

By Senator Burt

16-1540-02

1 A bill to be entitled
2 An act relating to adoption; amending s.
3 63.022, F.S.; revising legislative intent with
4 respect to maintaining sibling groups in
5 adoptions; amending s. 63.039, F.S.; revising
6 requirements for obtaining a written waiver of
7 venue; eliminating a requirement for the
8 payment of attorney's fees and costs in certain
9 actions to set aside a judgment terminating
10 parental rights or a judgment of adoption;
11 amending s. 63.042, F.S.; authorizing a married
12 person to adopt without the other spouse
13 joining as a petitioner if it is in the best
14 interests of the child; amending s. 63.0423,
15 F.S.; revising the period within which a motion
16 for a termination of parental rights pending
17 adoption must be filed; amending ss. 63.0425,
18 63.062, F.S.; revising requirements for
19 notifying a grandparent or father of an
20 impending adoption; revising requirements for
21 obtaining a written waiver of venue; amending
22 s. 63.082, F.S.; providing requirements for
23 identifying parents; eliminating provisions
24 allowing the revocation of an adoption before
25 placement of the minor; conforming notice
26 requirements to changes made by the act;
27 amending s. 63.085, F.S.; revising the period
28 for an adoption entity to make certain
29 disclosures to a person seeking to place a
30 minor; conforming notice requirements to
31 changes made by the act; amending s. 63.087,

1 F.S.; revising requirements for venue in a
2 proceeding to terminate parental rights pending
3 adoption; providing for a single filing fee
4 with respect to multiple proceedings; amending
5 s. 63.088, F.S.; revising the period in which
6 to begin procedures to locate certain parties
7 to an adoption; amending s. 63.089, F.S.;
8 revising circumstances under which the court
9 may make a finding of abandonment; removing a
10 requirement that the court dismiss a case with
11 prejudice if it fails to find that parental
12 rights should be terminated; revising the
13 period within which a motion must be filed to
14 void a judgment of adoption; revising
15 requirements for conducting a final hearing;
16 amending s. 63.092, F.S.; removing a
17 requirement for a home study prior to placement
18 under certain circumstances; amending s.
19 63.097, F.S.; providing for additional living
20 expenses to be paid by an adoption entity;
21 revising a limitation on court costs;
22 eliminating a limitation on cumulative
23 expenses; amending s. 63.102, F.S.; revising
24 requirements for a petition for adoption or a
25 declaratory statement; revising certain
26 limitations on nonrefundable payments to the
27 adoption entity; amending s. 63.132, F.S.;
28 revising requirements for the affidavit of
29 expenses and receipts; amending s. 63.142,
30 F.S.; revising the period for filing a motion
31 to void a judgment terminating parental rights

1 pending adoption; amending s. 63.172, F.S.;
2 eliminating an exception for rights of
3 inheritance with respect to the effect of a
4 judgment of adoption; amending ss. 63.207,
5 63.212, F.S.; revising certain limitations on
6 placing a minor with a relative; providing an
7 effective date.

8

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

10

11 Section 1. Subsection (1) of section 63.022, Florida
12 Statutes, is amended to read:

13 63.022 Legislative intent.--

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

19 Section 2. Section 63.039, Florida Statutes, is
20 amended to read:

21 63.039 Duty of adoption entity to prospective adoptive
22 parents; sanctions.--

23 (1) An adoption entity placing a minor for adoption
24 has an affirmative duty to follow the requirements of this
25 chapter and specifically the following provisions, which
26 protect and promote the well-being of persons being adopted
27 and their parents and prospective adoptive parents by
28 promoting certainty, finality, and permanency for such
29 persons. The adoption entity must:

30

31

1 (a) Provide written initial disclosure to the
2 prospective adoptive parent at the time and in the manner
3 required under s. 63.085.

4 (b) Provide written initial and postbirth disclosure
5 to the parent at the time and in the manner required under s.
6 63.085.

7 (c) When a written consent for adoption is obtained,
8 obtain the consent at the time and in the manner required
9 under s. 63.082.

10 (d) When a written consent or affidavit of
11 nonpaternity for adoption is obtained, obtain a consent to
12 adoption or affidavit of nonpaternity that contains the
13 language required under s. 63.062 or s. 63.082.

14 (e) Include in the petition to terminate parental
15 rights pending adoption all information required under s.
16 63.087(6)(e) and (f).

17 (f) Obtain and file the affidavit of inquiry pursuant
18 to s. 63.088(3), if the required inquiry is not conducted
19 orally in the presence of the court.

20 (g) When the identity of a person whose consent to
21 adoption is necessary under this chapter is known but the
22 location of such a person is unknown, conduct the diligent
23 search and file the affidavit required under s. 63.088(4).

24 (h) Serve the petition and notice of hearing to
25 terminate parental rights pending adoption at the time and in
26 the manner required by s. 63.088.

27 (i) Obtain the written waiver of venue required under
28 s. 63.062 in cases ~~involving a child younger than 6 months of~~
29 ~~age~~ in which venue for the termination of parental rights will
30 be located in a county other than the county where a the
31 parent whose rights are to be terminated resides.

1 (2) If a court finds that a consent to adoption or an
2 affidavit of nonpaternity taken under this chapter was
3 obtained by fraud or ~~under~~ duress attributable to the adoption
4 entity, the court must award all sums paid by the prospective
5 adoptive parents or on their behalf in anticipation of or in
6 connection with the adoption. The court may also award
7 reasonable attorney's fees and costs incurred by the
8 prospective adoptive parents in connection with the adoption
9 and any litigation related to placement or adoption of a
10 minor. The court must award reasonable attorney's fees and
11 costs, if any, incurred by the person whose consent or
12 affidavit was obtained by fraud or ~~under~~ duress. Any award
13 under this subsection to the prospective adoptive parents or
14 to the person whose consent or affidavit was obtained by fraud
15 or ~~under~~ duress must be paid directly to them by the adoption
16 entity or by any applicable insurance carrier on behalf of the
17 adoption entity.

18 ~~(3) If a person whose consent to an adoption is~~
19 ~~required under s. 63.062 prevails in an action to set aside a~~
20 ~~judgment terminating parental rights pending adoption, or a~~
21 ~~judgment of adoption, the court must award reasonable~~
22 ~~attorney's fees and costs to the prevailing party. An award~~
23 ~~under this subsection must be paid by the adoption entity or~~
24 ~~by any applicable insurance carrier on behalf of the adoption~~
25 ~~entity if the court finds that the acts or omissions of the~~
26 ~~entity were the basis for the court's order granting relief to~~
27 ~~the prevailing party.~~

28 (3)(4) Within 30 days after the date that the order
29 was issued, the clerk of the court must forward to:
30
31

1 (a) The Florida Bar any order that imposes sanctions
2 under this section against an attorney acting as an adoption
3 entity.

4 (b) The Department of Children and Family Services any
5 order that imposes sanctions under this section against a
6 licensed child-placing agency or a child-placing agency
7 licensed in another state that is qualified by the department.

8 (c) The entity under s. 409.176 that certifies
9 child-caring agencies any order that imposes sanctions under
10 this section against a child-caring agency registered under s.
11 409.176.

12 Section 3. Subsection (2) of section 63.042, Florida
13 Statutes, is amended to read:

14 63.042 Who may be adopted; who may adopt.--

15 (2) The following persons may adopt:

16 (a) A husband and wife jointly;

17 (b) An unmarried adult, including the birth parent of
18 the person to be adopted;

19 (c) The unmarried minor birth parent of the person to
20 be adopted; or

21 (d) A married person without the other spouse joining
22 as a petitioner, if the person to be adopted is not his or her
23 spouse, and if:

24 1. The other spouse is a parent of the person to be
25 adopted and consents to the adoption; ~~or~~

26 2. The failure of the other spouse to join in the
27 petition or to consent to the adoption is excused by the court
28 for reason of prolonged unexplained absence, unavailability,
29 incapacity, or circumstances constituting an unreasonable
30 withholding of consent; or

31

1 3. The court finds it is in the best interests of the
2 child.

3 Section 4. Paragraph (a) of subsection (9) of section
4 63.0423, Florida Statutes, is amended to read:

5 63.0423 Procedures with respect to abandoned
6 newborns.--

7 (9)(a) A judgment terminating parental rights pending
8 adoption is voidable, and any later judgment of adoption of
9 that minor is voidable, if, upon the motion of a parent, the
10 court finds that a person knowingly gave false information
11 that prevented the parent from timely making known his or her
12 desire to assume parental responsibilities toward the minor or
13 from exercising his or her parental rights. A motion under
14 this subsection must be filed with the court originally
15 entering the judgment. The motion must be filed within a
16 reasonable time, but not later than 1 year ~~2 years~~ after the
17 entry of the judgment terminating parental rights.

