DAYS AFTER THE DATE YOU
15 SIGNED THE CONSENT OR 1 BUSINESS DAY AFTER THE
16 DATE OF THE BIRTH MOTHER'S DISCHARGE FROM A
17 LICENSED HOSPITAL OR BIRTH CENTER, WHICHEVER IS
18 LATER.

19
20 YOU MAY DO THIS BY NOTIFYING THE ADOPTION
21 ENTITY IN WRITING THAT YOU ARE WITHDRAWING YOUR
22 CONSENT. YOU MAY DO THIS BY PRESENTING A LETTER
23 AT A UNITED STATES POST OFFICE AND ASKING THAT
24 THE LETTER BE SENT BY CERTIFIED UNITED STATES
25 MAIL WITH RETURN RECEIPT REQUESTED WITHIN 3
26 BUSINESS DAYS AFTER THE DATE YOU SIGNED THE
27 CONSENT OR 1 BUSINESS DAY AFTER THE DATE OF THE
28 BIRTH MOTHER'S DISCHARGE FROM A LICENSED
29 HOSPITAL OR BIRTH CENTER, WHICHEVER IS LATER.
30 AS USED IN THIS SECTION, THE TERM "BUSINESS
31 DAY" MEANS A DAY ON WHICH THE UNITED STATES

1 POST OFFICE ACCEPTS CERTIFIED MAIL FOR
2 DELIVERY. THE COST OF THIS MUST BE PAID AT THE
3 TIME OF MAILING AND THE RECEIPT SHOULD BE
4 RETAINED AS PROOF THAT CONSENT WAS WITHDRAWN IN
5 A TIMELY MANNER.

6
7 THE ADOPTION ENTITY YOU SHOULD NOTIFY IS:
8 ...(Name of Adoption Entity)..., ...(Address of
9 Adoption Entity)..., ...(Phone Number of
10 Adoption Entity).... FOLLOWING 3 BUSINESS DAYS
11 AFTER THE DATE YOU SIGNED THE CONSENT OR 1
12 BUSINESS DAY AFTER THE DATE OF THE BIRTH
13 MOTHER'S DISCHARGE FROM A LICENSED HOSPITAL OR
14 BIRTH CENTER, WHICHEVER IS LATER, YOU MAY
15 WITHDRAW YOUR CONSENT ONLY IF YOU CAN PROVE IN
16 COURT THAT CONSENT WAS OBTAINED BY FRAUD OR
17 DURESS.

18
19 (5) Before any consent to adoption or affidavit of
20 nonpaternity is executed by a birth parent, but after the
21 birth of the child, all requirements of disclosure under s.
22 63.085 must be met.

23 (6) A copy of each consent signed in an action for
24 termination of parental rights pending adoption must be
25 provided to each person whose consent is required under s.
26 63.062. A copy of each consent must be hand delivered, with a
27 written acknowledgement of receipt signed by the person whose
28 consent is required, or mailed by first class United States
29 mail to the address of record in the court file. If a copy of
30 a consent cannot be provided as required in this section, the
31 adoption entity must execute an acknowledgement that states

1 the reason the copy of the consent is undeliverable. The
2 original consent and acknowledgment of receipt, or the
3 acknowledgment of mailing by the adoption entity, must be
4 filed with the petition for termination of parental rights
5 pending adoption.

6 (7)(5) Consent executed under paragraph (4)(c) may be
7 withdrawn for any reason by notifying the adoption entity in
8 writing by certified United States mail, return receipt
9 requested, not later than 3 business days after execution of
10 the consent or 1 business day after the date of the birth
11 mother's discharge from a licensed hospital or birth center,
12 whichever occurs later. As used in this subsection, the term
13 "business day" means a day on which the United States Post
14 Office accepts certified mail for delivery. Upon receiving
15 written notice from a person of that person's desire to
16 withdraw consent, the adoption entity must contact the
17 prospective adoptive parent to arrange a time certain for the
18 adoption entity to regain physical custody of the child,
19 unless upon motion for emergency hearing by the adoption
20 entity, the court determines in written findings that
21 placement of the minor with the person withdrawing consent may
22 endanger the minor. If the court finds that such placement may
23 endanger the minor, the court must enter an order regarding
24 continued placement of the child. The order shall include, but
25 not be limited to, whether temporary placement in foster care
26 is appropriate, whether an investigation by the Department of
27 Children and Families is recommended, and whether a relative
28 within the third degree is available for the temporary
29 placement. In addition, if the person withdrawing consent
30 claims to be the father of the minor but has not been
31 established to be the father by marriage, court order, or

1 scientific testing, the court may order scientific paternity
2 testing and reserve ruling on removal of the child until the
3 results of such testing have been filed with the court. The
4 adoption entity must return the minor within 3 days to the
5 physical custody of the person withdrawing consent.
6 Thereafter, consent may be withdrawn only when the court finds
7 that the consent was obtained by fraud or duress. An affidavit
8 of nonpaternity may be withdrawn only if the court finds that
9 the affidavit of nonpaternity was obtained by fraud. The
10 adoption entity must include its name, address, and telephone
11 number on the consent form.

12 Section 13. Section 63.085, Florida Statutes, is
13 amended to read:

14 (Substantial rewording of section. See
15 s. 63.085, F.S., for present text.)

16 63.085 Disclosure by adoption entity.--

17 (1) DISCLOSURE REQUIRED TO BIRTH PARENTS AND
18 PROSPECTIVE ADOPTIVE PARENTS.--Not later than 7 days after a
19 person seeking to adopt a minor or a person seeking to place a
20 minor for adoption contacts an adoption entity in person or
21 provides the adoption entity with a mailing address, the
22 entity must provide a written disclosure statement to that
23 person. If a birth parent did not initially contact the
24 adoption entity, the written disclosure must be provided
25 within 7 days after that birth parent is identified and
26 located. The written disclosure statement must be in
27 substantially the following form:

28
29
30
31

ADOPTION DISCLOSURE

1 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE
2 PROVIDED TO ALL PERSONS CONSIDERING ADOPTION TO
3 ADVISE THEM OF THE FOLLOWING FACTS REGARDING
4 ADOPTION UNDER FLORIDA LAW:

5
6 1. Under section 63.212, Florida
7 Statutes, the existence of a placement or
8 adoption contract signed by the birth parent or
9 adoptive parent, prior approval of that
10 contract by the court, or payment of any
11 expenses permitted under Florida law does not
12 obligate anyone to sign a consent or ultimately
13 place a minor for adoption.

14 2. Under section 63.092, Florida
15 Statutes, a favorable preliminary home study
16 and a home investigation of the prospective
17 adoptive home must be completed as required by
18 chapter 63, Florida Statutes, before the minor
19 may be placed in that home.

20 3. Under section 63.082, Florida
21 Statutes, a consent for adoption or affidavit
22 of nonpaternity may not be signed until after
23 the birth of the minor. The consent or
24 affidavit of nonpaternity is valid and binding
25 upon execution unless withdrawn as permitted
26 under section 63.082, Florida Statutes. If the
27 minor is to be placed for adoption upon leaving
28 the hospital, the consent may not be signed
29 until 48 hours after birth or the day the birth
30 mother is released from the hospital. If the
31 minor is not placed for adoption upon leaving

1 the hospital, a 3-day revocation period
2 applies. Consent may be withdrawn for any
3 reason by notifying the adoption entity in
4 writing. In order to withdraw consent, the
5 written withdrawal of consent must be mailed no
6 later than 3 business days after execution of
7 the consent or 1 business day after the date of
8 the birth mother's discharge from a licensed
9 hospital or birth center, whichever occurs
10 later. The letter must be sent by certified
11 mail, return receipt requested. This is done by
12 presenting it at any United States Post Office,
13 and asking that the letter be sent by certified
14 United States mail with return receipt
15 requested. The cost of this must be paid at the
16 time of mailing and the receipt should be
17 retained as proof that consent was withdrawn in
18 a timely manner. For purposes of this chapter,
19 the term "business day" means a day on which
20 the United States Post Office accepts certified
21 mail for delivery. Upon receiving written
22 notice from a person of that person's desire to
23 withdraw consent, the adoption entity must
24 contact the prospective adoptive parent to
25 arrange a time certain to regain physical
26 custody of the child. The adoption entity must
27 return the minor within 3 days to the physical
28 custody of the person withdrawing consent.
29 Thereafter, consent may be withdrawn only if
30 the court finds that consent was obtained by
31 fraud. An affidavit of nonpaternity, once

1 executed, may be withdrawn only if the court
2 finds that it was obtained by fraud.
3 4. Under section 63.082, Florida
4 Statutes, a person who signs a consent or
5 affidavit of nonpaternity for adoption must be
6 given reasonable notice of his or her right to
7 select a person who does not have a
8 partnership, employment, agency, or other
9 professional or personal relationship with the
10 adoption entity or the prospective adoptive
11 parents to be present when the consent or
12 affidavit of nonpaternity is executed and to
13 sign the consent or affidavit as a witness.
14 5. Under section 63.088, Florida
15 Statutes, specific and extensive efforts are
16 required by law to attempt to obtain the
17 consents required under section 63.062, Florida
18 Statutes. If these efforts are unsuccessful, an
19 order terminating parental rights pending
20 adoption may not be issued by the court until
21 those requirements have been met and an
22 affidavit of service has been filed with the
23 court.
24 6. Under Florida law, an intermediary may
25 represent the legal interests of only the
26 adoptive parents, not of any birth parent. Each
27 person whose consent to an adoption is required
28 under section 63.062, Florida Statutes,
29 including each birth parent, is entitled to
30 seek independent legal advice and
31

1 representation before signing any document or
2 surrendering parental rights.

3 7. Under section 63.089, Florida
4 Statutes, the termination of parental rights
5 will occur simultaneously with the entry of a
6 judgment terminating parental rights pending
7 adoption.

8 8. Under section 63.182, Florida
9 Statutes, an action or proceeding of any kind
10 to vacate, set aside, or otherwise nullify an
11 order of adoption or an underlying order
12 terminating parental rights pending adoption on
13 any ground, including fraud or duress, must be
14 filed within 1 year after entry of the order
15 terminating parental rights pending adoption.

