

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1518

SPONSOR: Children and Families Committee, Judiciary Committee and Senator Campbell

SUBJECT: Adoption

DATE: March 11, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Johnson	JU	Favorable/CS
2.	Dowds	Whiddon	CF	Favorable/CS
3.			AHS	
4.			AP	
5.			RC	
6.				

I. Summary:

CS/CS/SB 1518 revises Florida’s adoption law as follows:

- Streamlines adoptions proceedings for adoptions by stepparents by allowing a petition for termination of parental rights and a petition for adoption to be consolidated and addressed in a single hearing;
- Provides for a diligent good faith effort to interview parents prior to executing the consent to adoption;
- Repeals s. 63.185, F.S., which is one of two statutory provisions that require that adoptive parents to reside or work in Florida;
- Eliminates the ability to revoke the consent to adoption within 1 business day after the mother’s discharge;
- Increases the time frame from 7 to 14 days for adoption entities to provide written disclosure and initiate diligent search efforts;
- Reduces the time period in which action can be filed to nullify a judgment of adoption or termination of parental rights from 2 years to 1 year;
- Establishes a paternity registry for fathers claiming to be the father of a child;
- Removes the exclusion of rights of inheritance from the legal relationship created with adoption; and
- Allows the court to domesticate out-of-country judgments of adoption for purposes of official recognition and issuance of a foreign birth certificate.

The bill amends the following sections of the Florida Statutes: 63.039, 63.0423, 63.062, 63.082, 63.085, 63.088, 63.089, 63.102, 63.122, 63.142, 63.165, 63.172, 63.182 and 63.192. The bill repeals section 63.185 of the Florida Statutes.

II. Present Situation:

In 2001, the Legislature comprehensively amended Florida's adoption law, which became law without the Governor's signature on April 18, 2001 (ch. 2001-03, L.O.F.). The provisions of the Act became effective October 1, 2001. The cumulative effect of the Act was to provide uniformity, continuity, clarification and finality regarding proceedings for termination of parental rights and proceedings for adoption. It streamlined the total adoption process by providing for a uniform bifurcated procedural framework whereby the proceedings for termination of parental rights are completed before the proceedings for the creation of new parental rights may be initiated. It added registered child-caring agencies to the list of entities eligible to handle adoptions. It set forth explicit and comprehensive disclosure, consent, notice, service and hearing requirements in termination of parental rights and adoption proceedings.

Some of the provisions of the amended adoption law are as follows:

Time frames for Filing a Petition for Adoption and Holding the Hearing for the Adoption

The time frame in which a person may file a petition for adoption subsequent to a judgment for termination of parental rights was altered by ch. 2001-03, L.O.F. A petition for adoption must be filed no sooner than 30 days (but no later than 60 days) after the entry of a judgment terminating parental rights [s. 63.102(1) and (3), F.S.]. Adult adoptees or minors who were the subject of a proceeding for termination of parental rights initiated under ch. 39, F.S., are not subject to the 30-day minimum. No hearing on the petition for adoption may be held sooner than 30 days after the entry of the judgment terminating parental rights or sooner than 90 days after the minor has been placed in the petitioner's physical custody [s. 63.122(1), F.S.]. These time frames apply to cases of stepparent adoptions. However, other provisions of adoption law do not apply or are applied differently in these cases including requirements governing home studies, out-of-state placements with stepparents and prior court approval of adoption fees.

Consent to Adopt

A petition to terminate parental rights pending adoption may only be granted if consent for adoption has been executed pursuant to s. 63.082, F.S. (s. 63.062, F.S.) Section 63.082(3), F.S., provides that the petition to terminate parental rights include the consent form and family social and medical history. Ch. 2001-03, L.O.F., required that each parent be interviewed prior to executing the consent, unless the parent cannot be located or identified. Each person who executes a consent to adoption is to be given a copy of the consent, via hand-delivery, with a written acknowledgment of receipt, or via first class mail.

Residency Requirement

Section 63.185, F.S., currently requires that adoptive parents must either reside or be employed in Florida. The exception provided is when adopting a special needs child, as defined in s. 409.166, F.S. Section 63.207, F.S., prohibits an adoption entity from placing a child with a family who lives or works outside the state of Florida unless the parent placing the child chooses to place the child outside of the state, the child is to be placed with a relative or the child is a special needs child, as defined in s. 409.166, F.S. For a child under one of these circumstances being placed with a family who neither works or lives in Florida, the circuit court of this state is required to retain jurisdiction until the adoption is final (s. 63.207, F.S.).