18 Section 5. Subsection (1) of section 63.0425, Florida
19 Statutes, is amended to read:

20 63.0425 Grandparent's right to adopt.--

21 (1) When a child who has lived with a grandparent for
22 at least 6 continuous months is placed for adoption, the
23 adoption entity handling the adoption shall notify that
24 grandparent of the impending adoption before the petition for
25 adoption is filed. If the grandparent petitions the court to
26 adopt the child, the court shall give first priority for
27 adoption to that grandparent.

28 Section 6. Subsections (1), (2), (4), and (9) of
29 section 63.062, Florida Statutes, are amended to read:

30 63.062 Persons required to consent to adoption;
31 affidavit of nonpaternity; waiver of venue.--

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

7 (a) The mother of the minor.

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

9 1. The minor was conceived or born while the father
10 was married to the mother;

11 2. The minor is his child by adoption; or

12 3. The minor has been established by court proceeding
13 to be his child.

14 (c) If there is no father as set forth in paragraph
15 (b), any man established to be the father of the child by
16 scientific tests that are generally acceptable within the
17 scientific community to show a probability of paternity.

18 (d) If there is no father as set forth in paragraph
19 (b) or paragraph (c), any man who the mother has reason to
20 believe may be the father of the minor, or who is in fact the
21 father of the minor, and who:

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

26 2. Has provided, or has attempted to provide, the
27 child or the mother during her pregnancy with support in a
28 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.~~

3 (e) Any father ~~person~~ who is a party in any pending
4 proceeding in which paternity, custody, or termination of
5 parental rights regarding the minor is at issue.

6 ~~(f) Any father who has provided, or has attempted to~~
7 ~~provide, the child or the mother during her pregnancy with~~
8 ~~support in a repetitive, customary manner, if consent has been~~
9 ~~obtained under paragraph (a) and subparagraph (b)1.~~

10 ~~(f)(g)~~ The minor, if more than 12 years of age, unless
11 the court in the best interest of the minor dispenses with the
12 minor's consent.

13 (2) Any person whose consent is required ~~under~~
14 ~~paragraph (1)(c) or paragraph (1)(d)~~ may execute an affidavit
15 of nonpaternity in lieu of a consent under this section and by
16 doing so waives notice to all court proceedings after the date
17 of execution. An affidavit of nonpaternity must be executed as
18 provided in s. 63.082. The person executing the affidavit must
19 receive disclosure under s. 63.085 prior to signing the
20 affidavit.

21 (4) An affidavit of nonpaternity must be in
22 substantially the following form:

23
24 AFFIDAVIT OF NONPATERNITY

25
26 1. I have personal knowledge of the facts
27 stated in this affidavit.

28 2. I have been told that has a
29 child. I shall not establish or claim paternity
30 for this child, whose name is and whose
31 date of birth is

1 3. The child referenced in this affidavit
2 was not conceived or born while the birth
3 mother was married to me. I AM NOT MARRIED TO
4 THE BIRTH MOTHER, nor do I intend to marry the
5 birth mother or establish rights as a legal
6 father.
7 ~~4. With respect to the child referenced~~
8 ~~in this affidavit, I have not provided the~~
9 ~~birth mother with child support or prebirth~~
10 ~~support; I have not provided her with prenatal~~
11 ~~care or assisted her with medical expenses; I~~
12 ~~have not provided the birth mother or her child~~
13 ~~or unborn child with support of any kind, nor~~
14 ~~do I intend to do so.~~
15 ~~4.5.~~ I have no interest in assuming the
16 responsibilities of parenthood for this child.
17 I will not acknowledge in writing that I am the
18 father of this child or institute court
19 proceedings to establish the child as mine.
20 ~~5.6.~~ I do not object to any decision or
21 arrangements makes regarding this child,
22 including adoption.
23 ~~6.7.~~ I have been told of my right to
24 choose a person who does not have an
25 employment, professional, or personal
26 relationship with the adoption entity or the
27 prospective adoptive parents to be present when
28 this affidavit is executed and to sign it as a
29 witness.
30
31

1 I WAIVE NOTICE OF ANY AND ALL PROCEEDINGS TO
2 TERMINATE PARENTAL RIGHTS OR FINALIZE AN
3 ADOPTION UNDER CHAPTER 63, FLORIDA STATUTES.
4

5 (9)(a) In cases involving a child ~~younger than 6~~
6 ~~months of age~~ in which venue for the termination of parental
7 rights may be located in a county other than where a the
8 parent whose rights are to be terminated resides, the adoption
9 entity must obtain, from any party executing an affidavit of
10 nonpaternity or consent, a waiver of venue, which must be
11 filed with the petition and must be in substantially the
12 following form:

13
14 WAIVER OF VENUE
15

16 I understand that I may have the right to
17 require that the Petition to terminate my
18 parental rights be filed in the county where I
19 reside. I waive such right so that the Petition
20 to Terminate Parental Rights may be filed by
21 (adoption entity) in (county name) County,
22 Florida.
23

24 I understand that, after signing this waiver, I
25 may object to the county where the proceedings
26 to terminate my parental rights will be held by
27 appearing at the hearing or by filing a written
28 objection, on the attached form, with the Clerk
29 of the Court who is located at (address of
30 court). If I later object to ~~this transfer of~~
31 venue, the case may ~~will~~ be transferred to a

1 county in Florida in which I reside if I intend
2 to assert legally recognized grounds to contest
3 a termination of parental rights. If I have no
4 such residence, the case may ~~will~~ be
5 transferred to a county where another parent
6 resides or where at least one parent resided at
7 the time of signing a consent or affidavit of
8 nonpaternity.

9
10 (b)1. The waiver of venue must be a separate document
11 containing no consents, disclosures, or other information
12 unrelated to venue.

13 2. Adoption entities must attach to the waiver of
14 venue a form that the parent whose rights are to be terminated
15 may use to request a transfer of venue for the proceeding.
16 This form must contain the intended caption of the action for
17 termination of parental rights and information identifying the
18 child which will be sufficient for the clerk to properly file
19 the form upon receipt.

20 3. This form must include a notice that if an adoption
21 entity knows that a parent whose rights will be terminated
22 intends to object to the termination on a legally recognized
23 ground but intentionally files the petition for termination of
24 parental rights in a county that ~~which~~ is not consistent with
25 the required venue under such circumstances, the adoption
26 entity shall be responsible for the attorney's fees of the
27 parent requesting ~~contesting~~ the transfer of venue.

28 Section 7. Paragraph (a) of subsection (3), paragraphs
29 (b), (c), and (e) of subsection (4), and subsections (6) and
30 (7) of section 63.082, Florida Statutes, are amended to read:

31

1 63.082 Execution of consent to adoption or affidavit
2 of nonpaternity; family social and medical history; withdrawal
3 of consent.--

4 (3)(a) The department must provide a consent form and
5 a family social and medical history form to an adoption entity
6 that intends to place a child for adoption. Forms containing,
7 at a minimum, the same information as the forms promulgated by
8 the department must be attached to the petition to terminate
9 parental rights pending adoption and must contain such
10 biological and sociological information or such information as
11 to the family medical history, regarding the minor and the
12 parents, as is required by the department. The information
13 must be incorporated into the final home investigation report
14 specified in s. 63.125. ~~Each parent must be interviewed by A~~
15 ~~representative of the department, a licensed child-placing~~
16 ~~agency, or a licensed professional, pursuant to s. 63.092,~~
17 must make good-faith and diligent efforts to interview each
18 parent before the consent is executed, unless the parent
19 cannot be located or identified. A summary of each interview,
20 or a statement that the parent is unlocated or unidentified,
21 must be filed with the petition to terminate parental rights
22 pending adoption and included in the final home investigation
23 report filed under s. 63.125. The interview may be excused by
24 the court for good cause.

25 (4)

26 (b) A consent to the adoption of a minor who is to be
27 placed for adoption ~~with identified prospective adoptive~~
28 ~~parents under s. 63.052,~~ upon the minor's release from a
29 licensed hospital or birth center following birth, shall not
30 be executed sooner than 48 hours after the minor's birth or
31 the day the birth mother has been notified in writing, either

1 on her patient chart or in release paperwork, that she is fit
2 to be released from a licensed hospital or birth center,
3 whichever is earlier. A consent executed under this paragraph
4 is valid upon execution and may be withdrawn only if the court
5 finds that it was obtained by fraud or ~~under~~ duress. The
6 waiting period provided in this paragraph does not apply in
7 any case in which the revocation period in paragraph (c)
8 applies.