16 9. Under section 63.182, Florida
17 Statutes, for 1 year after the entry of a
18 judgment of adoption, any irregularity or
19 procedural defect in the adoption proceeding
20 may be the subject of an appeal contesting the
21 validity of the judgment.

22 10. Under section 63.089, Florida
23 Statutes, a judgment terminating parental
24 rights pending adoption is voidable and any
25 later judgment of adoption of that minor is
26 voidable if, upon the motion of a birth parent,
27 the court finds that any person knowingly gave
28 false information that prevented the birth
29 parent from timely making known his or her
30 desire to assume parental responsibilities
31 toward the minor or meeting the requirements

1 under chapter 63, Florida Statutes, to exercise
2 his or her parental rights. A motion under
3 section 63.089, Florida Statutes, must be filed
4 with the court originally entering the
5 judgment. The motion must be filed within a
6 reasonable time, but not later than 1 year
7 after the date the judgment to which the motion
8 is directed was entered.

9 11. Under section 63.165, Florida
10 Statutes, the State of Florida maintains a
11 registry of adoption information. Information
12 about the registry is available from the
13 Department of Children and Family Services.

14 12. Under section 63.032, Florida
15 Statutes, a court may find that a birth parent
16 has abandoned his or her child based on conduct
17 during the pregnancy or based on conduct after
18 the child is born. In addition, under section
19 63.089, Florida Statutes, the failure of a
20 birth parent to respond to notices of
21 proceedings involving his or her child shall
22 result in termination of parental rights of a
23 birth parent. A lawyer can explain what a birth
24 parent must do to protect his or her parental
25 rights. Any birth parent wishing to protect his
26 or her parental rights should act IMMEDIATELY.

27 13. Each birth parent and adoptive parent
28 is entitled to independent legal advice and
29 representation. Attorney information may be
30 obtained from the yellow pages, The Florida
31

1 Bar's lawyer referral service, and local legal
2 aid offices and bar associations.

3 14. There are counseling services
4 available in the community to assist in making
5 a parenting decision. Consult the yellow pages
6 of the telephone directory.

7 15. Medical and social services support
8 is available if the birth parent wishes to
9 retain parental rights and responsibilities.
10 Consult the Department of Children and Family
11 Services.

12
13 (2) ACKNOWLEDGMENT OF DISCLOSURE.--The adoption entity
14 must obtain a written statement acknowledging receipt of the
15 disclosure required under subsection (1) and signed by the
16 persons receiving the disclosure or, if it is not possible to
17 obtain such an acknowledgement, the adoption entity must
18 execute an affidavit stating why an acknowledgement could not
19 be obtained. A copy of the acknowledgement of receipt of the
20 disclosure must be provided to the person signing it. A copy
21 of the acknowledgement or affidavit executed by the adoption
22 entity in lieu of the acknowledgement must be maintained in
23 the file of the adoption entity. The original acknowledgement
24 or affidavit must be filed with the court. In the case of a
25 disclosure provided under subsection (1), the original
26 acknowledgement or affidavit must be included in the
27 preliminary home study required in s. 63.092(3).

28 (3) POSTBIRTH DISCLOSURE TO BIRTH PARENTS.--Before
29 execution of any consent to adoption by a birth parent, but
30 after the birth of the minor, all requirements of subsections
31 (1) and (2) for making certain disclosures to a birth parent

1 and obtaining a written acknowledgment of receipt must be
2 repeated.

3 Section 14. Section 63.087, Florida Statutes, is
4 created to read:

5 63.087 Proceeding to terminate parental rights pending
6 adoption; general provisions.--

7 (1) INTENT.--It is the intent of the Legislature to
8 provide a proceeding in which the court determines whether a
9 minor is legally available for adoption through a separate
10 proceeding to address termination of parental rights prior to
11 the filing of a petition for adoption.

12 (2) GOVERNING RULES.--The Florida Family Law Rules of
13 Procedure govern a proceeding to terminate parental rights
14 pending adoption unless otherwise provided by law.

15 (3) JURISDICTION.--A court of this state which is
16 competent to decide child welfare or custody matters has
17 jurisdiction to hear all matters arising from a proceeding to
18 terminate parental rights pending adoption. All subsequent
19 proceedings for the adoption of the minor, if the petition for
20 termination is granted, must be conducted by the same judge as
21 these proceedings whenever possible.

22 (4) VENUE.--A petition to terminate parental rights
23 pending adoption must be filed in the county where the child
24 resided for the prior 6 months or, if the child is younger
25 than 6 months of age, in the county where the birth mother or
26 birth father resided at the time of the execution of the
27 consent to adoption or the affidavit of nonpaternity, or, if
28 there is no consent or affidavit of nonpaternity executed by a
29 birth parent, in the county where the birth mother resides.

30 (5) PREREQUISITE FOR ADOPTION.--A petition for
31 adoption may not be filed until 30 days after the date the

1 judge signed the judgment terminating parental rights pending
2 adoption under this chapter, unless the adoptee is an adult or
3 the minor has been the subject of a judgment terminating
4 parental rights under chapter 39.

5 (6) PETITION.--

6 (a) A proceeding seeking to terminate parental rights
7 pending adoption pursuant to this chapter must be commenced by
8 the filing of an original petition after the birth of the
9 minor.

10 (b) The petition may be filed by a birth parent or
11 legal guardian of the minor.

12 (c) The petition must be entitled: "In the Matter of
13 the Proposed Adoption of a Minor Child."

14 (d) If a petition for a declaratory statement under s.
15 63.102 has previously been filed, a subsequent petition to
16 terminate parental rights pending adoption may, at the request
17 of any party or on the court's own motion, be consolidated
18 with that previous action. If the petition to terminate
19 parental rights pending adoption is consolidated with a prior
20 petition filed under this chapter for which a filing fee has
21 been paid, the petitioner may not be charged a subsequent or
22 additional filing fee.

23 (e) The petition to terminate parental rights pending
24 adoption must be in writing and signed by the petitioner under
25 oath stating the petitioner's good faith in filing the
26 petition. A written consent, affidavit of nonpaternity, or
27 affidavit of due diligence under s. 63.088, for each person
28 whose consent is required under s. 63.062, must be attached.

29 (f) The petition must include:

30 1. The minor's name, gender, date of birth, and place
31 of birth. The petition must contain all names by which the

1 minor is or has been known, including the minor's legal name
2 at the time of the filing of the petition, to allow interested
3 parties to the action, including birth parents, legal
4 guardians, persons with custodial or visitation rights to the
5 minor, and persons entitled to notice pursuant to the Uniform
6 Child Custody Jurisdiction Act or the Indian Child Welfare
7 Act, to identify their own interest in the action.

8 2. If the petition is filed before the day the minor
9 is 6 months old and if the identity or location of the birth
10 father is unknown, each city in which the birth mother resided
11 or traveled during the 12 months prior to the minor's birth,
12 including the county and state in which that city is located.

13 3. Unless the consent of each person whose consent is
14 required under s. 63.062 or an affidavit of nonpaternity is
15 attached to the petition, the name and address or, if a
16 specific address is unknown, the city, including the county
17 and state in which that city is located, of:

- 18 a. The minor's mother;
19 b. Any man whom the mother reasonably believes may be
20 the minor's father; and
21 c. Any legal custodian of the minor.
22

23 If a required name or address is not known, the petition must
24 so state.

25 4. All information required by the Uniform Child
26 Custody Jurisdiction Act and the Indian Child Welfare Act.

27 5. A statement of the grounds under s. 63.089 upon
28 which the petition is based.

29 6. The name, address, and telephone number of any
30 adoption entity seeking to place the minor for adoption.
31

1 7. The name, address, and phone number of the division
2 of the circuit court in which the petition is to be filed.

3 (7) ANSWER NOT REQUIRED.--An answer to the petition or
4 any pleading need not be filed by any minor, parent, or legal
5 custodian, but any matter that might be set forth in an answer
6 or other pleading may be pleaded orally before the court or
7 filed in writing as any such person may choose.

8 Notwithstanding the filing of any answer or any pleading, any
9 person present at the hearing to terminate parental rights
10 pending adoption whose consent to adoption is required under
11 s. 63.062 must:

12 (a) Be advised by the court that he or she has a right
13 to ask that the hearing be reset for a later date so that the
14 person may consult with an attorney;

15 (b) Be given an opportunity to deny the allegations in
16 the petition; and

17 (c) Be given the opportunity to challenge the validity
18 of any consents or affidavits of nonpaternity signed by any
19 person.

20 Section 15. Section 63.088, Florida Statutes, is
21 created to read:

22 63.088 Proceeding to terminate parental rights pending
23 adoption; notice and service.--

24 (1) INITIATE LOCATION AND IDENTIFICATION
25 PROCEDURES.--When the location or identity of a person whose
26 consent to an adoption is required but is not known, the
27 adoption entity must begin the inquiry and diligent search
28 process required by this section not later than 7 days after
29 the date on which the person seeking to place a minor for
30 adoption has evidenced in writing to the entity a desire to
31 place the minor for adoption with that entity or not later

1 than 7 days after the date any money is provided as permitted
2 under this chapter by the adoption entity for the benefit of
3 the person seeking to place a minor for adoption.

4 (2) LOCATION AND IDENTITY KNOWN.--Before the court may
5 determine that a minor is available for adoption, and in
6 addition to the other requirements set forth in this chapter,
7 each person whose consent is required under s. 63.062, who has
8 not executed an affidavit of nonpaternity, and whose location
9 and identity has been determined by compliance with the
10 procedures in this section must be personally served, pursuant
11 to chapter 48, at least 30 days before the hearing with a copy
12 of the petition to terminate parental rights pending adoption
13 and with notice in substantially the following form:

14
15 NOTICE OF PETITION AND HEARING

16 TO TERMINATE PARENTAL RIGHTS PENDING ADOPTION

17
18 A petition to terminate parental rights pending
19 adoption has been filed. A copy of the petition
20 is being served with this notice. There will be
21 a hearing on the petition to terminate parental
22 rights pending adoption on ... (date) ... at
23 ... (time) ... before ... (judge) ... at ...
24 (location, including complete name and street
25 address of the courthouse) The court has
26 set aside ... (amount of time) ... for this
27 hearing.

