

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 835 Adoption  
**SPONSOR(S):** Mahon, Anderson, and others  
**TIED BILLS:** HB 983 **IDEN./SIM. BILLS:** SB 2456

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	13Y, 0N, w/CS	Birtman	Havlicak
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

- HB 835 makes changes to chapter 63, F.S.; Florida's adoption law. The bill generally does the following:
- Makes a legislative finding that the interests of the state, the mother, the child, and the adoptive parents outweigh the interests of an unwed biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child; and that the unwed father has the primary responsibility to protect his rights, and is presumed to know that his child may be adopted without his consent unless he complies with the provisions of this legislation and demonstrates a prompt and full commitment to parental responsibilities.
  - Makes a legislative finding that an unmarried mother has a right of privacy with regard to her pregnancy.
  - Creates the Florida Putative Father Registry within the Department of Health, Office of Vital Statistics, with which an unmarried biological father must register in order to retain any parental rights.
  - Deletes statutory provisions which require the mother to name a potential unmarried biological father.
  - Deletes extensive notice requirements in exchange for requiring registration with the Putative Father Registry.
  - Shortens the statute of repose to one year, regardless of the grounds.
  - Allows private adoption entities to intervene in the adoptions of dependent children.
  - Makes it easier and more lucrative for adoption entities and birth mothers to place children in Florida by increasing allowable fees to adoption entities and birth mothers, and by allowing out-of-state placement of children.

The bill appears to have a minimal fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

To the extent that the bill creates the Florida Putative Father Registry, the size of government appears not to be reduced.

#### B. EFFECT OF PROPOSED CHANGES:

**Rights of unwed fathers:** The United States Supreme Court has protected a putative father’s parental rights when he has established a substantial relationship with his child. A substantial relationship is the existence of a biological link, and the father’s commitment to the responsibilities of fatherhood by participating in his child’s upbringing.<sup>1</sup> The mere existence of a biological link does not merit constitutional protection.<sup>2</sup> The Florida Supreme Court has similarly held that the failure of an unwed father to grasp the opportunity to develop a parental relationship by accepting some measure of responsibility for the child can result in a loss of constitutional protections.<sup>3</sup>

**Effect of proposed changes:** The bill defines “unmarried biological father” as the child’s biological father who is not married to the child’s mother at the time of conception or birth of the child, and who has not been declared by a court of competent jurisdiction to be the legal father of the child.

In newly created s. 63.053, F.S., the bill includes three specific legislative findings:

1. If an unmarried father fails to take the actions that are available to him to establish a relationship with his child, his parental interest may be lost entirely, or greatly diminished, by his failure to timely comply with the available legal steps to substantiate a parental interest.
2. The interests of the state, the mother, the child, and the adoptive parents outweigh the interests of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child in accordance with the requirements of this act. An unmarried biological father has the primary responsibility to protect his rights, and is presumed to know that his child may be adopted without his consent unless he complies with the provisions of the act.
3. An unmarried mother has a right of privacy with regard to her pregnancy and adoption plan.

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<sup>1</sup> See *Lehr v. Robertson*, 463 U.S. 248 (1983). In this case, the U.S. Supreme Court held that the state’s failure to give a putative father notice of pending adoption proceedings, despite the state’s actual notice of his existence and whereabouts, did not deny him due process or equal protection, since he could have guaranteed that he would have received notice by mailing a postcard to the putative father registry.

<sup>2</sup> See *Lehr* at 261.

<sup>3</sup> See *In the Matter of the Adoption of Doe*, 543 So.2d 741, 748 (Fla. 1989).

**Notice and Consent:** Current law requires execution of written consent or service of notice, to the following categories of persons, prior to granting a termination of parental rights petition<sup>4</sup>:

- 'Legal fathers': The father of the minor if:
  - i. The minor was conceived or born while the father was married to the mother;
  - ii. The minor is his child by adoption; or
  - iii. The minor has been established by court proceeding to be his child.
- 'DNA fathers': **IF** there is no "legal" father as set out above, any man established to be the father by scientific testing that is generally acceptable within the scientific community to show a probability of paternity.
- 'Other fathers': **IF** there is no "legal" or "DNA" father as set out above, any man who the mother has reason to believe may be the father of the minor and who:
  - i. Has filed an acknowledgement of paternity with the Office of Vital Statistics of the Department of Health;
  - ii. Has provided, or attempted to provide, the child or the mother during her pregnancy with support in a repetitive, customary manner; or
  - iii. Has been identified by the birth mother as a person she has reason to believe may be the father of the minor in an action to terminate parental rights.
- To any person who is a party in any pending proceeding in which paternity, custody, or termination of parental rights is at issue.
- To any father who has provided, or has attempted to provide, the child or the mother during her pregnancy with support in a repetitive, customary manner, if consent has been obtained from the mother and legal father.
- A minor, if older than 12.