9 (c) When the minor to be adopted is not placed
10 pursuant to s. 63.052 upon the minor's release from a licensed
11 hospital or birth center following birth, the consent to
12 adoption may be executed at any time after the birth of the
13 minor. While such consent is valid upon execution, it is
14 subject to the 3-day revocation period under subsection (7) ~~or~~
15 ~~may be revoked at any time prior to the placement of the minor~~
16 ~~with the prospective adoptive parents, whichever is later. If~~
17 ~~a consent has been executed, this subsection may not be~~
18 ~~construed to provide a birth parent with more than 3 days to~~
19 ~~revoke that consent once the child has been placed with the~~
20 ~~prospective adoptive parents.~~The revocation period provided
21 in this paragraph does not apply in any case in which the
22 waiting period in paragraph (b) applies.

23 (e) A consent to adoption must contain, in at least
24 16-point boldfaced type, an acknowledgment of the parent's
25 rights in substantially the following form:

26
27 CONSENT TO ADOPTION

28
29 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE
30 PERSON WHO DOES NOT HAVE AN EMPLOYMENT,
31 PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH THE

1 ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE
2 PARENTS TO BE PRESENT WHEN THIS AFFIDAVIT IS
3 EXECUTED AND TO SIGN IT AS A WITNESS. YOU MUST
4 ACKNOWLEDGE ON THIS FORM THAT YOU WERE NOTIFIED
5 OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS
6 OR WITNESSES YOU SELECTED, IF ANY.
7
8 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU
9 MAY DO ANY OF THE FOLLOWING INSTEAD OF SIGNING
10 THIS CONSENT OR BEFORE SIGNING THIS CONSENT:
11
12 1. CONSULT WITH AN ATTORNEY;
13 2. HOLD, CARE FOR, AND FEED THE CHILD;
14 3. PLACE THE CHILD IN FOSTER CARE OR WITH
15 ANY FRIEND OR FAMILY MEMBER YOU CHOOSE WHO IS
16 WILLING TO CARE FOR THE CHILD;
17 4. TAKE THE CHILD HOME UNLESS OTHERWISE
18 LEGALLY PROHIBITED; AND
19 5. FIND OUT ABOUT THE COMMUNITY RESOURCES
20 THAT ARE AVAILABLE TO YOU IF YOU DO NOT GO
21 THROUGH WITH THE ADOPTION.
22
23 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP
24 ALL RIGHTS TO YOUR CHILD. YOUR CONSENT IS VALID
25 AND BINDING UNLESS WITHDRAWN AS PERMITTED BY
26 LAW. IF YOU ARE GIVING UP YOUR RIGHTS TO A
27 CHILD WHO IS TO BE PLACED FOR ADOPTION ~~WITH~~
28 ~~IDENTIFIED PROSPECTIVE ADOPTIVE PARENTS~~ UPON
29 THE CHILD'S RELEASE FROM A LICENSED HOSPITAL OR
30 BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD
31 WILL BE IMPOSED BEFORE YOU MAY SIGN THE CONSENT

1 FOR ADOPTION. YOU MUST WAIT 48 HOURS FROM THE
2 TIME OF BIRTH, OR UNTIL THE BIRTH MOTHER HAS
3 BEEN NOTIFIED IN WRITING, EITHER ON HER PATIENT
4 CHART OR IN RELEASE PAPERS, THAT SHE IS FIT TO
5 BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
6 CENTER, WHICHEVER IS SOONER, BEFORE YOU MAY
7 SIGN THE CONSENT FOR ADOPTION. ONCE YOU HAVE
8 SIGNED THE CONSENT, IT IS VALID AND BINDING AND
9 CANNOT BE WITHDRAWN UNLESS A COURT FINDS THAT
10 IT WAS OBTAINED BY FRAUD OR ~~UNDER~~ DURESS.

11
12 IF YOU ARE GIVING UP YOUR RIGHTS TO A CHILD WHO
13 IS NOT PLACED FOR ADOPTION UPON THE CHILD'S
14 RELEASE FROM A LICENSED HOSPITAL OR BIRTH
15 CENTER FOLLOWING BIRTH, YOU MAY SIGN THE
16 CONSENT AT ANY TIME AFTER THE BIRTH OF THE
17 CHILD. WHILE THE CONSENT IS VALID AND BINDING
18 WHEN SIGNED, YOU HAVE TIME TO CHANGE YOUR MIND.
19 THIS TIME IS CALLED THE REVOCATION PERIOD. WHEN
20 THE REVOCATION PERIOD APPLIES, YOU MAY WITHDRAW
21 YOUR CONSENT ~~FOR ANY REASON AT ANY TIME PRIOR~~
22 ~~TO THE PLACEMENT OF THE CHILD WITH THE~~
23 ~~PROSPECTIVE ADOPTIVE PARENTS, OR IF YOU DO IT~~
24 ~~WITHIN 3 BUSINESS DAYS AFTER THE DATE YOU~~
25 ~~SIGNED THE CONSENT OR 1 BUSINESS DAY AFTER THE~~
26 ~~DATE OF THE BIRTH MOTHER'S DISCHARGE FROM A~~
27 ~~LICENSED HOSPITAL OR BIRTH CENTER, WHICHEVER IS~~
28 ~~LATER.~~

29
30 TO WITHDRAW YOUR CONSENT DURING THE REVOCATION
31 PERIOD, YOU MUST:

1 1. NOTIFY THE ADOPTION ENTITY, BY WRITING
2 A LETTER, THAT YOU ARE WITHDRAWING YOUR
3 CONSENT.
4 2. MAIL THE LETTER AT A UNITED STATES
5 POST OFFICE WITHIN 3 BUSINESS DAYS AFTER THE
6 DATE YOU SIGNED THE CONSENT ~~OR 1 BUSINESS DAY~~
7 ~~AFTER THE DATE OF THE BIRTH MOTHER'S DISCHARGE~~
8 ~~FROM A LICENSED HOSPITAL OR BIRTH CENTER,~~
9 ~~WHICHEVER IS LATER.~~ THE TERM "BUSINESS DAY"
10 MEANS ANY DAY ON WHICH THE UNITED STATES POSTAL
11 SERVICE ACCEPTS CERTIFIED MAIL FOR DELIVERY.
12 3. SEND THE LETTER BY CERTIFIED UNITED
13 STATES MAIL WITH RETURN RECEIPT REQUESTED.
14 4. PAY POSTAL COSTS AT THE TIME YOU MAIL
15 THE LETTER.
16 5. KEEP THE CERTIFIED MAIL RECEIPT AS
17 PROOF THAT CONSENT WAS WITHDRAWN IN A TIMELY
18 MANNER.
19
20 TO WITHDRAW YOUR CONSENT ~~PRIOR TO THE PLACEMENT~~
21 ~~OF THE CHILD WITH THE PROSPECTIVE ADOPTIVE~~
22 ~~PARENTS,~~ YOU MUST NOTIFY THE ADOPTION ENTITY,
23 IN WRITING BY CERTIFIED UNITED STATES MAIL,
24 RETURN RECEIPT REQUESTED. THE ADOPTION ENTITY
25 YOU SHOULD NOTIFY IS: ...(name of adoption
26 entity)..., ...(address of adoption entity)...,
27 ...(phone number of adoption entity)....
28
29 ONCE THE REVOCATION PERIOD IS OVER, ~~OR THE~~
30 ~~CHILD HAS BEEN PLACED WITH THE PROSPECTIVE~~
31 ~~ADOPTIVE PARENTS, WHICHEVER OCCURS LATER,~~ YOU

1 MAY NOT WITHDRAW YOUR CONSENT UNLESS YOU CAN
2 PROVE IN COURT THAT CONSENT WAS OBTAINED BY
3 FRAUD OR ~~UNDER~~ DURESS.
4

5 (6) A copy or duplicate original of each consent
6 signed in an action for termination of parental rights pending
7 adoption must be provided to the person who executed the
8 consent to adoption. The copy must be hand delivered, with a
9 written acknowledgment of receipt signed by the person whose
10 consent is required, or mailed by first class United States
11 mail to the address of record in the court file. If a copy of
12 a consent cannot be provided as required in this subsection,
13 the adoption entity must execute an affidavit stating why the
14 copy of the consent is undeliverable. The original consent and
15 acknowledgment of receipt, an acknowledgment of mailing by the
16 adoption entity, or an affidavit stating why the copy of the
17 consent is undeliverable must be filed with the petition for
18 termination of parental rights pending adoption.