28
29 UNDER SECTION 63.089, FLORIDA STATUTES, FAILURE
30 TO FILE A WRITTEN RESPONSE TO THIS NOTICE WITH
31 THE COURT OR TO APPEAR AT THIS HEARING

1 CONSTITUTES GROUNDS UPON WHICH THE COURT SHALL
2 END ANY PARENTAL RIGHTS YOU MAY HAVE REGARDING
3 THE MINOR CHILD.

- 4
- 5 (3) REQUIRED INQUIRY.--In all cases filed under this
6 section, the court must conduct the following inquiry of the
7 person who is placing the minor for adoption and of any
8 relative or custodian of the minor who is present at the
9 hearing and likely to have the following information:
- 10 (a) Whether the mother of the minor was married at any
11 time when conception of the minor may have occurred or at the
12 time of the birth of the minor;
- 13 (b) Whether the mother was cohabiting with a male at
14 any time when conception of the minor may have occurred;
- 15 (c) Whether the mother has received payments or
16 promises of support with respect to the minor or, because of
17 her pregnancy, from any person she has reason to believe may
18 be the father;
- 19 (d) Whether the mother has named any person as the
20 father on the birth certificate of the minor or in connection
21 with applying for or receiving public assistance;
- 22 (e) Whether any person has acknowledged or claimed
23 paternity of the minor; and
- 24 (f) Whether the mother knows the identity of any
25 person whom she has reason to believe may be the father.

26

27 The information required under this subsection may be provided
28 to the court in the form of a sworn affidavit by a person
29 having personal knowledge of the facts, addressing each
30 inquiry enumerated in this subsection. The inquiry required
31

1 under this subsection may be conducted before the birth of the
2 minor.
3 (4) LOCATION UNKNOWN; IDENTITY DETERMINED.--If the
4 inquiry by the court under subsection (3) identifies any
5 person whose consent is required under s. 63.062 and who has
6 not executed an affidavit of nonpaternity, and the location of
7 the person from whom consent is required is unknown, the
8 adoption entity must conduct a diligent search for that person
9 which must include the following inquiries:
10 (a) The person's current address, or any previous
11 address, through an inquiry of the United States Post Office
12 through the Freedom of Information Act;
13 (b) The last known employment of the person, including
14 the name and address of the person's employer. Inquiry should
15 be made of the last known employer as to any address to which
16 wage and earnings statements (W-2 forms) of the person have
17 been mailed. Inquiry should be made of the last known employer
18 as to whether the person is eligible for a pension or
19 profit-sharing plan and any address to which pension or other
20 funds have been mailed;
21 (c) Union memberships the person may have held or
22 unions that governed the person's particular trade or craft in
23 the area where the person last resided;
24 (d) Regulatory agencies, including those regulating
25 licensing in the area where the person last resided;
26 (e) Names and addresses of relatives to the extent
27 such can be reasonably obtained from the petitioner or other
28 sources, contacts with those relatives, and inquiry as to the
29 person's last known address. The petitioner shall pursue any
30 leads of any addresses where the person may have moved.
31 Relatives include, but are not limited to, parents, brothers,

1 sisters, aunts, uncles, cousins, nieces, nephews,
2 grandparents, great grandparents, former in-laws, stepparents,
3 and stepchildren;

4 (f) Information as to whether or not the person may
5 have died, and if so, the date and location;

6 (g) Telephone listings in the area where the person
7 last resided;

8 (h) Inquiries of law enforcement agencies in the area
9 where the person last resided;

10 (i) Highway patrol records in the state where the
11 person last resided;

12 (j) Department of Corrections records in the state
13 where the person last resided;

14 (k) Hospitals in the area where the person last
15 resided;

16 (l) Records of utility companies, including water,
17 sewer, cable TV, and electric companies in the area where the
18 person last resided;

19 (m) Records of the Armed Forces of the United States
20 as to whether there is any information as to the person;

21 (n) Records of the tax assessor and tax collector in
22 the area where the person last resided; and

23 (o) Search of one Internet data bank locator service.
24

25 Any person contacted by a petitioner who is requesting
26 information pursuant to this subsection must release the
27 requested information to the petitioner, except when
28 prohibited by law, without the necessity of a subpoena or
29 court order. An affidavit of diligent search executed by the
30 petitioner and the adoption entity must be filed with the
31 court confirming completion of each aspect of the diligent

1 search enumerated in this subsection and specifying the
2 results. The diligent search required under this subsection
3 may be conducted before the birth of the minor.

4 (5) LOCATION NOT DETERMINED OR IDENTITY UNKNOWN.--This
5 subsection only applies if, as to any person whose consent is
6 required under s. 63.062 and who has not executed an affidavit
7 of nonpaternity, the location or identity of the person is
8 unknown and the inquiry under subsection (3) fails to identify
9 the person or the due diligence search under subsection (4)
10 fails to locate the person. The unlocated or unidentified
11 person must be served notice under subsection (2), of the
12 petition and hearing to terminate parental rights pending
13 adoption by constructive service in the manner provided in
14 chapter 49 in each county identified in the petition, as
15 provided in s. 63.087(6). The notice, in addition to all
16 information required in the petition under s. 63.087(6) and
17 chapter 49, must contain a physical description, including,
18 but not limited to, age, race, hair and eye color, and
19 approximate height and weight of the minor's mother and of any
20 person the mother reasonably believes may be the father; the
21 minor's date of birth; and any date and city, including the
22 county and state in which the city is located, in which
23 conception may have occurred. If any of the facts that must be
24 included in the petition under this subsection are unknown and
25 cannot be reasonably ascertained, the petition must so state.

26 Section 16. Section 63.089, Florida Statutes, is
27 created to read:

28 63.089 Proceeding to terminate parental rights pending
29 adoption.--

30 (1) HEARING.--The court may terminate parental rights
31 pending adoption only after a full evidentiary hearing.

1 (2) HEARING PREREQUISITES.--The court may hold the
2 hearing only when:
3 (a) For each person whose consent is required under s.
4 63.062:
5 1. A consent under s. 63.082 has been executed and
6 filed with the court;
7 2. An affidavit of nonpaternity under s. 63.082 has
8 been executed and filed with the court; or
9 3. Notice has been provided under ss. 63.087 and
10 63.088;
11 (b) For each notice and petition that must be served
12 under ss. 63.087 and 63.088:
13 1. At least 30 days have elapsed since the date of
14 personal service and an affidavit of service has been filed
15 with the court;
16 2. At least 60 days have elapsed since the first date
17 of publication of constructive service and an affidavit of
18 service has been filed with the court; or
19 3. An affidavit of nonpaternity which affirmatively
20 waives service has been executed and filed with the court;
21 (c) The minor named in the petition has been born; and
22 (d) The petition contains all information required
23 under s. 63.087 and all affidavits of inquiry, due diligence,
24 and service required under s. 63.088 have been obtained and
25 filed with the court.
26 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
27 ADOPTION.--The court may issue a judgment terminating parental
28 rights pending adoption if the court determines by clear and
29 convincing evidence that each person whose consent to an
30 adoption is required under s. 63.062:
31

1 (a) Has executed a valid consent that has not been
2 withdrawn under s. 63.082 and the consent was obtained
3 according to the requirements of this chapter;

4 (b) Has executed an affidavit of nonpaternity and the
5 affidavit was obtained according to the requirements of this
6 chapter;

7 (c) Has been properly served notice of the proceeding
8 in accordance with the requirements of this chapter and has
9 failed to file a written answer or appear at the evidentiary
10 hearing resulting in the order terminating parental rights
11 pending adoption;

12 (d) Has abandoned the minor as abandonment is defined
13 in s. 63.032(14);

14 (e) Is a parent of the person to be adopted, which
15 parent has been judicially declared incapacitated with
16 restoration of competency found to be medically improbable;

17 (f) Is a legal guardian or lawful custodian of the
18 person to be adopted, other than a parent, who has failed to
19 respond in writing to a request for consent for a period of 60
20 days or, after examination of his or her written reasons for
21 withholding consent, is found by the court to be withholding
22 his or her consent unreasonably; or

23 (g) Is the spouse of the person to be adopted who has
24 failed to consent, and the failure of the spouse to consent to
25 the adoption is excused by reason of prolonged and unexplained
26 absence, unavailability, incapacity, or circumstances that are
27 found by the court to constitute unreasonable withholding of
28 consent.

29 (4) FINDING OF ABANDONMENT.--A finding of abandonment
30 resulting in a termination of parental rights must be based
31 upon clear and convincing evidence. A finding of abandonment

1 may not be based upon a lack of emotional support to a birth
2 mother during her pregnancy.

3 (a) In making a determination of abandonment the court
4 must consider:

5 1. Whether the actions alleged to constitute
6 abandonment demonstrate a willful disregard for the safety of
7 the child or unborn child;

8 2. Whether other persons prevented the person alleged
9 to have abandoned the child from making the efforts referenced
10 in this subsection;

11 3. Whether the person alleged to have abandoned the
12 child, while being able, refused to provide financial support
13 when such support was requested by the child's legal guardian
14 or custodian;

15 4. Whether the person alleged to have abandoned the
16 child, while being able, refused to pay for medical treatment
17 when such payment was requested by the child's legal guardian
18 or custodian and those expenses were not covered by insurance
19 or other available sources;

20 5. Whether the amount of support provided or medical
21 expenses paid was appropriate, taking into consideration the
22 needs of the child and relative means and resources available
23 to the person alleged to have abandoned the child and
24 available to the child's legal guardian or custodian during
25 the period the child allegedly was abandoned; and

26 6. Whether the child's legal guardian or custodian
27 made the child's whereabouts known to the person alleged to
28 have abandoned the child; advised that person of the needs of
29 the child or the needs of the mother of an unborn child with
30 regard to the pregnancy; or informed that person of events
31

1 such as medical appointments and tests relating to the child
2 or, if unborn, the pregnancy.