A 'DNA father' or 'other father' may execute an affidavit of non-paternity in lieu of consent, and by so doing waives notice to all court proceedings.<sup>5</sup>

Notice is important on the front end of the adoption process to ensure that a father's substantive rights are adjudicated early, and prior to any adoption and/or placement of the child with adoptive parents. In order to ensure notice, the following statutory provisions currently apply:

- A. Personal service is required on all persons whose consent is required, and who have not executed an affidavit of non-paternity.<sup>6</sup> The court is required to conduct an inquiry of the mother, and any other person likely to have information regarding the identity of any other person who may be the father. If the inquiry identifies a legal father, the inquiry need not continue further.<sup>7</sup>
- B. IF the inquiry identifies any person whose consent is required, who has not executed a consent or an affidavit of non-paternity, AND the location is unknown, the adoption entity must perform a diligent search.<sup>8</sup>

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<sup>4</sup> See s. 63.062(1), F.S.

<sup>5</sup> See s. 63.062(2), F.S.

<sup>6</sup> See s. 63.088(2), F.S.

<sup>7</sup> See s. 63.088(3), F.S.

<sup>8</sup> See s. 63.088(4), F.S. The adoption entity is required to make inquiries of the U.S. Postal Service, the last known employer; regulatory agencies; relatives; telephone listings; law enforcement agencies; highway patrol records; Department of Corrections records; hospitals; records of utility companies; records of the Armed Forces; records of the tax assessor and collector; Internet databank locator services; and medical providers.

- C. **ONLY IF** the inquiry does not yield the identity or location of a person required to consent, and who has not consented or executed an affidavit of non-paternity, must constructive notice be provided.<sup>9</sup>

**Effects of proposed changes:** The bill creates the Florida Putative Father Registry, with which an unmarried biological father must register in order to preserve the right to notice and consent. The claim of paternity may be filed at any time prior to a child's birth, but may not be filed after a petition for termination of parental rights is filed. The registrant expressly consents to submit to DNA testing, and may revoke his consent at any time prior to birth of the child. The registrant is required to notify the Registry of change of address; failure to do so shall not serve as a valid defense based upon lack of notice unless the petitioner has actual or constructive notice of the registrant's address. See the Section entitled "Florida Putative Father Registry" for more details about the Registry.

The bill changes the categories of persons who must either consent or be noticed. Pursuant to the bill, the only persons entitled to notice or consent are the mother, legal fathers, and fathers who have registered and demonstrated their commitment to the responsibilities of fatherhood. The bill deletes notice and consent requirements for DNA fathers and other men who might be fathers. Even if an unmarried biological father has registered, his consent is only required if he demonstrates his commitment to the responsibilities of fatherhood as follows:

- Regarding a child 6 months or older at placement, an unmarried biological father must have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and provided financial support in accordance with his ability, if not prevented from doing so by the person having lawful custody of the child, AND either:
  - Regularly visited the child at least monthly, when physically and financially able to do so, and when not prevented from doing so by the birth mother; or
  - Maintained regular communication with the child or the person who has custody of the child, when physically or financially unable to visit, or when not prevented from doing so by the birth mother.
  - The expression of desire to fulfill parental responsibilities unsupported by evidence does not preclude a finding by the court that the unmarried biological father failed to comply with the requirements of the bill.
  - An unmarried biological father who openly lived with the child for at least 6 months within the 1 –year period following birth is exempt from these requirements.
- Regarding a child 6 months of age or younger at placement, an unmarried biological father must have registered with the registry; filed an affidavit that he is personally fully able and willing to take responsibility for the child and agreed to an order of child support and a contribution to the mother's living and medical expenses incurred for her pregnancy; and if he had knowledge of the pregnancy, paid a fair and reasonable amount of the expenses in connection with the pregnancy and birth, when not prevented from doing so by the birth mother or agency having lawful custody of the child.