19 (7)(a) A consent that is being withdrawn under
20 paragraph (4)(c) may be withdrawn ~~at any time prior to the~~
21 ~~minor's placement with the prospective adoptive parents or by~~
22 notifying the adoption entity in writing by certified United
23 States mail, return receipt requested, not later than 3
24 business days after execution of the consent ~~or 1 business day~~
25 ~~after the date of the birth mother's discharge from a licensed~~
26 ~~hospital or birth center, whichever occurs later.~~ As used in
27 this subsection, the term "business day" means any day on
28 which the United States Postal Service accepts certified mail
29 for delivery.

30 (b) Upon receiving timely and proper written notice
31 from a person of that person's desire to withdraw consent to

1 adoption, the adoption entity must contact the prospective
2 adoptive parent to arrange a time certain for the adoption
3 entity to regain physical custody of the minor, unless, upon a
4 motion for emergency hearing by the adoption entity, the court
5 determines in written findings that:

6 1. Placement of the minor with the person withdrawing
7 consent may endanger the minor;~~;~~

8 2. The person who desires to withdraw consent to the
9 adoption was not required to consent to the adoption; or

10 3. The person who desires to withdraw consent to the
11 adoption has been found to have abandoned the child.

12 (c) If the court finds that such placement may
13 endanger the minor, the court must enter an order regarding
14 continued placement of the minor. The order shall include, but
15 not be limited to, whether temporary placement in foster care
16 is appropriate, whether an investigation by the department is
17 recommended, and whether a relative within the third degree is
18 available for the temporary placement.

19 (d) If the person withdrawing consent claims to be the
20 father of the minor but has not been established to be the
21 father by marriage, court order, or scientific testing, the
22 court may order scientific paternity testing and reserve
23 ruling on removal of the minor until the results of such
24 testing have been filed with the court.

25 (e) The adoption entity must return the minor within 3
26 days after timely and proper notification of the withdrawal of
27 consent or after the court determines that withdrawal is valid
28 and binding upon consideration of an emergency motion, as
29 filed pursuant to paragraph (b), to the physical custody of
30 the person withdrawing consent or the person directed by the
31 court.

1 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE
2 PROVIDED TO ALL PERSONS CONSIDERING ADOPTING A
3 MINOR OR SEEKING TO PLACE A MINOR FOR ADOPTION,
4 TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING
5 ADOPTION UNDER FLORIDA LAW:
6

7 1. Under section 63.102, Florida
8 Statutes, the existence of a placement or
9 adoption contract signed by the parent or
10 prospective adoptive parent, prior approval of
11 that contract by the court, or payment of any
12 expenses permitted under Florida law does not
13 obligate anyone to sign a consent or ultimately
14 place a minor for adoption.

15 2. Under sections 63.092 and 63.125,
16 Florida Statutes, a favorable preliminary home
17 study, before the minor may be placed in that
18 home, and a final home investigation, before
19 the adoption becomes final, must be completed,
20 except under certain circumstances.

21 3. Under section 63.082, Florida
22 Statutes, a consent to adoption or affidavit of
23 nonpaternity may not be signed until after the
24 birth of the minor.

25 4. Under section 63.082, Florida
26 Statutes, if the minor is to be placed for
27 adoption ~~with identified prospective adoptive~~
28 ~~parents~~ upon release from a licensed hospital
29 or birth center following birth, the consent to
30 adoption may not be signed until 48 hours after
31 birth or until the day the birth mother has

1 been notified in writing, either on her patient
2 chart or in release papers, that she is fit to
3 be released from the licensed hospital or birth
4 center, whichever is sooner. The consent to
5 adoption or affidavit of nonpaternity is valid
6 and binding upon execution unless the court
7 finds it was obtained by fraud or ~~under~~ duress.
8 5. Under section 63.082, Florida
9 Statutes, if the minor is not placed for
10 adoption ~~with the prospective adoptive parent~~
11 upon release from the hospital or birth center
12 following birth, a 3-day revocation period
13 applies during which consent may be withdrawn
14 for any reason by notifying the adoption entity
15 in writing. In order to withdraw consent, the
16 written withdrawal of consent must be mailed at
17 a United States Post Office no later than 3
18 business days after execution of the consent ~~or~~
19 ~~1 business day after the date of the birth~~
20 ~~mother's discharge from a licensed hospital or~~
21 ~~birth center, whichever occurs later.~~ For
22 purposes of mailing the withdrawal of consent,
23 the term "business day" means any day on which
24 the United States Postal Service accepts
25 certified mail for delivery. The letter must be
26 sent by certified United States mail, return
27 receipt requested. Postal costs must be paid at
28 the time of mailing and the receipt should be
29 retained as proof that consent was withdrawn in
30 a timely manner.
31

1 ~~6.~~ Under section 63.082, Florida
2 Statutes, and notwithstanding the revocation
3 period, the consent may be withdrawn at any
4 time prior to the placement of the child with
5 the prospective adoptive parent, by notifying
6 the adoption entity in writing by certified
7 United States mail, return receipt requested.
8 ~~6.7.~~ Under section 63.082, Florida
9 Statutes, if an adoption entity timely receives
10 written notice from a person of that person's
11 desire to withdraw consent, the adoption entity
12 must contact the prospective adoptive parent to
13 arrange a time certain to regain physical
14 custody of the child. Absent a court order for
15 continued placement of the child entered under
16 section 63.082, Florida Statutes, the adoption
17 entity must return the minor within 3 business
18 days after notification of the withdrawal of
19 consent to the physical custody of the person
20 withdrawing consent or the person directed by
21 the court. After the revocation period for
22 withdrawal of consent ends, ~~or after the~~
23 ~~placement of the child with the prospective~~
24 ~~adoptive parent, whichever occurs later,~~ the
25 consent may be withdrawn only if the court
26 finds that the consent was obtained by fraud or
27 ~~under~~ duress.
28 ~~7.8.~~ Under section 63.082, Florida
29 Statutes, an affidavit of nonpaternity, once
30 executed, may be withdrawn only if the court
31

1 finds that it was obtained by fraud or ~~under~~
2 duress.

3 ~~8.9.~~ Under section 63.082, Florida
4 Statutes, a person who signs a consent to
5 adoption or an affidavit of nonpaternity must
6 be given reasonable notice of his or her right
7 to select a person who does not have an
8 employment, professional, or personal
9 relationship with the adoption entity or the
10 prospective adoptive parents to be present when
11 the consent or affidavit is executed and to
12 sign the consent or affidavit as a witness.

13 ~~9.10.~~ Under section 63.088, Florida
14 Statutes, specific and extensive efforts are
15 required by law to attempt to obtain the
16 consents required under section 63.062, Florida
17 Statutes. If these efforts are unsuccessful,
18 the court may not enter a judgment terminating
19 parental rights pending adoption until certain
20 requirements have been met.

21 ~~10.11.~~ Under Florida law, an intermediary
22 may represent the legal interests of only the
23 prospective adoptive parents. Each person whose
24 consent to an adoption is required under
25 section 63.062, Florida Statutes, is entitled
26 to seek independent legal advice and
27 representation before signing any document or
28 surrendering parental rights.

29 ~~11.12.~~ Under section 63.182, Florida
30 Statutes, an action or proceeding of any kind
31 to vacate, set aside, or otherwise nullify a

1 judgment of adoption or an underlying judgment
2 terminating parental rights pending adoption,
3 on any ground, ~~including duress but excluding~~
4 ~~fraud~~, must be filed within 1 year after entry
5 of the judgment terminating parental rights
6 pending adoption. ~~Such an action or proceeding~~
7 ~~for fraud must be filed within 2 years after~~
8 ~~entry of the judgment terminating parental~~
9 ~~rights.~~

10 12.13. Under section 63.089, Florida
11 Statutes, a judgment terminating parental
12 rights pending adoption is voidable and any
13 later judgment of adoption of that minor is
14 voidable if, upon the motion of a parent, the
15 court finds that any person knowingly gave
16 false information that prevented the parent
17 from timely making known his or her desire to
18 assume parental responsibilities toward the
19 minor or to exercise his or her parental
20 rights. The motion must be filed with the court
21 that originally entered the judgment. The
22 motion must be filed within a reasonable time,
23 but not later than 1 year ~~2 years~~ after the
24 date the judgment to which the motion is
25 directed was entered.

26 13.14. Under section 63.165, Florida
27 Statutes, the State of Florida maintains a
28 registry of adoption information. Information
29 about the registry is available from the
30 Department of Children and Family Services.