Revocation of Consent

A parent is prohibited from executing a consent to adoption or an affidavit of nonpaternity before the minor is born. In cases in which the minor is placed for adoption with identified prospective adoptive parents subsequent to the minor's birth, there is a 48-hour waiting period before a consent for adoption may be executed. Once the consent is executed, it can only be withdrawn if the court finds the consent was obtained by fraud or duress. When the minor is not initially placed for adoption following the minor's birth, there is no waiting period for executing the consent to adoption. This consent may either be withdrawn at any time prior to the minor's placement with the prospective adoptive parents or revoked by notifying the adoption entity either within 3 business days after execution or 1 business day after the mother's discharge.

Procedure and Disclosure Time frames

The adoption entity must provide a written disclosure statement to the person seeking to adopt or the person placing a minor for adoption within 7 days after contact is made by that person (s. 63.085, F.S.). If the parent was not the person who initiated the contact, the adoption entity must provide a written disclosure statement to the parent within 7 days after the parent is identified and located. Section 63.088, F.S., requires the adoption entity to initiate steps to identify, locate and notify the "father." Such efforts must begin no later than 7 days after the adoption entity has been contacted in writing by the birth mother regarding her desire to place a child for adoption or if the birth mother has accepted any money from the adoption entity.

Statute of Repose

Chapter 2000-188, L.O.F., substantially amended s. 63.182, F.S., to create 1-year and 2-year statutes of repose. Any challenge to a judgment of termination of parental rights or subsequent adoption based on any ground, including duress but excluding fraud, is barred forever 1 year after entry of the judgment terminating parental rights. A similar claim based on fraud is barred after 2 years after entry of the judgment terminating parental rights. In addition, law was enacted that allowed a parent in adoptions of abandoned newborns to move to set aside a judgment terminating parental rights or a subsequent judgment of adoption based on a claim of fraudulent concealment which kept the parent from asserting his or her parental rights [s. 63.0423(9), F.S.]. Chapter 2001-03, L.O.F., reinforced the objective to achieve finality in adoptions and mitigate the potential for future challenges to final adoption judgments. Using the same statutory provision that was applied to adoptions of abandoned newborns, ss. 63.085(1), 63.089(7) and 63.142(4), F.S., were amended in 2001 to allow a parent in any adoption to move to set aside a judgment terminating parental rights or a subsequent judgment of adoption based on a claim of fraudulent concealment which kept the parent from timely asserting his or her parental rights. In any adoption, such motion must be filed within a reasonable time but absolutely no later than 2 years after the date of the judgment terminating parental rights.

State Registries of Adoption Information

Currently, two different registries of adoption related information are maintained in Florida. The Department of Children and Families maintains a statewide registry of the names of the adoptees, birth parents and adoptive parents, as well as any information those persons wish to include (s. 63.165, F.S.). Registration of information is strictly voluntary and paid for through statutorily-authorized fees charged to users of the service. All information contained in the registry is confidential and exempt from the provisions of s. 119.07(1), F.S., except as permitted by law with the express permission of the registrant.

In addition, the Department of Health is required to maintain a registry of fathers who have voluntarily acknowledged paternity and filed the acknowledgment with the Office of Vital Statistics.

Adoption and Rights of Inheritance

Chapter 2001-226, L.O.F., resolved the statutory conflict between s. 63.172, F.S., and s. 732.108, F.S., by expressly providing that the rights of adopted persons to inherit from the natural parent or family or from the adoptive parent or family shall be determined by the provisions of s. 732.108, F.S., in the Probate Code. Prior to this act, under ch. 63, F.S., a judgment of adoption terminated all legal relationships, including rights of inheritance between the adopted person and the natural parents and former relatives. The adopted person was then considered a lineal descendent of the adopting parent as if born to the adopting parent and as a relative of the adopting parent's family. In contrast, ch. 732, F.S. (s. 732.108, F.S.), provided three exceptions under which a legal relationship between an adopted person and his or her natural or deceased parent or that parent's relative may still exist for purposes of intestate succession and inheritance:

- (a) When the person is adopted by a natural parent's spouse;
- (b) When the person is adopted by a natural parent's spouse who married the natural parent after the death of the other natural parent; and
- (c) When the person is adopted by a close relative, as defined in s. 63.172(2), F.S.