3 (b) The child has been abandoned when the parent of a
4 child is incarcerated on or after October 1, 1999, in a state
5 or federal correctional institution and sentenced to a term of
6 incarceration of 8 years or longer, regardless of how long the
7 person is actually incarcerated under that sentence or how
8 long the person will be incarcerated after October 1, 1999,
9 and:

10 1. The period of time for which the parent is expected
11 to be incarcerated will constitute a substantial portion of
12 the period of time before the child will attain the age of 18
13 years;

14 2. The incarcerated parent has been determined by the
15 court to be a violent career criminal as defined in s.
16 775.084, a habitual violent felony offender as defined in s.
17 775.084, or a sexual predator as defined in s. 775.21; has
18 been convicted of first-degree murder or second-degree murder
19 in violation of s. 782.04 or a sexual battery that constitutes
20 a capital felony, life felony, or first-degree felony
21 violation of s. 794.011; or has been convicted of an offense
22 that is substantially similar in elements and penalties to one
23 of those listed in this subparagraph and that is in violation
24 of a law of another state, the District of Columbia, the
25 United States or any of its possessions or territories, or any
26 foreign jurisdiction; and

27 3. The court determines by clear and convincing
28 evidence that continuing the parental relationship with the
29 incarcerated parent would be harmful to the child and, for
30 this reason, that termination of the parental rights of the
31 incarcerated parent is in the best interest of the child.

1 (c) The only conduct of a father toward a mother
2 during pregnancy that the court may consider in determining
3 whether the child has been abandoned is conduct that occurred
4 after reasonable and diligent efforts have been made to inform
5 the father that he is, or may be, the father of the child.

6 (5) DISMISSAL OF CASE WITH PREJUDICE.--If the court
7 does not find by clear and convincing evidence that parental
8 rights of a birth parent should be terminated pending
9 adoption, the court must dismiss the case with prejudice and
10 that birth parent's parental rights remain in full force under
11 the law. Parental rights may not be terminated based upon a
12 consent that the court finds has been timely withdrawn under
13 s. 63.082 or a consent or affidavit of nonpaternity that the
14 court finds was obtained by fraud. The court must enter an
15 order based upon written findings providing for the placement
16 of the minor. The court may order scientific testing to
17 determine the paternity of the minor at any time during which
18 the court has jurisdiction over the minor. Further
19 proceedings, if any, regarding the minor must be brought in a
20 separate custody action under chapter 61, a dependency action
21 under chapter 39, or a paternity action under chapter 742.

22 (6) A JUDGMENT TERMINATING PARENTAL RIGHTS PENDING
23 ADOPTION.--

24 (a) The judgment terminating parental rights pending
25 adoption must be in writing and contain findings of fact as to
26 the grounds for terminating parental rights pending adoption.

27 (b) The clerk of the court shall mail a copy of the
28 judgment within 24 hours after filing to the department, the
29 petitioner, and the respondent. The clerk shall execute a
30 certificate of each mailing.

31

1 (c) A judgment terminating parental rights pending
2 adoption is voidable and any later judgment of adoption of
3 that minor is voidable if, upon the motion of a birth parent,
4 the court finds that a person knowingly gave false information
5 that prevented the birth parent from timely making known his
6 or her desire to assume parental responsibilities toward the
7 minor or meeting the requirements under this chapter to
8 exercise his or her parental rights. A motion under this
9 paragraph must be filed with the court originally entering the
10 judgment. The motion must be filed within a reasonable time,
11 but not later than 1 year after the date the termination of
12 parental rights final order was entered.

13 (d) Not later than 30 days after the filing of a
14 motion under this subsection, the court must conduct a
15 preliminary hearing to determine what contact, if any, shall
16 be permitted between a birth parent and the child pending
17 resolution of the motion. Such contact shall only be
18 considered if it is requested by a birth parent who has
19 appeared at the hearing. If the court orders contact between a
20 birth parent and child, the order must be issued in writing as
21 expeditiously as possible and must state with specificity any
22 provisions regarding contact with persons other than those
23 with whom the child resides.

24 (e) At the preliminary hearing, the court, upon the
25 motion of any party or its own motion, may order scientific
26 testing to determine the paternity of the minor if the person
27 seeking to set aside the judgment is alleging to be the
28 child's birth father and that fact has not previously been
29 determined by legitimacy or scientific testing. The court may
30 order supervised visitation with a person from whom scientific
31 testing for paternity has been ordered conditional upon the

1 filing of those test results with the court and such results
2 establish that person's paternity of the minor.

3 (f) No later than 45 days after the preliminary
4 hearing, the court must conduct a final hearing on the motion
5 to set aside the judgment and issue its written order as
6 expeditiously as possible thereafter.

7 (7) RECORDS; CONFIDENTIAL INFORMATION.--All records
8 pertaining to a petition to terminate parental rights pending
9 adoption are records related to the subsequent adoption of the
10 minor and are subject to the provisions of s. 63.162, as such
11 provisions apply to records of an adoption proceeding. The
12 confidentiality provisions of this chapter do not apply to the
13 extent information regarding persons or proceedings must be
14 made available as specified under s. 63.088.

15 Section 17. Section 63.092, Florida Statutes, 1998
16 Supplement, is amended to read:

17 63.092 Report to the court of intended placement by an
18 intermediary; preliminary study.--

19 (1) REPORT TO THE COURT.--The adoption entity
20 intermediary must report any intended placement of a minor for
21 adoption with any person not related within the third degree
22 or a stepparent if the adoption entity intermediary has
23 knowledge of, or participates in, such intended placement. The
24 report must be made to the court before the minor is placed in
25 the home.

26 (2) AT-RISK PLACEMENT.--If the minor is placed in the
27 prospective adoptive home before the parental rights of the
28 minor's birth parents are terminated under s. 63.089, the
29 placement is an at-risk placement. If the placement is an
30 at-risk placement, the prospective adoptive parents must
31 acknowledge in writing before the minor may be placed in the

1 prospective adoptive home that the placement is at risk and
2 that the minor is subject to removal from the prospective
3 adoptive home by the adoption entity or by court order.

4 (3)~~(2)~~ PRELIMINARY HOME STUDY.--Before placing the
5 minor in the intended adoptive home, a preliminary home study
6 must be performed by a licensed child-placing agency, a
7 licensed professional, or agency described in s. 61.20(2),
8 unless the petitioner is a stepparent, a spouse of the birth
9 parent, or a relative. The preliminary study shall be
10 completed within 30 days after the receipt by the court of the
11 adoption entity's intermediary's report, but in no event may
12 the minor child be placed in the prospective adoptive home
13 prior to the completion of the preliminary study unless
14 ordered by the court. If the petitioner is a stepparent, a
15 spouse of the birth parent, or a relative, the preliminary
16 home study may be required by the court for good cause shown.
17 The department is required to perform the preliminary home
18 study only if there is no licensed child-placing agency,
19 licensed professional, or agency described in s. 61.20(2), in
20 the county where the prospective adoptive parents reside. The
21 preliminary home study must be made to determine the
22 suitability of the intended adoptive parents and may be
23 completed prior to identification of a prospective adoptive
24 minor child. A favorable preliminary home study is valid for
25 1 year after the date of its completion. A minor may child
26 ~~must~~ not be placed in an intended adoptive home before a
27 favorable preliminary home study is completed unless the
28 adoptive home is also a licensed foster home under s. 409.175.
29 The preliminary home study must include, at a minimum:

- 30 (a) An interview with the intended adoptive parents;
31

1 (b) Records checks of the department's central abuse
2 registry and criminal records correspondence checks pursuant
3 to s. 435.045 through the Department of Law Enforcement on the
4 intended adoptive parents;

5 (c) An assessment of the physical environment of the
6 home;

7 (d) A determination of the financial security of the
8 intended adoptive parents;

9 (e) Documentation of counseling and education of the
10 intended adoptive parents on adoptive parenting;

11 (f) Documentation that information on adoption and the
12 adoption process has been provided to the intended adoptive
13 parents;

14 (g) Documentation that information on support services
15 available in the community has been provided to the intended
16 adoptive parents; and

17 (h) A copy of each ~~the~~ signed acknowledgement
18 ~~statement~~ required by s. 63.085; ~~and~~

19 ~~(i) A copy of the written acknowledgment required by~~
20 ~~s. 63.085(1).~~

21
22 If the preliminary home study is favorable, a minor may be
23 placed in the home pending entry of the judgment of adoption.
24 A minor may not be placed in the home if the preliminary home
25 study is unfavorable. If the preliminary home study is
26 unfavorable, the intermediary or petitioner may, within 20
27 days after receipt of a copy of the written recommendation,
28 petition the court to determine the suitability of the
29 intended adoptive home. A determination as to suitability
30 under this subsection does not act as a presumption of
31 suitability at the final hearing. In determining the

1 suitability of the intended adoptive home, the court must
2 consider the totality of the circumstances in the home.

3 Section 18. Section 63.097, Florida Statutes, is
4 amended to read:

5 63.097 Fees.--

6 (1) The following fees, costs, and expenses may be
7 assessed by the adoption entity or paid by the adoption entity
8 on behalf of the prospective adoptive parents:

9 (a) Reasonable living expenses of the birth mother
10 which the birth mother is unable to pay due to involuntary
11 unemployment, medical disability due to the pregnancy which is
12 certified by a medical professional who has examined the birth
13 mother, or any other disability defined in s. 110.215.

14 Reasonable living expenses are rent, utilities, basic
15 telephone service, food, necessary clothing, transportation,
16 and items included in the affidavit filed under s. 63.132 and
17 found by the court to be necessary for the health of the
18 unborn child.

19 (b) Reasonable and necessary medical expenses.

20 (c) Expenses necessary to comply with the requirements
21 of this chapter including, but not limited to, service of
22 process under s. 63.088, a due diligence search under s.
23 63.088, a preliminary home study under s. 63.092, and a final
24 home study under s. 63.125.