31

1 14.15. Under section 63.032, Florida
2 Statutes, a court may find that a parent has
3 abandoned his or her child based on conduct
4 during the pregnancy or based on conduct after
5 the child is born. In addition, under section
6 63.089, Florida Statutes, the failure of a
7 parent to respond to notices of proceedings
8 involving his or her child shall result in
9 termination of parental rights of a parent. A
10 lawyer can explain what a parent must do to
11 protect his or her parental rights. Any parent
12 wishing to protect his or her parental rights
13 should act IMMEDIATELY.

14 15.16. Each parent and prospective
15 adoptive parent is entitled to independent
16 legal advice and representation. Attorney
17 information may be obtained from the yellow
18 pages, The Florida Bar's lawyer referral
19 service, and local legal aid offices and bar
20 associations.

21 16.17. Counseling services may be helpful
22 while making a parenting decision. Consult the
23 yellow pages of the telephone directory.

24 17.18. Medical and social services
25 support is available if the parent wishes to
26 retain parental rights and responsibilities.
27 Consult the Department of Children and Family
28 Services.

29 18.19. Under section 63.039, Florida
30 Statutes, an adoption entity has certain legal
31 responsibilities and may be liable for damages

1 to persons whose consent to an adoption is
2 required or to prospective adoptive parents for
3 failing to materially meet those
4 responsibilities. Damages may also be recovered
5 from an adoption entity if a consent to
6 adoption or affidavit of nonpaternity is
7 obtained by fraud or ~~under~~ duress attributable
8 to an adoption entity.

9 19.20. Under section 63.097, Florida
10 Statutes, reasonable living expenses of the
11 birth mother may be paid by the prospective
12 adoptive parents and the adoption entity only
13 if the birth mother is unable to pay due to
14 unemployment, underemployment, or disability.
15 The law also allows payment of reasonable and
16 necessary medical expenses, expenses necessary
17 to comply with the requirements of chapter 63,
18 Florida Statutes, court filing expenses, and
19 costs associated with advertising. Certain
20 documented legal, counseling, and other
21 professional fees may be paid. ~~Prior~~ Approval
22 of the court is not required until the
23 cumulative total of amounts permitted exceeds
24 \$2,500 in legal or other fees, \$500 in court
25 costs, or \$3,000 in expenses, ~~or \$1,500 in~~
26 ~~cumulative expenses incurred prior to the date~~
27 ~~the prospective adoptive parent retains the~~
28 ~~adoption entity~~. The following fees, costs, and
29 expenses are prohibited:

30 a. Any fee or expense that constitutes
31 payment for locating a minor for adoption.

1 b. Any lump-sum payment to the entity
2 which is nonrefundable directly to the payor or
3 which is not itemized on the affidavit.

4 c. Any fee on the affidavit which does
5 not specify the service that was provided and
6 for which the fee is being charged, such as a
7 fee for facilitation or acquisition.

8
9 The court may reduce amounts charged or refund
10 amounts that have been paid if it finds that
11 these amounts were more than what was
12 reasonable or allowed under the law.

13 ~~20.21.~~ Under section 63.132, Florida
14 Statutes, the adoption entity and the
15 prospective adoptive parents must sign and file
16 with the court a written statement under oath
17 listing all the fees, expenses, and costs made,
18 or agreed to be made, by or on behalf of the
19 prospective adoptive parents and any adoption
20 entity in connection with the adoption. The
21 affidavit must state whether any of the
22 expenses were eligible to be paid for by any
23 other source.

24 ~~21.22.~~ Under section 63.132, Florida
25 Statutes, the court order approving the money
26 spent on the adoption must be separate from the
27 judgment making the adoption final. The court
28 may approve only certain costs and expenses
29 allowed under section 63.097, Florida Statutes.
30 The court may approve only fees that are
31 allowed under law and that it finds to be

1 "reasonable." A good idea of what is and is not
2 allowed to be paid for in an adoption can be
3 determined by reading sections 63.097 and
4 63.132, Florida Statutes.

5
6 (2) ACKNOWLEDGMENT OF DISCLOSURE.--The adoption entity
7 must obtain a written statement acknowledging receipt of the
8 disclosure required under subsection (1) and signed by the
9 persons receiving the disclosure or, if it is not possible to
10 obtain such an acknowledgment, the adoption entity must
11 execute an affidavit stating why an acknowledgment could not
12 be obtained. If the disclosure was delivered by certified
13 United States mail, return receipt requested, a return receipt
14 signed by the person from whom acknowledgment is required is
15 sufficient to meet the requirements of this subsection. A copy
16 or duplicate original ~~of the acknowledgment of receipt~~ of the
17 disclosure must be provided to the person signing it. A copy
18 of the disclosure and acknowledgment or affidavit executed by
19 the adoption entity in lieu of the acknowledgment must be
20 maintained in the file of the adoption entity. The original
21 disclosure and acknowledgment or affidavit must be filed with
22 the court. In the case of a disclosure provided under
23 subsection (1) by adoptive parents, the original disclosure
24 and acknowledgment or affidavit must be included in the
25 preliminary home study required in s. 63.092.

26 Section 9. Subsections (3), (4), and (6) of section
27 63.087, Florida Statutes, are amended to read:

28 63.087 Proceeding to terminate parental rights pending
29 adoption; general provisions.--

30 (3) JURISDICTION.--A court of this state which is
31 competent to decide child welfare or custody matters has

1 jurisdiction to hear all matters arising from a proceeding to
2 terminate parental rights pending adoption. All subsequent
3 proceedings for the adoption of the minor, if the petition for
4 termination is granted, should ~~must~~ be conducted by the same
5 judge who conducted the termination proceedings, if that judge
6 is still available within the division of the court which
7 conducts termination or adoption cases or, if that judge is
8 unavailable, by another judge within the division.

9 (4) VENUE.--

10 (a) A petition to terminate parental rights pending
11 adoption must be filed:

12 1. In the county where the child resided for the
13 previous 6 months;

14 2. If the child is younger than 6 months of age or has
15 not continuously resided in one county for the previous 6
16 months, in the county where the parent resided at the time of
17 the execution of the consent to adoption or the affidavit of
18 nonpaternity;

19 3. ~~If the child is younger than 6 months of age and a~~
20 ~~waiver of venue has been obtained pursuant to s. 63.062, in~~
21 ~~the county where the adoption entity is located or, if the~~
22 ~~adoption entity has more than one place of business, in the~~
23 ~~county which is located in closest proximity to the county in~~
24 ~~which the parent whose rights are to be terminated resided at~~
25 ~~the time of execution of the consent or affidavit of~~
26 ~~nonpaternity;~~

27 4. If there is no consent or affidavit of nonpaternity
28 executed by any a parent, in the county where the birth mother
29 resides; or

30 5. If neither parent resides in the state, in the
31 county where the adoption entity is located.

1 (b) If a petition for termination of parental rights
2 has been filed and a parent whose rights are to be terminated
3 objects to venue, there must be a hearing in which the court
4 shall determine whether that parent intends to assert valid
5 and legally recognized grounds to contest a termination of
6 parental rights and, if so, the court shall immediately
7 transfer venue to the county ~~where that parent resides, if~~
8 ~~there is such a county, or, if not, a county~~ where:

9 1. At least one parent whose rights are to be
10 terminated resides;

11 2. At least one parent resided at the time of
12 execution of a consent or affidavit of nonpaternity; or

13 3. The adoption entity is located, if neither
14 subparagraph 1. nor subparagraph 2. applies.

15
16 For purposes of selecting venue, the court shall consider the
17 ease of access to the court for the parent who intends to
18 contest a termination of parental rights.

19 (c) If there is a transfer of venue, the adoption
20 entity or the petitioner must bear the cost of venue transfer.

21
22 For purposes of the hearing under this subsection, witnesses
23 located in another jurisdiction may testify by deposition or
24 testify by telephone, audiovisual means, or other electronic
25 means before a designated court or at another location.
26 Documentary evidence transmitted from another location by
27 technological means that do not produce an original writing
28 may not be excluded from evidence on an objection based on the
29 means of transmission. The court on its own motion may
30 otherwise prescribe the manner in which and the terms upon
31 which the testimony is taken.

1 (6) PETITION.--

2 (a) A proceeding seeking to terminate parental rights
3 pending adoption pursuant to this chapter must be initiated by
4 the filing of an original petition after the birth of the
5 minor.