Foreign Judgments of Adoption

Section 63.192, F.S., currently provides that a judgment terminating parental rights or finalizing adoption and issued pursuant to due process of law by a court of appropriate jurisdiction outside the state or outside the United States must be given recognition and is enforceable as if the judgment had been issued by a court of this state. It has been anecdotally reported that in practice, adoptive parents are having to relitigate the entire adoption process in Florida in order to secure official recognition of the foreign judgment entered in another country. The Division of Vital Statistics of the Department of Health will not issue a certificate of foreign birth for an adopted child unless a judgment of adoption is entered by a court of this state (s. 382.017, F.S.). In addition, the division requires the judgment to be certified with proof of date and place of the adoptee's birth and a request from the court that the certificate be prepared.

III. Effect of Proposed Changes:

CS/CS/SB 1518 provides for a number of revisions to Florida's adoption law.

Time frames for Filing a Petition for Adoption and Holding the Hearing for Adoption

Sections 63.102(1), F.S., is amended to allow petitions for termination of parental rights and adoption to be consolidated into a single petition in those cases where a child is being adopted by a stepparent and the parent whose rights are being terminated has executed a consent pursuant to s. 63.082, F.S. Similarly, s. 63.122(1), F.S., is amended to allow a single hearing to address both the petition for termination of parental rights and the adoption when the adoption of a child is by the stepparent. These amendments eliminate the minimum 30-day period between the termination of parental rights and adoption for children by stepparents.

Consent to Adopt

The bill amends s. 63.082, F.S., to replace the requirement that every parent be interviewed before the consent is executed, unless the parent cannot be located or identified, with a diligent good faith effort to interview each parent if the parent's identity is known. A duplicate original of the consent is also permitted in lieu of a copy.

Residency Requirement

CS/CS/SB 1518 repeals s. 63.185, F.S., which stipulates that adoptive parents must either reside or work in Florida, with the exception of when adopting special needs children. However, s. 63.207, F.S., continues to prohibit an adoption entity from placing a child with a family who neither resides or works in Florida, with certain exceptions. The jurisdiction of the adoption of those children meeting the identified exceptions remains with the circuit court in Florida until the adoption becomes final.

Revocation of Consent

The bill alters the time frame under which the consent to adoption of a minor not initially placed for adoption following the minor's birth may be revoked. The ability of the parent to revoke the consent 1 business day after the mother's discharge is eliminated. The parents retain the ability to revoke the consent to adoption within 3 business days after execution or to withdraw the consent prior to placement of the minor. Sections 63.082 and 63.085, F.S., are amended to reflect this revision.

Procedure and Disclosure Time frames

The time frame of 7 days imposed on the adoption entity to provide written disclosure to the person seeking to adopt or place a child and the parent identified and located is increased to 14 days in s. 63.085, F.S. Section 63.088, F.S., is also amended to allow the adoption entity 14 days instead of 7 days to initiate efforts to identify, locate and notify the father.

Statute of Repose

Section 63.182, F.S., is amended to eliminate the ability to file any form of action to nullify a judgment of adoption or judgment of termination of parental rights more than one year after entry of the judgment terminating parental rights. The 1 year time frame is applied regardless of the grounds. The distinction between fraud and duress and the additional time provided in the event of fraud is eliminated. The time limit of 2 years is changed to 1 year in ss. 63.0423, 63.082, 63.089 and 63.142, F.S. References to "fraud or under duress" are changed to "fraud or duress" in several places in the bill.

State Registries of Adoption Information

CS/CS/SB 1518 establishes a paternity registry within the Department of Children and Families' State Registry of Adoption Information (s. 63.165(2), F.S.). A man claiming to be the father of a minor is required to register with the paternity registry unless the minor was conceived or born while the man was married to the mother, the father has adopted the child, paternity has been established in court or paternity has been established by genetic testing. Registration at the paternity registry may be accepted prior to the birth of the child but must be accomplished within 30 days after the birth of the child. The bill stipulates that a man who does not register with the paternity registry within the designated time frames may not assert an interest in the minor. The following exceptions are provided: the putative father as identified in s. 63.062(1), F.S., is

required to consent or be served notice, the diligent search effort in s. 63.088, F.S., is required to identify and locate the father and the parent may file a motion in court to void the termination of parental rights or judgment of adoption pursuant to s. 63.089(7), F.S. A man who is required to consent to adoption and has registered is entitled to receive notice of petition and hearing for terminating parental rights.