An unmarried biological father who does not comply with the above provisions is deemed to have waived and surrendered any rights in relation to the child, including notice and consent. If the unmarried biological father fails to file a response within 30 days of service, his consent is no longer required and his rights are waived.

If the birth mother identifies a man who she believes is the unmarried biological father of her child, the adoption entity may provide notice and shall conduct a diligent search if his location is unknown. If neither the diligent search nor the Putative Father Registry reveals a match, the adoption entity may

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<sup>9</sup> See s. 63.088(5), F.S. The notice is required to contain a physical description, including approximate age, race, and height and weight of the mother and of any person the mother reasonably believes may be the father; and any date and city in which conception may have occurred. This notice is required to be published in every city in which the mother resided or traveled, in which conception may have occurred, during the 12 months before the minor's birth, pursuant to s. 63.087(6), F.S.

petition the court to declare that the adoption entity has no further obligation to provide notice and that his consent is not required.

An unmarried biological father who resides in another state may contest a termination of parental rights and assert his interest in a child prior to the judgment of adoption if the unmarried mother left that state without notifying him that she could be located in Florida; he has attempted to locate the mother but does not know or have reason to know that she is in Florida; and has substantially complied with the requirements of the state where the mother previously resided or was located in order to protect his parental interests.

The bill allows an affidavit of non-paternity to be executed prior to the birth of the minor, where previously such affidavit could not be executed pre-birth; an affidavit of non-paternity is irrevocable. The consent form is modified to conform to the provisions of the bill. If a person seeks to withdraw consent, but has not been established to be the father by marriage, court order, or scientific testing, the adoption entity may return the minor to the care and custody of the mother, if she is not otherwise prohibited from having custody of the child.

The bill gives a minor parent the power to consent to the adoption of his or her child, which may not be revoked upon reaching the age of majority or otherwise becoming emancipated. If younger than 14, the consent or affidavit of non-paternity must be witnessed by a parent, legal guardian, or court-appointed guardian ad litem.

The notice and consent provisions provided in this bill do not apply in cases in which the child is conceived as a result of a violation of the criminal laws of this state.

**Abandonment:** Abandoned is currently defined by statute as:

A situation in which the parent or person having legal custody of a child, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If, in the opinion of the court, the efforts of such parent or person having legal custody of the child to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. In making this decision, the court may consider the conduct of a father towards the child's mother during her pregnancy.<sup>10</sup>

A finding of abandonment resulting in a termination of parental rights must be based on clear and convincing evidence, and may not be based upon a lack of emotional support to a birth mother during her pregnancy, but may be based upon emotional abuse to a birth mother during her pregnancy.<sup>11</sup> The statute sets out relevant factors that the court must consider in making a determination of abandonment, most of which require that the person failed to act after being informed that he was the father.<sup>12</sup> The only conduct that the court may consider in determining whether a child has been

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<sup>10</sup> See s. 63.032(1), F.S.

<sup>11</sup> See s. 63.089(4), F.S. Two Florida Supreme Court cases have in recent years examined the rights of unwed fathers during the adoption process. In 1989, the Supreme Court of Florida held that a father's conduct toward the mother during the pregnancy could evidence abandonment of his unborn child. *In the Matter of the Adoption of Doe*, 543 So.2d 741 (Fla. 1989), cert. denied 493 U.S. 964 (1989). Once the father was found to have abandoned his child, the statute precluded him from objecting to the subsequent adoption, and therefore he had no right to notice or an opportunity to be heard on the issue. More recently the Court upheld a finding of abandonment by the father based on his lack of emotional support and his emotional abuse of the mother during her pregnancy. *In re the Adoption of Baby E.A.W.*, 658 So.2d 961 (Fla. 1995), cert. denied 516 U.S. 1051 (1996).

<sup>12</sup> See s. 63.089(4), F.S. The court must consider, among other relevant factors not inconsistent with this section: whether the actions demonstrate a willful disregard for the safety or well being of the child or unborn child; whether other persons prevented the person from making efforts; whether the person, while being able, refused to provide financial

abandoned is conduct that occurred after the father was informed that he may be the father, or after a diligent search and notice was served.<sup>13</sup>

**Effects of proposed changes:** The bill amends the definition of 'abandonment' to include 'little or no' communication with the child, and amends s. 63.089(4), F.S. to track the definition of abandonment in s. 63.032(1), F.S. The bill allows abandonment to be based upon a lack of emotional support to a birth mother during her pregnancy, and deletes provisions requiring a parent to have knowledge that he was the father in failing to provide financial or medical support. The bill does not allow the court to consider whether the person having legal custody of the child made the child's whereabouts known to the person allegedly abandoning the child; advised that person of the child's needs, or the mother's needs in regards to the pregnancy; or informed that person of medical appointments and tests. The bill deletes provisions allowing the court to consider only that conduct that occurred after the father was informed that he may be the father, or was given notice that he may be the father.