6 (b) The petition may be filed by a parent or person
7 having legal or physical custody of the minor. The petition
8 may be filed by an adoption entity only if a parent or person
9 having legal custody who has executed a consent to adoption
10 pursuant to s. 63.082 consents in writing to the entity filing
11 the petition. The original of such consent must be filed with
12 the petition.

13 (c) The petition must be entitled: "In the Matter of
14 the Termination of Parental Rights for the Proposed Adoption
15 of a Minor Child."

16 (d) A petition to terminate parental rights must be
17 consolidated with a previously filed petition for a
18 declaratory statement filed under s. 63.102. Only one filing
19 fee may be assessed for ~~both~~ the petitions for termination of
20 parental rights, and declaratory statement, and adoption
21 petitions. However, the action for termination of parental
22 rights and the adoption shall remain separate cases.

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 to adoption, affidavit of
27 nonpaternity, or affidavit of diligent search under s. 63.088,
28 for each person whose consent to adoption is required under s.
29 63.062, must be executed and attached.

30 (f) The petition must include:

31

1 1. The minor's name, gender, date of birth, and place
2 of birth. The petition must contain all names by which the
3 minor is or has been known, excluding the minor's prospective
4 adoptive name but including the minor's legal name at the time
5 of the filing of the petition, to allow interested parties to
6 the action, including parents, persons having legal custody of
7 the minor, persons with custodial or visitation rights to the
8 minor pursuant to court order, and persons entitled to notice
9 pursuant to the Uniform Child Custody Jurisdiction Act or the
10 Indian Child Welfare Act, to identify their own interest in
11 the action.

12 2. If the petition is filed before the day the minor
13 is 6 months old and if the identity or location of the father
14 is unknown, each city in which the mother resided or traveled,
15 in which conception may have occurred, during the 12 months
16 before the minor's birth, including the county and state in
17 which that city is located.

18 3. Unless a consent to adoption or affidavit of
19 nonpaternity executed by each person whose consent is required
20 under s. 63.062 is attached to the petition, the name and the
21 city of residence, including the county and state in which
22 that city is located, of:

23 a. The minor's mother;

24 b. Any man who the mother reasonably believes may be
25 the minor's father; and

26 c. Any person who has legal custody, as defined in s.
27 39.01, of the minor.

28

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

31

1 4. All information required by the Uniform Child
2 Custody Jurisdiction Act and the Indian Child Welfare Act.

3 5. A statement of the grounds under s. 63.089 upon
4 which the petition is based.

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

7 7. The name, address, and telephone number of the
8 division of the circuit court in which the petition is to be
9 filed.

10 8. A certification of compliance with the requirements
11 of s. 63.0425 regarding notice to grandparents of an impending
12 adoption.

13 Section 10. Subsections (1) and (2) of section 63.088,
14 Florida Statutes, are amended to read:

15 63.088 Proceeding to terminate parental rights pending
16 adoption; notice and service; diligent search.--

17 (1) INITIATE LOCATION AND IDENTIFICATION
18 PROCEDURES.--When the location or identity of a person whose
19 consent to an adoption is required but is not known, the
20 adoption entity must begin the inquiry and diligent search
21 process required by this section not later than 14 business ~~7~~
22 days after the date on which the person seeking to place a
23 minor for adoption has evidenced in writing to the entity a
24 desire to place the minor for adoption with that entity, or
25 not later than 14 business ~~7~~ days after the date any money is
26 provided as permitted under this chapter by the adoption
27 entity for the benefit of the person seeking to place a minor
28 for adoption.

29 (2) LOCATION AND IDENTITY KNOWN.--Before the court may
30 determine that a minor is available for adoption, and in
31 addition to the other requirements set forth in this chapter,

1 each person whose consent is required under s. 63.062, who has
2 not executed an affidavit of nonpaternity or a consent for
3 adoption, and whose location and identity have been determined
4 by compliance with the procedures in this section must be
5 personally served, pursuant to chapter 48, at least 30 days
6 before the hearing with a copy of the petition to terminate
7 parental rights pending adoption and with notice in
8 substantially the following form:

9
10 NOTICE OF PETITION AND HEARING
11 TO TERMINATE PARENTAL RIGHTS
12 PENDING ADOPTION
13

14 A petition to terminate parental rights pending
15 adoption has been filed. A copy of the petition
16 is being served with this notice. There will be
17 a hearing on the petition to terminate parental
18 rights pending adoption on (date) at (time)
19 before (judge) at (location, including complete
20 name and street address of the courthouse). The
21 court has set aside (amount of time) for this
22 hearing. If you executed a consent to adoption
23 or an affidavit of nonpaternity and a waiver of
24 venue, you may have the right to request that
25 the hearing on the petition to terminate
26 parental rights be transferred to the county in
27 which you reside. You may object by appearing
28 at the hearing or filing a written objection
29 with the court.
30
31

1 UNDER SECTION 63.089, FLORIDA STATUTES, FAILURE
2 TO FILE A WRITTEN RESPONSE TO THIS NOTICE WITH
3 THE COURT OR TO APPEAR AT THIS HEARING
4 CONSTITUTES GROUNDS UPON WHICH THE COURT SHALL
5 END ANY PARENTAL RIGHTS YOU MAY HAVE REGARDING
6 THE MINOR CHILD.
7

8 Section 11. Subsection (1), paragraphs (a) and (c) of
9 subsection (4), subsection (5), and paragraphs (a) and (d) of
10 subsection (7) of section 63.089, Florida Statutes, are
11 amended to read:

12 63.089 Proceeding to terminate parental rights pending
13 adoption; hearing; grounds; dismissal of petition; judgment.--

14 (1) HEARING.--The court shall hold a hearing to ~~may~~
15 terminate parental rights pending adoption ~~only after a full~~
16 ~~evidentiary hearing.~~

17 (4) FINDING OF ABANDONMENT.--A finding of abandonment
18 resulting in a termination of parental rights must be based
19 upon clear and convincing evidence. A finding of abandonment
20 may not be based upon a lack of emotional support to a birth
21 mother during her pregnancy, but may be based upon emotional
22 abuse to a birth mother during her pregnancy.

23 (a) In making a determination of abandonment at a
24 hearing for termination of parental rights pursuant to this
25 chapter, the court must consider, among other relevant factors
26 not inconsistent with this section:

27 1. Whether the actions alleged to constitute
28 abandonment demonstrate a willful disregard for the safety or
29 welfare of the child or unborn child;
30
31

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

4 3. Whether the person alleged to have abandoned the
5 child, while being able, refused to provide financial support
6 after such person was informed or had reason to believe he may
7 be the father of the child;

8 4. Whether the person alleged to have abandoned the
9 child, while being able, failed ~~refused~~ to pay for medical
10 treatment when ~~such payment was requested by the person having~~
11 ~~legal custody of the child and~~ those expenses were not covered
12 by insurance or other available sources;

13 5. Whether the amount of support provided or medical
14 expenses paid was appropriate, taking into consideration the
15 needs of the child and relative means and resources available
16 to the person alleged to have abandoned the child and
17 available to the person having legal custody of the child
18 during the period the child allegedly was abandoned; and

19 6. Whether the person having legal custody of the
20 child made the child's whereabouts known to the person alleged
21 to have abandoned the child, advised that person of the needs
22 of the child or the needs of the mother of an unborn child
23 with regard to the pregnancy, or informed that person of
24 events such as medical appointments and tests relating to the
25 child or, if unborn, the pregnancy.

26 (c) The only conduct of a father toward a mother
27 during pregnancy that the court may consider in determining
28 whether the child has been abandoned is conduct that occurred
29 after the father was informed he may be the father of the
30 child or after diligent search ~~and notice~~ as provided in s.

31

1 63.088 have been made to inform the father that he is, or may
2 be, the father of the child.

3 (5) DISMISSAL OF PETITION ~~WITH PREJUDICE~~.--If the
4 court does not find by clear and convincing evidence that
5 parental rights of a parent should be terminated pending
6 adoption, the court must dismiss the petition ~~with prejudice~~
7 and that parent's parental rights that were the subject of
8 such petition remain in full force under the law. The order
9 must include written findings in support of the dismissal,
10 including findings as to the criteria in subsection (4) if
11 rejecting a claim of abandonment. Parental rights may not be
12 terminated based upon a consent that the court finds has been
13 timely withdrawn under s. 63.082 or a consent to adoption or
14 affidavit of nonpaternity that the court finds was obtained by
15 fraud or ~~under~~ duress. The court must enter an order based
16 upon written findings providing for the placement of the
17 minor. The court may order scientific testing to determine the
18 paternity of the minor at any time during which the court has
19 jurisdiction over the minor. Further proceedings, if any,
20 regarding the minor must be brought in a separate custody
21 action under chapter 61, a dependency action under chapter 39,
22 or a paternity action under chapter 742.