25 (d) Court filing expenses, court costs, and other
26 litigation expenses.

27 (e) Costs associated with advertising under s.
28 63.212(1)(h).

29 (f) The following professional fees:
30
31

1 1. A reasonable hourly fee necessary to provide legal
2 representation to the adoptive parents in a proceeding filed
3 under this chapter.

4 2. A reasonable hourly fee for contact with the birth
5 parent related to the adoption. In determining a reasonable
6 hourly fee under this subparagraph, the court must consider if
7 the tasks done were clerical or of such a nature that the
8 matter could have been handled by support staff at a lesser
9 rate than the rate for legal representation charged under
10 subparagraph 1. Tasks of such nature include, but need not be
11 limited to, tasks such as transportation, transmitting funds,
12 arranging appointments, and securing accommodations. This does
13 not include obtaining a birth parent's signature on any
14 document.

15 3. A reasonable hourly fee for counseling services
16 provided to a birth parent or adoptive parent by a
17 psychologist licensed under chapter 490 or a clinical social
18 worker, marriage and family therapist, or mental health
19 counselor licensed under chapter 491.

20 (2) Prior approval of the court is not required until
21 the cumulative total of amounts permitted under subsection (1)
22 exceeds:

23 (a) \$2,500 in legal or other fees;

24 (b) \$500 in court costs; or

25 (c) \$3,000 in expenditures.

26 (3) Any fees, costs, or expenditures not included in
27 subsection (1) or prohibited under subsection (4) require
28 court approval prior to payment and must be based on a finding
29 of extraordinary circumstances.

30 (4) The following fees, costs, and expenses are
31 prohibited:

1 1. Any fee or expense that constitutes payment for
2 locating a minor for adoption.

3 2. Cumulative expenses in excess of a total of \$500
4 related to the minor, the pregnancy, a birth parent, or
5 adoption proceeding which are incurred prior to the date the
6 prospective adoptive parent retains the adoption entity.

7 3. Any lump-sum payment to the entity which is
8 nonrefundable directly to the payor or which is not itemized
9 on the affidavit filed under s. 63.132.

10 4. Any fee on the affidavit which does not specify the
11 service that was provided and for which the fee is being
12 charged, such as a fee for facilitation, acquisition, or other
13 similar service, or which does not identify the date the
14 service was provided, the time required to provide the
15 service, the person or entity providing the service, and the
16 hourly fee charged.

17 ~~(1) APPROVAL OF FEES TO INTERMEDIARIES.--Any fee over~~
18 ~~\$1,000 and those costs as set out in s. 63.212(1)(d) over~~
19 ~~\$2,500, paid to an intermediary other than actual, documented~~
20 ~~medical costs, court costs, and hospital costs must be~~
21 ~~approved by the court prior to assessment of the fee by the~~
22 ~~intermediary and upon a showing of justification for the~~
23 ~~larger fee.~~

24 ~~(5)(2) FEES FOR AGENCIES OR THE DEPARTMENT.--When an~~
25 ~~intermediary uses the services of a licensed child-placing~~
26 ~~agency, a professional, any other person or agency pursuant to~~
27 ~~s. 63.092, or, if necessary, the department, the person~~
28 ~~seeking to adopt the child must pay the licensed child-placing~~
29 ~~agency, professional, other person or agency, or the~~
30 ~~department an amount equal to the cost of all services~~
31 ~~performed, including, but not limited to, the cost of~~

1 conducting the preliminary home study, counseling, and the
2 final home investigation. The court, upon a finding that the
3 person seeking to adopt the child is financially unable to pay
4 that amount, may order that such person pay a lesser amount.

5 Section 19. Section 63.102, Florida Statutes, is
6 amended to read:

7 63.102 Filing of petition; venue; proceeding for
8 approval of fees and costs.--

9 (1) After a court order terminating parental rights
10 has been issued, a proceeding for adoption may ~~shall~~ be
11 commenced by filing a petition entitled, "In the Matter of the
12 Adoption of" in the circuit court. The person to be
13 adopted shall be designated in the caption in the name by
14 which he or she is to be known if the petition is granted. ~~If~~
15 ~~the child is placed for adoption by an agency~~, Any name by
16 which the minor child was previously known may ~~shall~~ not be
17 disclosed in the petition, the notice of hearing, or the
18 judgment of adoption.

19 (2) A petition for adoption or for a declaratory
20 statement as to the adoption contract shall be filed in the
21 county where the petitioner or petitioners or the minor child
22 resides or where the agency or intermediary with ~~in~~ which the
23 minor child has been placed is located.

24 (3) Except for adoptions involving placement of a
25 minor child with a relative within the third degree of
26 consanguinity, a petition for adoption in an adoption handled
27 by an intermediary shall be filed within 30 working days after
28 placement of a minor child with a parent seeking to adopt the
29 minor child. If no petition is filed within 30 days, any
30 interested party, including the state, may file an action
31

1 challenging the prospective adoptive parent's physical custody
2 of the minor child.

3 (4) If the filing of the petition for adoption or for
4 a declaratory statement as to the adoption contract in the
5 county where the petitioner or minor child resides would tend
6 to endanger the privacy of the petitioner or minor child, the
7 petition for adoption may be filed in a different county,
8 provided the substantive rights of any person will not thereby
9 be affected.

10 (5) A proceeding for prior approval of fees and costs
11 may be commenced any time after an agreement is reached
12 between the birth mother and the adoptive parents by filing a
13 petition for declaratory statement on the agreement entitled
14 "In the Matter of the Proposed Adoption of a Minor Child" in
15 the circuit court.

16 (a) The petition must be filed jointly by the adoption
17 entity and each person who enters into the agreement.

18 (b) A contract for the payment of fees, costs, and
19 expenditures permitted under this chapter must be in writing,
20 and any person who enters into the contract has 3 business
21 days in which to cancel the contract. To cancel the contract,
22 the person must notify the adoption entity in writing by
23 certified United States mail, return receipt requested, no
24 later than 3 business days after signing the contract. For the
25 purposes of this subsection, the term "business day" means a
26 day on which the United States Post Office accepts certified
27 mail for delivery. If the contract is canceled within the
28 first 3 business days, the person who cancels the contract
29 does not owe any legal, intermediary, or other fees, but may
30 be responsible for the adoption entity's actual costs during
31 that time.

1 (c) The court may grant prior approval only of fees
2 and expenditures permitted under s. 63.097. A prior approval
3 of prospective fees and costs does not create a presumption
4 that these items will subsequently be approved by the court
5 under s. 63.132 unless such a finding is supported by the
6 evidence submitted at that time. The court retains
7 jurisdiction to order an adoption entity to refund to the
8 person who enters into the contract any sum or portion of a
9 sum preapproved under this subsection if, upon submission of a
10 complete accounting of fees, costs, and expenses in an
11 affidavit required under s. 63.132, the court finds the fees,
12 costs, and expenses actually incurred to be less than the sums
13 approved prospectively under this subsection.

14 (d) The contract may not require, and the court may
15 not approve, any lump-sum payment to the entity which is
16 nonrefundable to the payor or any amount that constitutes
17 payment for locating a minor for adoption.

18 (e) If a petition for adoption is filed under this
19 section subsequent to the filing of a petition for a
20 declaratory statement or a petition to terminate parental
21 rights pending adoption, the previous petition may, at the
22 request of any party or on the court's own motion, be
23 consolidated with the petition for adoption. If the petition
24 for adoption is consolidated with a prior petition filed under
25 this chapter for which a filing fee has been paid, the
26 petitioner may not be charged any subsequent or additional
27 filing fee.

28 (f) Prior approval of fees and costs by the court does
29 not obligate the birth parent to ultimately relinquish the
30 minor for adoption.~~if a petition for adoption is subsequently~~
31

1 ~~filed, the petition for declaratory statement and the petition~~
2 ~~for adoption must be consolidated into one case.~~

3 Section 20. Section 63.112, Florida Statutes, is
4 amended to read:

5 63.112 Petition for adoption; description; report or
6 recommendation, exceptions; mailing.--

7 (1) A sufficient number of copies of the petition for
8 adoption shall be signed and verified by the petitioner and
9 filed with the clerk of the court so that service may be made
10 under subsection (4) and shall state:

11 (a) The date and place of birth of the person to be
12 adopted, if known;

13 (b) The name to be given to the person to be adopted;

14 (c) The date petitioner acquired custody of the minor
15 and the name of the person placing the minor;

16 (d) The full name, age, and place and duration of
17 residence of the petitioner;

18 (e) The marital status of the petitioner, including
19 the date and place of marriage, if married, and divorces, if
20 any;

21 (f) The facilities and resources of the petitioner,
22 including those under a subsidy agreement, available to
23 provide for the care of the minor to be adopted;

24 (g) A description and estimate of the value of any
25 property of the person to be adopted;

26 (h) The case style and date of entry of the order
27 terminating parental rights or the judgment declaring a minor
28 available for adoption name and address, if known, of any
29 ~~person whose consent to the adoption is required, but who has~~
30 ~~not consented, and facts or circumstances that excuse the lack~~
31 ~~of consent; and~~

- 1 (i) The reasons why the petitioner desires to adopt
2 the person.
- 3 (2) The following documents are required to be filed
4 with the clerk of the court at the time the petition is filed:
- 5 (a) A certified copy of the court order terminating
6 parental rights under chapter 39 or the judgment declaring a
7 minor available for adoption under this chapter ~~The required~~
8 ~~consents, unless consent is excused by the court.~~
- 9 (b) The favorable preliminary home study of the
10 department, licensed child-placing agency, or professional
11 pursuant to s. 63.092, as to the suitability of the home in
12 which the minor has been placed.
- 13 (c) The surrender document must include documentation
14 that an interview was ~~interviews were~~ held with:
- 15 1. ~~The birth mother, if parental rights have not been~~
16 ~~terminated;~~
- 17 2. ~~The birth father, if his consent to the adoption is~~
18 ~~required and parental rights have not been terminated; and~~
- 19 3. the minor child, if older than 12 years of age,
20 unless the court, in the best interest of the minor child,
21 dispenses with the minor's ~~child's~~ consent under s.
22 63.062(1)(e) ~~63.062(1)(c)~~.
- 23
- 24 ~~The court may waive the requirement for an interview with the~~
25 ~~birth mother or birth father in the investigation for good~~
26 ~~cause shown.~~
- 27 (3) Unless ordered by the court, no report or
28 recommendation is required when the placement is a stepparent
29 adoption or when the minor child is related to one of the
30 adoptive parents within the third degree.
- 31

1 (4) The clerk of the court shall mail a copy of the
2 petition within 24 hours after filing, and execute a
3 certificate of mailing, to the department and the agency
4 placing the minor, if any.