**The Florida Putative Father Registry:** The bill creates s. 63.054, F.S., regarding the Florida Putative Father Registry. Newly created s. 63.054, F.S., provides for the following:

- In order to preserve any rights to notice and consent, an unmarried biological father must register with the Florida Putative Father Registry.
- An unmarried biological father may register any time prior to the child's birth, but not after a termination of parental rights petition is filed. In order to register, the registrant must provide the name, address, date of birth, and physical description of the mother; the date, place, and location of conception; and the name, date, and place of birth of the child, if known, and shall be signed under oath. It is the obligation of the registrant to notify the department with a change of address.
- The registrant may designate an agent or representative to receive communication on his behalf.
- The registrant may revoke his claim to paternity at any time prior to birth.
- In each proceeding to terminate parental rights or adoption proceeding the petitioner must contact the Office of Vital Statistics to search the Putative Father Registry. The Office of Vital Statistics must issue a certificate identifying each registered unmarried biological father whose information matches the search request; or that no matching registration was located in the registry.
- The Department of Health, Office of Vital Statistics is required to do the following:
  - Establish the Florida Putative Father Registry.
  - Charge a nominal fee to cover the costs of filing, indexing, and searching.
  - Adopt by rule application forms for initiation of a search of the registry, and make the forms available.
  - Produce and distribute, within existing resources, a pamphlet or publication informing the public about the registry; and provide additional information using public service announcements or the Internet.<sup>14</sup>
- Access to records in the Putative Father Registry is limited to an adoption entity upon filing a request for a search of the registry; the registrant, upon notarized request; and the court, upon issuance of a court order concerning a petitioner acting pro se.

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support or medical expenses after being informed that he may be the father of the child; whether the person having legal custody of the child made the child's whereabouts known to the person alleged to have abandoned the child, advised of the needs of the child or of the mother in regards to the pregnancy, or informed that person of medical appointments and tests; is incarcerated for a substantial period of time before the child will reach the age of 18; has been convicted of specified violent crimes; or continuing the relationship with the incarcerated parent would be harmful to the child.

<sup>13</sup> See s. 63.089(4)(c), F.S.

<sup>14</sup> See s. 63.054(11) of the HB 835 as amended. The pamphlet must be included in health class curriculums taught in public and charter schools, provided to hospitals, adoption entities, libraries, medical clinics, schools, universities, and providers of child-related services, upon request. The pamphlet must be offered to each person applying for a Florida identification card and a driver's license.

- The database comprising the Putative Father Registry is confidential and separate from all others in this state, and may not be accessed by any other state or federal agency or entity.<sup>15</sup>
- Registering with the Putative Father Registry does not excuse or waive the obligation of a petitioner to comply with the diligent search and inquiry requirements.

**Relief from Judgment:/Statute of Repose:** If the court does not find by clear and convincing evidence that parental rights should be terminated, current law requires the petition to be dismissed with prejudice.<sup>16</sup> Current law provides that a judgment terminating parental rights, and any later judgment of adoption, is voidable if upon motion of a parent, the court finds that a person knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities for the minor. The motion must be filed no later than 2 years after the entry of the judgment terminating parental rights.<sup>17</sup> The current statute of repose requires any action to vacate, set aside, or otherwise nullify a judgment terminating parental rights on any ground except fraud, to be filed within 1 year after entry of the judgment. An action based on fraud must be filed within 2 years after entry of the judgment.<sup>18</sup>

**Effect of proposed changes:** The bill deletes the requirement that the court dismiss a petition 'with prejudice' if it does not find by clear and convincing evidence that parental rights should be terminated. The bill deletes the voidability of a judgment terminating parental rights or adoption based upon false information that prevented a parent from timely making known his or her desire to assume parental responsibilities, and instead provides that a judgment is voidable if the court finds that the adoption fails to meet the requirements of ch. 63, F.S. The bill allows visitation between the alleged parent and the child if that person has previously established a bonded relationship with the child, and allows the court longer than 45 days to hold the final hearing on the motion for relief from the judgment for good cause shown or if otherwise agreed between the parties. The statute of repose is amended to require any action to vacate, set aside, or otherwise nullify a judgment to be filed within 1 year of the judgment, regardless of the grounds upon which the action is based.