23 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL
24 RIGHTS.--

25 (a) A judgment terminating parental rights pending
26 adoption is voidable and any later judgment of adoption of
27 that minor is voidable if, upon the motion of a parent, the
28 court finds that a person knowingly gave false information
29 that prevented the parent from timely making known his or her
30 desire to assume parental responsibilities toward the minor or
31 meeting the requirements under this chapter to exercise his or

1 her parental rights. A motion under this subsection must be
2 filed with the court originally entering the judgment. The
3 motion must be filed within a reasonable time, but not later
4 than 1 year ~~2 years~~ after the entry of the judgment
5 terminating parental rights.

6 (d) No later than 45 days after the preliminary
7 hearing, unless stipulated by the parties, the court must
8 conduct a final hearing on the motion to set aside the
9 judgment and enter its written order as expeditiously as
10 possible thereafter.

11 Section 12. Subsection (3) of section 63.092, Florida
12 Statutes, is amended to read:

13 63.092 Report to the court of intended placement by an
14 adoption entity; at-risk placement; preliminary study.--

15 (3) PRELIMINARY HOME STUDY.--Before placing the minor
16 in the intended adoptive home, a preliminary home study must
17 be performed by a licensed child-placing agency, a
18 child-caring agency registered under s. 409.176, a licensed
19 professional, or agency described in s. 61.20(2), unless the
20 petitioner is a stepparent, a spouse of the parent, or a
21 relative. The preliminary study shall be completed within 30
22 days after the receipt by the court of the adoption entity's
23 report, but in no event may the minor be placed in the
24 prospective adoptive home prior to the completion of the
25 preliminary study unless ordered by the court. If the
26 petitioner is a stepparent, a spouse of the parent, or a
27 relative, the preliminary home study may be required by the
28 court for good cause shown. The department is required to
29 perform the preliminary home study only if there is no
30 licensed child-placing agency, child-caring agency registered
31 under s. 409.176, licensed professional, or agency described

1 in s. 61.20(2), in the county where the prospective adoptive
2 parents reside. The preliminary home study must be made to
3 determine the suitability of the intended adoptive parents and
4 may be completed prior to identification of a prospective
5 adoptive minor. A favorable preliminary home study is valid
6 for 1 year after the date of its completion. Upon its
7 completion, a copy of the home study must be provided to the
8 intended adoptive parents who were the subject of the home
9 study. A minor may not be placed in an intended adoptive home
10 before a favorable preliminary home study is completed unless
11 the adoptive home is also a licensed foster home under s.
12 409.175, or unless the petitioner is a stepparent, a spouse of
13 a parent, or a relative. The preliminary home study must
14 include, at a minimum:

- 15 (a) An interview with the intended adoptive parents;
- 16 (b) Records checks of the department's central abuse
17 registry and criminal records correspondence checks pursuant
18 to s. 435.045 through the Department of Law Enforcement on the
19 intended adoptive parents;
- 20 (c) An assessment of the physical environment of the
21 home;
- 22 (d) A determination of the financial security of the
23 intended adoptive parents;
- 24 (e) Documentation of counseling and education of the
25 intended adoptive parents on adoptive parenting;
- 26 (f) Documentation that information on adoption and the
27 adoption process has been provided to the intended adoptive
28 parents;
- 29 (g) Documentation that information on support services
30 available in the community has been provided to the intended
31 adoptive parents; and

1 (h) A copy of each signed acknowledgment required by
2 s. 63.085.

3
4 If the preliminary home study is favorable, a minor may be
5 placed in the home pending entry of the judgment of adoption.
6 A minor may not be placed in the home if the preliminary home
7 study is unfavorable. If the preliminary home study is
8 unfavorable, the adoption entity may, within 20 days after
9 receipt of a copy of the written recommendation, petition the
10 court to determine the suitability of the intended adoptive
11 home. A determination as to suitability under this subsection
12 does not act as a presumption of suitability at the final
13 hearing. In determining the suitability of the intended
14 adoptive home, the court must consider the totality of the
15 circumstances in the home. No minor may be placed in a home in
16 which there resides any person determined by the court to be a
17 sexual predator as defined in s. 775.21 or to have been
18 convicted of an offense listed in s. 63.089(4)(b)2.

19 Section 13. Paragraphs (a) and (f) of subsection (2)
20 and subsections (3) and (5) of section 63.097, Florida
21 Statutes, are amended to read:

22 63.097 Fees.--

23 (2) The following fees, costs, and expenses may be
24 assessed by the adoption entity or paid by the adoption entity
25 on behalf of the prospective adoptive parents:

26 (a) Reasonable living expenses of the birth mother
27 which the birth mother is unable to pay due to unemployment,
28 underemployment, or disability due to the pregnancy which is
29 certified by a medical professional who has examined the birth
30 mother, or any other disability defined in s. 110.215.
31 Reasonable living expenses are rent, utilities, toiletries,

1 basic telephone service, food, necessary clothing,
2 transportation, and expenses found by the court to be
3 necessary for the health of the birth mother or unborn child.

4 (f) The following professional fees:

5 1. A reasonable hourly fee necessary to provide legal
6 representation to the adoptive parents or adoption entity in a
7 proceeding filed under this chapter.

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

18 3. A reasonable hourly fee for counseling services
19 provided to a parent or a prospective adoptive parent by a
20 psychologist licensed under chapter 490 or a clinical social
21 worker, marriage and family therapist, crisis pregnancy
22 center, or mental health counselor licensed under chapter 491,
23 or a counselor who is employed by an adoption entity
24 accredited by the Council on Accreditation of Services for
25 Children and Families to provide pregnancy counseling and
26 supportive services.

27 (3) ~~Prior~~ Approval of the court is not required until
28 the cumulative total of amounts permitted under subsection (2)
29 exceeds:

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

31 (b) \$800~~\$500~~ in court costs; or

1 (c) \$3,000 in expenses ~~or~~
2 ~~(d) \$1,500 cumulative expenses that are related to the~~
3 ~~minor, the pregnancy, a parent, or adoption proceeding, which~~
4 ~~expenses are incurred prior to the date the prospective~~
5 ~~adoptive parent retains the adoption entity.~~

6 (5) The following fees, costs, and expenses are
7 prohibited:

8 (a) Any fee or expense that constitutes payment for
9 locating a minor for adoption.

10 (b) Any ~~lump-sum~~ payment that ~~to the entity which is~~
11 ~~nonrefundable directly to the payor or which~~ is not itemized
12 on the affidavit filed under s. 63.132.

13 (c) Any legal fee on the affidavit which does not
14 specify the service that was provided and for which the fee is
15 being charged, such as a fee for facilitation, acquisition, or
16 other similar service, or which does not identify the date the
17 service was provided, the time required to provide the
18 service, the person or entity providing the service, and the
19 hourly fee charged.

20 Section 14. Subsection (5) of section 63.102, Florida
21 Statutes, is amended to read:

22 63.102 Filing of petition for adoption or declaratory
23 statement; venue; proceeding for approval of fees and costs.--

24 (5) A proceeding for prior approval of fees and costs
25 may be commenced any time after an agreement is reached
26 between the birth mother and the adoptive parents by filing a
27 petition for declaratory statement on the agreement entitled
28 "In the Matter of the Proposed Adoption of a Minor Child" in
29 the circuit court.

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

1 (a)~~(b)~~ A contract for the payment of fees, costs, and
2 expenses permitted under this chapter must be in writing, and
3 any person who enters into the contract has 3 business days in
4 which to cancel the contract and withdraw from the adoption.
5 To cancel the contract, the person must notify the adoption
6 entity in writing by certified United States mail, return
7 receipt requested, no later than 3 business days after signing
8 the contract. For the purposes of this subsection, the term
9 "business day" means a day on which the United States Postal
10 Service accepts certified mail for delivery. If the contract
11 is canceled within the first 3 business days, the person who
12 cancels the contract does not owe any legal, intermediary, or
13 other fees, but may be responsible for the adoption entity's
14 actual costs during that time.

15 (b)~~(c)~~ The court may grant prior approval only of fees
16 and expenses permitted under s. 63.097. A prior approval of
17 prospective fees and costs does not create a presumption that
18 these items will subsequently be approved by the court under
19 s. 63.132. The court, under s. 63.132, may order an adoption
20 entity to refund any amount paid under this subsection that is
21 subsequently found by the court to be greater than fees,
22 costs, and expenses actually incurred.