5 Section 21. Section 63.122, Florida Statutes, is
6 amended to read:

7 63.122 Notice of hearing on petition.--

8 (1) After the petition to adopt a minor is filed, the
9 court must establish a time and place for hearing the
10 petition. The hearing may ~~must~~ not be held sooner than 30 days
11 after the date the judgment terminating parental rights was
12 entered or sooner than 90 days after the date the minor was
13 placed ~~the placing of the minor~~ in the physical custody of the
14 petitioner. The minor must remain under the supervision of
15 the department, an intermediary, or a licensed child-placing
16 agency until the adoption becomes final. When the petitioner
17 is a spouse of the birth parent, the hearing may be held
18 immediately after the filing of the petition.

19 (2) Notice of hearing must be given as prescribed by
20 the rules of civil procedure, and service of process must be
21 made as specified by law for civil actions.

22 (3) Upon a showing by the petitioner that the privacy
23 of the petitioner or minor ~~child~~ may be endangered, the court
24 may order the names of the petitioner or minor ~~child~~, or both,
25 to be deleted from the notice of hearing and from the copy of
26 the petition attached thereto, provided the substantive rights
27 of any person will not thereby be affected.

28 (4) Notice of the hearing must be given by the
29 petitioner to the adoption entity that places the minor.+

30 ~~(a) The department or any licensed child-placing~~
31 ~~agency placing the minor.~~

1 ~~(b) The intermediary.~~

2 ~~(c) Any person whose consent to the adoption is~~
3 ~~required by this act who has not consented, unless such~~
4 ~~person's consent is excused by the court.~~

5 ~~(d) Any person who is seeking to withdraw consent.~~

6 (5) After filing the petition to adopt an adult, a
7 notice of the time and place of the hearing must be given to
8 any person whose consent to the adoption is required but who
9 has not consented. The court may order an appropriate
10 investigation to assist in determining whether the adoption is
11 in the best interest of the persons involved.

12 Section 22. Section 63.125, Florida Statutes, is
13 amended to read:

14 63.125 Final home investigation.--

15 (1) The final home investigation must be conducted
16 before the adoption becomes final. The investigation may be
17 conducted by a licensed child-placing agency or a professional
18 in the same manner as provided in s. 63.092 to ascertain
19 whether the adoptive home is a suitable home for the minor and
20 whether the proposed adoption is in the best interest of the
21 minor. Unless directed by the court, an investigation and
22 recommendation are not required if the petitioner is a
23 stepparent or if the minor child is related to one of the
24 adoptive parents within the third degree of consanguinity.
25 The department is required to perform the home investigation
26 only if there is no licensed child-placing agency or
27 professional pursuant to s. 63.092 in the county in which the
28 prospective adoptive parent resides.

29 (2) The department, the licensed child-placing agency,
30 or the professional that performs the investigation must file
31 a written report of the investigation with the court and the

1 petitioner within 90 days after the date the petition is
2 filed.

3 (3) The report of the investigation must contain an
4 evaluation of the placement with a recommendation on the
5 granting of the petition for adoption and any other
6 information the court requires regarding the petitioner or the
7 minor.

8 (4) The department, the licensed child-placing agency,
9 or the professional making the required investigation may
10 request other state agencies or child-placing agencies within
11 or outside this state to make investigations of designated
12 parts of the inquiry and to make a written report to the
13 department, the professional, or other person or agency.

14 (5) The final home investigation must include:

15 (a) The information from the preliminary home study.

16 (b) After the minor ~~child~~ is placed in the intended
17 adoptive home, two scheduled visits with the minor ~~child~~ and
18 the minor's ~~child's~~ adoptive parent or parents, one of which
19 visits must be in the home, to determine the suitability of
20 the placement.

21 (c) The family social and medical history as provided
22 in s. 63.082.

23 (d) Any other information relevant to the suitability
24 of the intended adoptive home.

25 (e) Any other relevant information, as provided in
26 rules that the department may adopt.

27 Section 23. Section 63.132, Florida Statutes, is
28 amended to read:

29 63.132 Affidavit ~~Report~~ of expenditures and
30 receipts.--

31

1 (1) At least 10 days before the hearing on the
2 petition for adoption, the petitioner and any adoption entity
3 ~~intermediary~~ must file two copies of an affidavit under this
4 section.

5 (a) The affidavit must be signed by the adoption
6 entity and the prospective adoptive parents. A copy of the
7 affidavit must be provided to the adoptive parents at the time
8 the affidavit is executed.

9 (b) The affidavit must itemize ~~containing a full~~
10 ~~accounting of~~ all disbursements and receipts of anything of
11 value, including professional and legal fees, made or agreed
12 to be made by or on behalf of the petitioner and any adoption
13 entity intermediary in connection with the adoption or in
14 connection with any prior proceeding to terminate parental
15 rights which involved the minor who is the subject of the
16 petition for adoption. The affidavit must also include, for
17 each fee itemized, the service provided for which the fee is
18 being charged, the date the service was provided, the time
19 required to provide the service, the person or entity that
20 provided the service, and the hourly fee charged.

21 (c) The clerk of the court shall forward a copy of the
22 affidavit to the department. The department must retain these
23 records for 5 years. Copies of affidavits received by the
24 department under this subsection must be provided upon the
25 request of any person. The department must redact all
26 identifying references to the minor, the birth parent, or the
27 adoptive parent from any affidavit released by the department.
28 The name of the adoption entity may not be redacted. The
29 intent of this paragraph is to create a resource for adoptive
30 parents and others wishing to obtain information about the
31 cost of adoption in this state.

1 (d) The affidavit ~~report~~ must show any expenses or
2 receipts incurred in connection with:

3 1.~~(a)~~ The birth of the minor.

4 2.~~(b)~~ The placement of the minor with the petitioner.

5 3.~~(c)~~ The medical or hospital care received by the
6 mother or by the minor during the mother's prenatal care and
7 confinement.

8 4.~~(d)~~ The living expenses of the birth mother. The
9 living expenses must be documented in detail to apprise the
10 court of the exact expenses incurred.

11 5.~~(e)~~ The services relating to the adoption or to the
12 placement of the minor for adoption that were received by or
13 on behalf of the petitioner, the adoption entity ~~intermediary~~,
14 either birth ~~natural~~ parent, the minor, or any other person.

15
16 The affidavit must state whether any of these expenses were or
17 are eligible to be paid for by collateral sources, including,
18 but not limited to, health insurance, Medicaid, Medicare, or
19 public assistance.

20 (2) The court may require such additional information
21 as is deemed necessary.

22 (3) The court must issue a separate order approving or
23 disapproving the fees, costs, and expenditures itemized in the
24 affidavit. The court may approve only fees, costs, and
25 expenditures allowed under s. 63.097. The court may reject in
26 whole or in part any fee, cost, or expenditure listed if the
27 court finds that the expense is:

28 (a) Contrary to this chapter;

29 (b) Not supported by a receipt in the record, if the
30 expense is not a fee of the adoption entity; or

31

1 (c) Not deemed by the court to be a reasonable fee or
2 expense, taking into consideration the requirements of this
3 chapter and the totality of the circumstances.

4 ~~(4)(3)~~ This section does not apply to an adoption by a
5 stepparent whose spouse is a birth natural or adoptive parent
6 of the minor child.

7 Section 24. Section 63.142, Florida Statutes, is
8 amended to read:

9 63.142 Hearing; judgment of adoption.--

10 (1) APPEARANCE.--The petitioner and the person to be
11 adopted shall appear at the hearing on the petition for
12 adoption, unless:

13 (a) The person is a minor under 12 years of age; or

14 (b) The presence of either is excused by the court for
15 good cause.

16 (2) CONTINUANCE.--The court may continue the hearing
17 from time to time to permit further observation,
18 investigation, or consideration of any facts or circumstances
19 affecting the granting of the petition.

20 (3) DISMISSAL.--

21 (a) If the petition is dismissed, the court shall
22 determine the person that is to have custody of the minor.

23 (b) If the petition is dismissed, the court shall
24 state with specificity the reasons for the dismissal.

25 (4) JUDGMENT.--At the conclusion of the hearing, after
26 ~~when~~ the court determines that the date for a birth parent to
27 file an appeal of a valid judgment terminating that birth
28 parent's parental rights has passed and no appeal is pending
29 ~~all necessary consents have been obtained~~ and that the
30 adoption is in the best interest of the person to be adopted,
31 a judgment of adoption shall be entered.

1 (a) A judgment terminating parental rights pending
2 adoption is voidable and any later judgment of adoption of
3 that minor is voidable if, upon the motion of the birth
4 parent, the court finds that any person knowingly gave false
5 information that prevented the birth parent from timely making
6 known his or her desire to assume parental responsibilities
7 toward the minor or meeting the requirements under this
8 chapter to exercise his or her parental rights. A motion under
9 this paragraph must be filed with the court that entered the
10 original judgment. The motion must be filed within a
11 reasonable time, but not later than 1 year after the date the
12 termination of parental rights final order was entered.

13 (b) Not later than 30 days after the filing of a
14 motion under this subsection, the court must conduct a
15 preliminary hearing to determine what contact, if any, shall
16 be permitted between a birth parent and the child pending
17 resolution of the motion. Such contact shall be considered
18 only if it is requested by a birth parent who has appeared at
19 the hearing. If the court orders contact between a birth
20 parent and child, the order must be issued in writing as
21 expeditiously as possible and must state with specificity any
22 provisions regarding contact with persons other than those
23 with whom the child resides.