**Out-of-state adoption:** It is currently unlawful for any person to place or attempt to place a minor for adoption with a person who primarily lives and works outside this state unless:

- the minor is placed with a relative within the third degree;
- the minor is placed with a stepparent;
- the parent placing the child chooses to place the minor out of state; or
- the minor is a special needs child.<sup>19</sup>

**Effect of proposed changes:** The bill amends the definition of 'intermediary' to include attorneys who place children born in this state with citizens of another state or country. The bill repeals s. 63.185, F.S., which requires primary residence and place of employment in Florida in order to adopt in this state, except for the adoption of a special needs child. The bill makes continued jurisdiction of the Florida court permissive when a minor is placed with prospective adoptive parents who primarily live and work outside Florida, and modifies the provision making it unlawful for a person to place a

<sup>15</sup> HB 983(2003) creates a public records exemption for all information contained in the Putative Father Registry.

<sup>16</sup> See s. 63.089(5), F.S.

<sup>17</sup> See ss. 63.089(7) and 63.142(4)(a), F.S. After the motion is filed, the court is required to conduct a preliminary hearing regarding contact between the parent and child; the court may order scientific testing and/or supervised visitation. The court has 45 days from the preliminary hearing to conduct a final hearing on the motion to set aside the judgment.

<sup>18</sup> See s. 63.182, F.S. The statute of repose provisions are applicable notwithstanding ss. 95.031, 95.11, F.S., or any other statute.

<sup>19</sup> See ss. 63.207 and 63.212, F.S. A special needs child, as defined by s. 409.166, F.S., is a child whose permanent custody has been awarded to the Department of Children and Family Services or to a licensed child-placing agency and who has established significant emotional ties with his or her foster parents; or is not likely to be adopted because he or she is 8 years old or older; is mentally retarded; is physically or emotionally handicapped; is of black or racially mixed parentage; or is a member of a sibling group provided that two or more members of the group remain together for the purposes of adoption.

minor for adoption with a person who primarily lives and works outside Florida, unless all of the requirements of the Interstate Compact for the Placement of Children have been met.<sup>20</sup>

**Venue:** Current law requires a petition to terminate parental rights to be filed:

- in the county where the child resided for the previous 6 months;
- if the child is younger than 6 months or has not continuously resided in the same county for 6 months, in the county where one parent resided at the time of the execution of the consent or affidavit of non-paternity;
- if the child is younger than 6 months and a waiver of venue has been obtained, in the county where the adoption entity is located;<sup>21</sup>
- if there is no consent or affidavit of non-paternity executed, in the county where the birth mother resides; or
- if neither parent resides in the state, the county where the adoption entity is located.<sup>22</sup>

If a parent whose rights are to be terminated objects to venue, there must be a hearing; if the court determines that the parent intends to assert legally recognized grounds to contest the termination, the court shall immediately transfer venue to the county where that parent resides, or another specified county.<sup>23</sup>

**Effect of proposed changes:** The bill deletes the provisions allowing venue to be waived in cases in which the child is younger than 6 months, and instead provides for a general waiver of venue by an objecting parent. The bill eliminates the waiver of venue form, and deletes provisions making the adoption entity financially responsible for the attorney's fees of the person contesting venue if the adoption entity intentionally filed the petition inconsistent with required venue. The bill further modifies venue by allowing the petition to be filed:

- in the county where the child resides (regardless of residence for the past 6 months);
- if the child doesn't reside in Florida, in the county where the adoption entity is located (eliminating venue in the county where the parent resided at the time of execution of the consent or affidavit of non-paternity, if the child is younger than 6 months);
- in the county where the adoption entity is located (deleting waiver provisions); or
- if neither parent resides in Florida, the county where the adoption entity is located (eliminating venue in the county where the mother resides if there is no consent or affidavit of non-paternity).

The bill further requires venue to be transferred to the county where the parent resides or resided at the time of execution of a consent or affidavit of non-paternity, if the parent is contesting the termination of parental rights and objects to venue.