23 (c)~~(d)~~ The contract may not require, and the court may
24 not approve, any lump-sum payment ~~to the entity which is~~
25 ~~nonrefundable to the payor~~ or any amount that constitutes
26 payment for locating a minor for adoption.

27 (d)~~(e)~~ When a petition for a declaratory statement as
28 to the adoption contract is filed prior to the commencement of
29 proceedings to terminate parental rights, it must be filed in
30 accordance with the venue requirements for the filing of the
31 petition terminating parental rights under s. 63.087. Pursuant

1 to s. 63.087, a previously filed petition for a declaratory
2 statement filed under this section must be consolidated with a
3 related subsequently filed petition for termination of
4 parental rights or petition for adoption. ~~If the petition for~~
5 ~~declaratory statement is filed after the judgment terminating~~
6 ~~parental rights has been entered, the action for declaratory~~
7 ~~statement must be consolidated with any related petition for~~
8 ~~adoption.~~ Only one filing fee may be assessed for ~~both~~ the
9 petitions for adoption, and declaratory statement, and
10 termination of parental rights petitions.

11 (e)~~(f)~~ Prior approval of fees and costs by the court
12 does not obligate the parent to ultimately relinquish the
13 minor for adoption.

14 Section 15. Subsection (1) of section 63.132, Florida
15 Statutes, is amended to read:

16 63.132 Affidavit of expenses and receipts.--

17 (1) At least 10 days before the hearing on the
18 petition for adoption, the prospective adoptive parent and any
19 adoption entity must file two copies of an affidavit under
20 this section.

21 (a) The affidavit must be signed by the adoption
22 entity and the prospective adoptive parents. A copy of the
23 affidavit must be provided to the adoptive parents before or
24 at the time the affidavit is executed.

25 (b) The affidavit must itemize all disbursements and
26 receipts of anything of value, including professional and
27 legal fees, made or agreed to be made by or on behalf of the
28 prospective adoptive parent and any adoption entity in
29 connection with the adoption or in connection with any prior
30 proceeding to terminate parental rights which involved the
31 minor who is the subject of the petition for adoption. The

1 affidavit of the adoption entity must also include, for each
2 fee itemized, the service provided for which the fee is being
3 charged, the date the service was provided, the time required
4 to provide the service, the person or entity that provided the
5 service, and the hourly fee charged.

6 (c) The clerk of the court shall forward a copy of the
7 affidavit to the department.

8 (d) The affidavit must show any expenses or receipts
9 incurred in connection with:

10 1. The birth of the minor.

11 2. The placement of the minor with the petitioner.

12 3. The medical or hospital care received by the mother
13 or by the minor during the mother's prenatal care and
14 confinement.

15 4. The living expenses of the birth mother. The living
16 expenses must be documented in detail to apprise the court of
17 the exact expenses incurred.

18 5. The services relating to the adoption or to the
19 placement of the minor for adoption that were received by or
20 on behalf of the petitioner, the adoption entity, either
21 parent, the minor, or any other person.

22

23 The affidavit must state whether any of these expenses were
24 paid for by collateral sources, including, but not limited to,
25 health insurance, Medicaid, Medicare, or public assistance.

26 Section 16. Paragraphs (a) and (d) of subsection (4)
27 of section 63.142, Florida Statutes, are amended to read:

28 63.142 Hearing; judgment of adoption.--

29 (4) JUDGMENT.--At the conclusion of the hearing, after
30 the court determines that the date for a parent to file an
31 appeal of a valid judgment terminating that parent's parental

1 rights has passed and no appeal, pursuant to the Florida Rules
2 of Appellate Procedure, is pending and that the adoption is in
3 the best interest of the person to be adopted, a judgment of
4 adoption shall be entered.

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

17 (d) Except upon good cause shown or stipulation of the
18 parties, no later than 45 days after the preliminary hearing,
19 the court must conduct a final hearing on the motion to set
20 aside the judgment and issue its written order as
21 expeditiously as possible thereafter.

22 Section 17. Paragraph (c) of subsection (1) of section
23 63.172, Florida Statutes, is amended to read:

24 63.172 Effect of judgment of adoption.--

25 (1) A judgment of adoption, whether entered by a court
26 of this state, another state, or of any other place, has the
27 following effect:

28 (c) ~~Except for rights of inheritance,~~It creates the
29 relationship between the adopted person and the petitioner and
30 all relatives of the petitioner that would have existed if the
31 adopted person were a blood descendant of the petitioner born

1 within wedlock. This relationship shall be created for all
2 purposes, including applicability of statutes, documents, and
3 instruments, whether executed before or after entry of the
4 adoption judgment, that do not expressly exclude an adopted
5 person from their operation or effect.

6 Section 18. Subsection (1) of section 63.207, Florida
7 Statutes, is amended to read:

8 63.207 Out-of-state placement.--

9 (1) Unless the parent placing a minor for adoption
10 files an affidavit that the parent chooses to place the minor
11 outside the state, giving the reason for that placement, or
12 the minor is to be placed with a relative ~~within the third~~
13 ~~degree~~ or with a stepparent, or the minor is a special needs
14 child, as defined in s. 409.166, or for other good cause
15 shown, an adoption entity may not:

16 (a) Take or send a minor out of the state for the
17 purpose of placement for adoption; or

18 (b) Place or attempt to place a minor for the purpose
19 of adoption with a family who primarily lives and works
20 outside Florida in another state. If an adoption entity is
21 acting under this subsection, the adoption entity must file a
22 petition for declaratory statement pursuant to s. 63.102 for
23 prior approval of fees and costs. The court shall review the
24 costs pursuant to s. 63.097. The petition for declaratory
25 statement must be converted to a petition for an adoption upon
26 placement of the minor in the home. The circuit court in this
27 state must retain jurisdiction over the matter until the
28 adoption becomes final. The prospective adoptive parents must
29 come to this state to have the adoption finalized. Violation
30 of the order subjects the adoption entity to contempt of court
31 and to the penalties provided in s. 63.212.

1 Section 19. Paragraphs (a), (b), and (c) of subsection
2 (1) and subsection (4) of section 63.212, Florida Statutes,
3 are amended to read:

4 63.212 Prohibited acts; penalties for violation;
5 preplanned adoption agreement.--

6 (1) It is unlawful for any person:

7 (a) To place or attempt to place a minor for adoption
8 with a person who primarily lives and works outside this state
9 unless the minor is placed with a relative ~~within the third~~
10 ~~degree~~ or with a stepparent. This requirement does not apply
11 if the minor is placed by an adoption entity in accordance
12 with s. 63.207.

13 (b) Except an adoption entity, to place or attempt to
14 place within the state a minor for adoption unless the minor
15 is placed with a relative ~~within the third degree~~ or with a
16 stepparent. This prohibition, however, does not apply to a
17 person who is placing or attempting to place a minor for the
18 purpose of adoption with the adoption entity.

19 (c) To sell or surrender, or to arrange for the sale
20 or surrender of, a minor to another person for money or
21 anything of value or to receive such minor child for such
22 payment or thing of value. If a minor is being adopted by a
23 relative ~~within the third degree~~ or by a stepparent, or is
24 being adopted through an adoption entity, this paragraph does
25 not prohibit the person who is contemplating adopting the
26 child from paying, under ss. 63.097 and 63.132, the actual
27 prenatal care and living expenses of the mother of the child
28 to be adopted, or from paying, under ss. 63.097 and 63.132,
29 the actual living and medical expenses of such mother for a
30 reasonable time, not to exceed 6 weeks, if medical needs
31 require such support, after the birth of the minor.

1 (4) It is unlawful for any adoption entity to fail to
2 report to the court, prior to placement, the intended
3 placement of a minor for purposes of adoption with any person
4 not a stepparent or a relative ~~within the third degree~~, if the
5 adoption entity participates in such intended placement.

6 Section 20. This act shall take effect July 1, 2002.

7
8 *****

9 SENATE SUMMARY

10 Revises various provisions of ch. 63, F.S., governing
11 adoptions. Changes the time within which to file a motion
12 to void a judgment terminating parental rights pending
13 adoption from 2 years to 1 year. Requires that a child's
14 grandparent be notified of an impending adoption if the
15 child has lived with the grandparent for 6 continuous
16 months. Revises notice requirements if there is not a
17 named father to consent to an adoption. Deletes a
18 provision allowing the birth mother to withdraw a consent
19 for adoption within 1 day after her date of discharge
20 from a hospital or birth center. Removes requirements
21 that a child be placed with a relative within the third
22 degree under certain circumstances. (See bill for
23 details.)