24 (c) At the preliminary hearing, the court, upon the
25 motion of any party or its own motion, may order scientific
26 testing to determine the paternity of the minor if the person
27 seeking to set aside the judgment is alleging to be the
28 child's birth father and that fact has not previously been
29 determined by legitimacy or scientific testing. The court may
30 order supervised visitation with a person from whom scientific
31 testing for paternity has been ordered conditional upon the

1 filing of those test results with the court and such results
2 establish that person's paternity of the minor.

3 (d) No later than 45 days after the preliminary
4 hearing, the court must conduct a final hearing on the motion
5 to set aside the judgment and issue its written order as
6 expeditiously as possible thereafter.

7 Section 25. Section 63.152, Florida Statutes, is
8 amended to read:

9 63.152 Application for new birth record.--Within 30
10 days after entry of a judgment of adoption, the clerk of the
11 court, and in agency adoptions, any child-placing agency
12 licensed by the department, shall prepare a certified
13 statement of the entry for the state registrar of vital
14 statistics on a form provided by the registrar. The clerk of
15 the court must mail a copy of the form completed under this
16 section to the state registry of adoption information under s.
17 63.165.A new birth record containing the necessary
18 information supplied by the certificate shall be issued by the
19 registrar on application of the adopting parents or the
20 adopted person.

21 Section 26. Section 63.165, Florida Statutes, is
22 amended to read:

23 63.165 State registry of adoption information; duty to
24 inform and explain.--Notwithstanding any other law to the
25 contrary, the department shall maintain a registry with the
26 last known names and addresses of an adoptee and his or her
27 birth ~~natural~~ parents and adoptive parents; the certified
28 statement of the final decree of adoption provided by the
29 clerk of the court under s. 63.152; and any other identifying
30 information that ~~which~~ the adoptee, birth ~~natural~~ parents, or
31 adoptive parents desire to include in the registry. The

1 department shall maintain the registry records for the time
2 required by rules adopted by the department in accordance with
3 this chapter or for 99 years, whichever period is greater.The
4 registry shall be open with respect to all adoptions in the
5 state, regardless of when they took place. The registry shall
6 be available for those persons choosing to enter information
7 therein, but no one shall be required to do so.

8 (1) Anyone seeking to enter, change, or use
9 information in the registry, or any agent of such person,
10 shall present verification of his or her identity and, if
11 applicable, his or her authority. A person who enters
12 information in the registry shall be required to indicate
13 clearly the persons to whom he or she is consenting to release
14 this information, which persons shall be limited to the
15 adoptee and the birth natural mother, birth natural father,
16 adoptive mother, adoptive father, birth natural siblings, and
17 maternal and paternal birth natural grandparents of the
18 adoptee. Except as provided in this section, information in
19 the registry is confidential and exempt from ~~the provisions of~~
20 s. 119.07(1). Consent to the release of this information may
21 be made in the case of a minor adoptee by his or her adoptive
22 parents or by the court after a showing of good cause. At any
23 time, any person may withdraw, limit, or otherwise restrict
24 consent to release information by notifying the department in
25 writing.

26 (2) The department may charge a reasonable fee to any
27 person seeking to enter, change, or use information in the
28 registry. The department shall deposit such fees in a trust
29 fund to be used by the department only for the efficient
30 administration of this section. The department and agencies
31 shall make counseling available for a fee to all persons

1 seeking to use the registry, and the department shall inform
2 all affected persons of the availability of such counseling.

3 (3) The department, intermediary, or licensed
4 child-placing agency must inform the birth parents before
5 parental rights are terminated, and the adoptive parents
6 before placement, in writing, of the existence and purpose of
7 the registry established under this section, but failure to do
8 so does not affect the validity of any proceeding under this
9 chapter.

10 Section 27. Section 63.182, Florida Statutes, is
11 amended to read:

12 (Substantial rewording of section. See
13 s. 63.182, F.S., for present text.)

14 63.182 Statute of repose.--An action or proceeding of
15 any kind to vacate, set aside, or otherwise nullify an order
16 of adoption or an underlying order terminating parental rights
17 on any ground, including fraud or duress, must be filed within
18 1 year after entry of the order terminating parental rights.

19 Section 28. Section 63.207, Florida Statutes, is
20 amended to read:

21 63.207 Out-of-state placement.--

22 (1) Unless the minor child is to be placed with a
23 relative within the third degree or with a stepparent, or is a
24 special needs child as defined in s. 409.166, an adoption
25 entity may not ~~no person except an intermediary, an agency, or~~
26 ~~the department shall:~~

27 (a) Take or send a minor child out of the state for
28 the purpose of placement for adoption; or

29 (b) Place or attempt to place a minor child for the
30 purpose of adoption with a family who primarily lives and
31 works outside Florida in another state. ~~An intermediary may~~

1 ~~place or attempt to place a child for adoption in another~~
2 ~~state only if the child is a special needs child as that term~~
3 ~~is defined in s. 409.166.~~ If an adoption entity intermediary
4 is acting under this subsection, the adoption entity must
5 ~~intermediary shall~~ file a petition for declaratory statement
6 pursuant to s. 63.102 for prior approval of fees and costs.
7 The court shall review the costs pursuant to s. 63.097. The
8 petition for declaratory statement must be converted to a
9 petition for an adoption upon placement of the minor child in
10 the home. The circuit court in this state must retain
11 jurisdiction over the matter until the adoption becomes final.
12 The adoptive parents must come to this state to have the
13 adoption finalized. Violation of the order subjects the
14 adoption entity intermediary to contempt of court and to the
15 penalties provided in s. 63.212.

16 (2) An adoption entity intermediary may not counsel a
17 birth mother to leave the state for the purpose of giving
18 birth to a child outside the state in order to secure a fee in
19 excess of that permitted under s. 63.097 when it is the
20 intention that the child is to be placed for adoption outside
21 the state.

22 (3) When applicable, the Interstate Compact on the
23 Placement of Children authorized in s. 409.401 shall be used
24 in placing children outside the state for adoption.

25 Section 29. Section 63.212, Florida Statutes, is
26 amended to read:

27 63.212 Prohibited acts; penalties for violation.--

28 (1) It is unlawful for any person:

29 (a) Except an adoption entity ~~the department, an~~
30 ~~intermediary, or an agency~~, to place or attempt to place a
31 minor child for adoption with a person who primarily lives and

1 works outside this state unless the minor child is placed with
2 a relative within the third degree or with a stepparent or is
3 a special needs child as defined in s. 409.166. An adoption
4 entity intermediary may place or attempt to place a special
5 needs child for adoption with a person who primarily lives and
6 works outside this state only if the adoption entity
7 intermediary has a declaratory statement from the court
8 establishing the fees to be paid under s. 63.207. This
9 requirement does not apply if the minor child is placed with a
10 relative within the third degree or with a stepparent.

11 (b) Except an adoption entity ~~the department, an~~
12 ~~intermediary, or an agency,~~ to place or attempt to place a
13 minor child for adoption with a family whose primary residence
14 and place of employment is in another state unless the minor
15 child is placed with a relative within the third degree or
16 with a stepparent. An adoption entity intermediary may place
17 or attempt to place a special needs child for adoption with a
18 family whose primary residence and place of employment is in
19 another state only if the adoption entity intermediary has a
20 declaratory statement from the court establishing the fees to
21 be paid. This requirement does not apply if the special needs
22 child is placed with a relative within the third degree or
23 with a stepparent.

24 (c) Except an adoption entity ~~the Department of~~
25 ~~Children and Family Services, an agency, or an intermediary,~~
26 to place or attempt to place within the state a minor child
27 for adoption unless the minor child is placed with a relative
28 within the third degree or with a stepparent. This
29 prohibition, however, does not apply to a person who is
30 placing or attempting to place a minor child for the purpose
31

1 of adoption with the adoption entity ~~Department of Children~~
2 ~~and Family Services or an agency or through an intermediary.~~

3 (d) To sell or surrender, or to arrange for the sale
4 or surrender of, a minor child to another person for money or
5 anything of value or to receive such minor child for such
6 payment or thing of value. If a minor child is being adopted
7 by a relative within the third degree or by a stepparent, or
8 is being adopted through an adoption entity, this paragraph
9 does not prohibit ~~the Department of Children and Family~~
10 ~~Services, an agency, or an intermediary, nothing herein shall~~
11 ~~be construed as prohibiting~~ the person who is contemplating
12 adopting the child from paying, under ss. 63.097 and 63.132,
13 the actual prenatal care and living expenses of the mother of
14 the child to be adopted, nor from paying, under ss. 63.097 and
15 63.132, the actual living and medical expenses of such mother
16 for a reasonable time, not to exceed 6 weeks, if medical needs
17 require such support, after the birth of the minor child.

18 (e) Having the rights and duties of a parent with
19 respect to the care and custody of a minor to assign or
20 transfer such parental rights for the purpose of, incidental
21 to, or otherwise connected with, selling or offering to sell
22 such rights and duties.

23 (f) To assist in the commission of any act prohibited
24 in paragraph (a), paragraph (b), paragraph (c), paragraph (d),
25 or paragraph (e).

26 (g) Except an adoption entity ~~the Department of~~
27 ~~Children and Family Services or an agency~~, to charge or accept
28 any fee or compensation of any nature from anyone for making a
29 referral in connection with an adoption.

30 (h) Except an adoption entity ~~the Department of~~
31 ~~Children and Family Services, an agency, or an intermediary,~~

1 to advertise or offer to the public, in any way, by any medium
2 whatever that a minor ~~child~~ is available for adoption or that
3 a minor ~~child~~ is sought for adoption; and further, it is
4 unlawful for any person to publish or broadcast any such
5 advertisement without including a Florida license number of
6 the agency or, ~~attorney, or physician~~ placing the
7 advertisement.