The Department of Children and Families is to provide a certificate of the results of a search of the paternity registry for the court, the birth mother or the adoption entity, if requested. A fee for processing a search of the registry may be charged by the department, the funds from which must be used to administer the registry. The department is required to inform the public about the paternity registry through the production and distribution of a publication and other avenues. The department is provided with rule-making authority.

Adoption and Rights of Inheritance

Section 63.172(1)(c), F.S., is amended to remove the exclusion of rights of inheritance from the legal relationship created with adoption. It does not, however, specifically provide for the applicability of inheritance to this legal relationship. While appearing to create in the relationship between the adopted person and adopted parents the right to inheritance, the reference to the exception for rights of inheritance remains in paragraph (b) pertaining the termination of relationship between adopted person and the birth parents. Therefore, the right of inheritance is to be dealt with in the Florida Probate Code for the terminating of relationships with birth parents and potentially in s. 63.172, F.S., for relationships created with the adoptive parents.

Foreign Judgments of Adoption

The bill amends s. 63.192, F.S., relating to foreign judgments of adoption. It authorizes a court to recognize an out-of-country judgment of adoption upon a finding that the judgment is authentic. It requires the adoptive parents to file the judgment, but the adoptive parents are not required to demonstrate that the adoption process and the substantive rights or due process rights applicable in the foreign jurisdiction were similar or equivalent to those of Florida. A court order recognizing the foreign judgment of adoption entitles the adoptee to obtain a certificate of foreign birth under s. 382.017, F.S.

The act shall take effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill provides for the express recognition of a foreign (out-of-country) judgment of adoption by a court that finds that the judgment is authentic. This is a process outside the established process for recording and recognition of other foreign judgments (i.e., by another state) as set forth in ss. 55.501-55.509, F.S. The process established under this bill is somewhat vague and may present some constitutional concern as to the validity and authenticity of the foreign documents. Typically, as to judgments rendered in foreign nations, states are not required to give full faith and credit but it is also a matter of judicial comity whereby a state may recognize a judgment of another jurisdiction based on whether the parties have been given notice and the opportunity to be heard, where the foreign court had original jurisdiction, and where the foreign decree does not offend the public policy of the State of Florida. Notably, Florida law provides express provisions for the recognition and enforceability of money judgments entered by a foreign state (i.e., out-of-the country), including grounds for nonrecognition and appeals (ss. 55.601-55.607, F.S.).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may facilitate adoptions by stepparents and reduce the costs attendant with filing two petitions and holding two separate hearings.

The bill may also minimize the relitigation of out-of-country judgments of adoption once a child is brought over to Florida, presuming the foreign judgments were entered by courts of competent jurisdiction and are conclusively valid. This change will also facilitate the issuance of foreign birth certificates.

C. Government Sector Impact:

The Department of Children and Families recommends that if a paternity registry is established, it should be placed in the Department of Health with the existing registry for voluntarily acknowledged fathers. If the paternity registry is placed in the Department of Children and Families, the department reports that two positions would be needed, as would computer software to enter, track, search and certify putative fathers and funds for development and dissemination of the required publications. The fiscal impact of the paternity registry would be \$371,678 for FY 2002-2003 and \$280,556 for FY 2003-2004.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As amended, s. 63.192, F.S., may need to be clarified regarding whether a distinction exists between the recognition of foreign judgments of adoption entered by states outside the state of Florida and those entered outside the country and that, as such, different requisites may apply. The bill also does not address what will constitute an “authenticate” foreign documentation.

When an amendment is made to a section in existing law, any law (or portion thereof) that cross-references that section must be reenacted (or republished) in order for the amendments to that section in the bill to be incorporated into the section. Otherwise, the provision of the law that cross-references the section (as amended by the bill) will remain a cross-reference to the section as it existed prior to the amendment in the bill. Several sections amended by this bill are cross-referenced in existing sections of law.

The bill appears to provide for rights of inheritance to be determined in s. 63.172, F.S., for relationships between the adopted person and adoptive parents and in ch. 732, F.S., for relationships between the adopted person and the natural parents. The implications of determining rights of inheritance for adopted persons using different statutes is not clear. The exclusion of rights to inheritance was amended into s. 63.172, F.S., last year to resolve statutory conflicts. This amendment may recreate the statutory conflicts.

VIII. Amendments:

None.