8 (i) To contract for the purchase, sale, or transfer of
9 custody or parental rights in connection with any child, ~~or~~ in
10 connection with any fetus yet unborn, or in connection with
11 any fetus identified in any way but not yet conceived, in
12 return for any valuable consideration. Any such contract is
13 void and unenforceable as against the public policy of this
14 state. However, fees, costs, and other incidental payments
15 made in accordance with statutory provisions for adoption,
16 foster care, and child welfare are permitted, and a person may
17 agree to pay expenses in connection with a preplanned adoption
18 agreement as specified below, but the payment of such expenses
19 may not be conditioned upon the transfer of parental rights.
20 Each petition for adoption which is filed in connection with a
21 preplanned adoption agreement must clearly identify the
22 adoption as a preplanned adoption arrangement and must include
23 a copy of the preplanned adoption agreement for review by the
24 court.

25 1. Individuals may enter into a preplanned adoption
26 arrangement as specified herein, but such arrangement shall
27 not in any way:

28 a. Effect final transfer of custody of a child or
29 final adoption of a child, without review and approval of the
30 department and the court, and without compliance with other
31 applicable provisions of law.

1 b. Constitute consent of a mother to place her child
2 for adoption until 7 days following birth, and unless the
3 court making the custody determination or approving the
4 adoption determines that the mother was aware of her right to
5 rescind within the 7-day period following birth but chose not
6 to rescind such consent.

7 2. A preplanned adoption arrangement shall be based
8 upon a preplanned adoption agreement that must ~~which shall~~
9 include, but need not be limited to, the following terms:

10 a. That the volunteer mother agrees to become pregnant
11 by the fertility technique specified in the agreement, to bear
12 the child, and to terminate any parental rights and
13 responsibilities to the child she might have through a written
14 consent executed at the same time as the preplanned adoption
15 agreement, subject to a right of rescission by the volunteer
16 mother any time within 7 days after the birth of the child.

17 b. That the volunteer mother agrees to submit to
18 reasonable medical evaluation and treatment and to adhere to
19 reasonable medical instructions about her prenatal health.

20 c. That the volunteer mother acknowledges that she is
21 aware that she will assume parental rights and
22 responsibilities for the child born to her as otherwise
23 provided by law for a mother, if the intended father and
24 intended mother terminate the agreement before final transfer
25 of custody is completed, or if a court determines that a
26 parent clearly specified by the preplanned adoption agreement
27 to be the biological parent is not the biological parent, or
28 if the preplanned adoption is not approved by the court
29 pursuant to the Florida Adoption Act.

30 d. That an intended father who is also the biological
31 father acknowledges that he is aware that he will assume

1 parental rights and responsibilities for the child as
2 otherwise provided by law for a father, if the agreement is
3 terminated for any reason by any party before final transfer
4 of custody is completed or if the planned adoption is not
5 approved by the court pursuant to the Florida Adoption Act.

6 e. That the intended father and intended mother
7 acknowledge that they may not receive custody or the parental
8 rights under the agreement if the volunteer mother terminates
9 the agreement or if the volunteer mother rescinds her consent
10 to place her child for adoption within 7 days after birth.

11 f. That the intended father and intended mother may
12 agree to pay all reasonable legal, medical, psychological, or
13 psychiatric expenses of the volunteer mother related to the
14 preplanned adoption arrangement, and may agree to pay the
15 reasonable living expenses of the volunteer mother. No other
16 compensation, whether in cash or in kind, shall be made
17 pursuant to a preplanned adoption arrangement.

18 g. That the intended father and intended mother agree
19 to accept custody of and to assert full parental rights and
20 responsibilities for the child immediately upon the child's
21 birth, regardless of any impairment to the child.

22 h. That the intended father and intended mother shall
23 have the right to specify the blood and tissue typing tests to
24 be performed if the agreement specifies that at least one of
25 them is intended to be the biological parent of the child.

26 i. That the agreement may be terminated at any time by
27 any of the parties.

28 3. A preplanned adoption agreement shall not contain
29 any provision:

30 a. To reduce any amount paid to the volunteer mother
31 if the child is stillborn or is born alive but impaired, or to

1 provide for the payment of a supplement or bonus for any
2 reason.

3 b. Requiring the termination of the volunteer mother's
4 pregnancy.

5 4. An attorney who represents an intended father and
6 intended mother or any other attorney with whom that attorney
7 is associated shall not represent simultaneously a female who
8 is or proposes to be a volunteer mother in any matter relating
9 to a preplanned adoption agreement or preplanned adoption
10 arrangement.

11 5. Payment to agents, finders, and intermediaries,
12 including attorneys and physicians, as a finder's fee for
13 finding volunteer mothers or matching a volunteer mother and
14 intended father and intended mother is prohibited. Doctors,
15 psychologists, attorneys, and other professionals may receive
16 reasonable compensation for their professional services, such
17 as providing medical services and procedures, legal advice in
18 structuring and negotiating a preplanned adoption agreement,
19 or counseling.

20 6. As used in this paragraph, the term:

21 a. "Blood and tissue typing tests" include, but are
22 not limited to, tests of red cell antigens, red cell
23 isoenzymes, human leukocyte antigens, and serum proteins.

24 b. "Child" means the child or children conceived by
25 means of an insemination that is part of a preplanned adoption
26 arrangement.

27 c. "Fertility technique" means artificial
28 embryonation, artificial insemination, whether in vivo or in
29 vitro, egg donation, or embryo adoption.

30 d. "Intended father" means a male who, as evidenced by
31 a preplanned adoption agreement, intends to have the parental

1 rights and responsibilities for a child conceived through a
2 fertility technique, regardless of whether the child is
3 biologically related to the male.

4 e. "Intended mother" means a female who, as evidenced
5 by a preplanned adoption agreement, intends to have the
6 parental rights and responsibilities for a child conceived
7 through a fertility technique, regardless of whether the child
8 is biologically related to the female.

9 f. "Parties" means the intended father and intended
10 mother, the volunteer mother and her husband, if she has a
11 husband, who are all parties to the preplanned adoption
12 agreement.

13 g. "Preplanned adoption agreement" means a written
14 agreement among the parties that specifies the intent of the
15 parties as to their rights and responsibilities in the
16 preplanned adoption arrangement, consistent with the
17 provisions of this act.

18 h. "Preplanned adoption arrangement" means the
19 arrangement through which the parties enter into an agreement
20 for the volunteer mother to bear the child, for payment by the
21 intended father and intended mother of the expenses allowed by
22 this act, for the intended father and intended mother to
23 assert full parental rights and responsibilities to the child
24 if consent to adoption is not rescinded after birth by the
25 volunteer mother, and for the volunteer mother to terminate,
26 subject to a right of rescission, in favor of the intended
27 father and intended mother all her parental rights and
28 responsibilities to the child.

29 i. "Volunteer mother" means a female person at least
30 18 years of age who voluntarily agrees, subject to a right of
31 rescission, that if she should become pregnant pursuant to a

1 preplanned adoption arrangement, she will terminate in favor
2 of the intended father and intended mother her parental rights
3 and responsibilities to the child.

4 (2) This section does not ~~Nothing herein shall be~~
5 ~~construed to~~ prohibit a licensed child-placing agency from
6 charging fees reasonably commensurate to the services
7 provided.

8 (3) It is unlawful for any adoption entity
9 ~~intermediary~~ to fail to report to the court, prior to
10 placement, the intended placement of a minor child for
11 purposes of adoption with any person not a stepparent or a
12 relative within the third degree, if the adoption entity
13 ~~intermediary~~ participates in such intended placement.

14 (4) It is unlawful for any adoption entity
15 ~~intermediary~~ to charge any fee over \$1,000 and those costs as
16 set out in paragraph (1)(d) over \$2,500, other than for actual
17 documented medical costs, court costs, and hospital costs
18 unless such fee is approved by the court prior to the
19 assessment of the fee by the adoption entity ~~intermediary~~ and
20 upon a showing of justification for the larger fee.

21 (5) It is unlawful for any adoption entity
22 ~~intermediary~~ to counsel a birth mother to leave the state for
23 the purpose of giving birth to a child outside the state in
24 order to secure a fee in excess of that permitted under s.
25 63.097 when it is the intention that the child be placed for
26 adoption outside the state.

27 (6) It is unlawful for any adoption entity
28 ~~intermediary~~ to obtain a preliminary home study or final home
29 investigation and fail to disclose the existence of the study
30 to the court.

31

1 (7) A person who violates any provision of this
2 section, excluding paragraph (1)(h), is guilty of a felony of
3 the third degree, punishable as provided in s. 775.082, s.
4 775.083, or s. 775.084. A person who violates paragraph
5 (1)(h) is guilty of a misdemeanor of the second degree,
6 punishable as provided in s. 775.083; and each day of
7 continuing violation shall be considered a separate offense.

8 Section 30. Section 63.072, Florida Statutes, is
9 repealed.

10 Section 31. Any petition for adoption filed before
11 October 1, 1999, shall be governed by the law in effect at the
12 time the petition was filed.

13 Section 32. This act shall take effect October 1,
14 1999.

15 *****

16
17 LEGISLATIVE SUMMARY

18
19 Revises various provisions of the Florida Adoption Act.
20 Deletes provisions that authorize a child-placing agency
21 to petition for termination of a child's parental rights
22 under ch. 39, F.S. Revises the requirements for executing
23 a consent to an adoption. Requires that the Department of
24 Children and Family Services and other agencies that
25 participate in placing persons for adoption make certain
26 disclosures to persons seeking to adopt and to the birth
27 parents of a minor placed for adoption. Requires that the
28 court hold a separate proceeding before the hearing on
29 the adoption to determine whether a minor is available
30 for adoption. Provides requirements for identifying and
31 locating persons who must be notified of the proceeding.
Specifies grounds upon which the court may declare that a
minor is available for adoption. Provides requirements
for the court in determining whether a minor has been
abandoned. Revises requirements for the court in
approving fees and costs paid in an adoption procedure.
Provides that approval by the court of such fees and
costs does not obligate the birth parent to relinquish a
minor for adoption. Specifies circumstances under which a
judgment declaring a minor available for adoption is
void. Requires that the Department of Children and Family
Services maintain the registry of adoption information
for the period required by department rule or 99 years,
whichever period is greater. (See bill for details.)