**Participation of adoption entities in adoptions of dependent children in the custody of the Department of Children and Families:** Current law provides for the termination of parental rights of dependent children (who have been abused, abandoned, or neglected and are in need of the state's

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<sup>20</sup> The Interstate Compact for the Placement of Children, as provided in s. 409.401, F.S., typically applies to children in the legal custody of the Department of Children and Families, and requires party states to cooperate with each other to ensure that each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment; the appropriate authorities in the receiving state can comply with all applicable requirements for the protection of the child; the proper authorities from the sending state may obtain complete information on which to evaluate a projected placement before it is made; and appropriate jurisdictional arrangements for the child will be promoted.

<sup>21</sup> Waiver of notice is provided in s. 63.062(9), F.S. If the adoption entity knows that a parent intends to object to the termination but intentionally files the petition to terminate parental rights in a county inconsistent with required venue, the adoption entity shall be responsible for the attorney's fees of the parent contesting the transfer of venue.

<sup>22</sup> See s. 63.087(4), F.S.

<sup>23</sup> See s. 63.087(4)(b), F.S. If there is no county where the objecting parent resides, venue is in the county where at least one parent whose rights are to be terminated resides; at least one parent resided at the time of execution of the consent or affidavit of non-paternity; or the adoption entity is located if neither of the first two sub-paragraphs apply. The court is required to consider ease of access to the court for the parent who intends to contest a termination of parental rights. If there is a transfer of venue, the adoption entity or the petitioner must bear the cost of the venue transfer.



protection) and the required due process safeguards, in chapter 39.<sup>24</sup> If the Department of Children and Family Services is given custody of a child for subsequent adoption pursuant to chapter 39, the department may place the child with a private agency, with a registered child-caring agency<sup>25</sup>, or in a family home for subsequent adoption.<sup>26</sup> Termination of parental rights and subsequent adoption proceedings of parents who voluntarily place their children for adoption are handled by chapter 63.

**Effect of proposed changes:** The bill provides that it is the intent of the Legislature to provide for cooperation between private adoption entities and DCF regarding permanent placement of children in the care of the department. The bill also allows an adoption entity to intervene in the dependency case for purposes of effectuating an adoption. In such cases, a preliminary home study is required, and if the prospective adoptive parents are qualified and the adoption appears to be in the best interests of the child, the child shall be immediately transferred to the custody of the prospective adoptive parents.

**Fees:** Florida law currently outlines the fees, costs, and expenses that may be assessed by the adoption entity on behalf of the prospective adoptive parents. Among other things, the law allows payment of reasonable living expenses of the birth mother which she is unable to pay due to unemployment, underemployment, or disability due to the pregnancy, which has been certified by a medical professional; reasonable and necessary medical expenses; expenses necessary to comply with the provisions of the statute; court costs and litigation expenses; and professional fees based on reasonable hourly fees.<sup>27</sup> Prior approval is required when the fee exceeds specified amounts.<sup>28</sup> Lump sum payments that are non-refundable directly to the payer are prohibited.<sup>29</sup> The court has discretion to order the prospective adoptive parents to pay a lesser amount for services performed (such as counseling, the preliminary home study, and the final home investigation) if it finds that such person is financially unable to pay.

**Effect of proposed changes:** The bill allows payment to the birth mother for reasonable living expenses that she is unable to pay due to a disability, and deletes the requirement that the disability be due to a pregnancy; allows the birth mother to be paid for toiletries, insurance, and other expenses for the birth mother's well being. The bill provides that these expenses are allowable during pregnancy and for a period of up to 6 weeks postpartum. The bill expands allowable fees and costs to include investigator fees, birth certificate, and medical record expenses. Fees for legal representation are allowed to be paid in a flat fee. The bill increases the amounts of fees allowed before court approval is required, deletes the requirement for prior approval of expenses incurred prior to retention of the adoption entity, and eliminates the court's ability to approve a lesser amount of professional service fees if financially unable to pay.

**Preplanned adoption agreements:** Preplanned adoption agreements (surrogacy agreements) are currently placed with provisions regarding prohibited acts.<sup>30</sup> The current provisions allow the intended mother and father to agree to pay all reasonable legal, medical, psychological, or psychiatric expenses of the volunteer mother, as well as reasonable living expenses. No other compensation shall be made pursuant to a preplanned adoption agreement.<sup>31</sup>

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<sup>24</sup> See s. 63.037, F.S., which exempts adoption proceedings initiated under ch. 39 from disclosure requirements; notice and service provisions provided in s. 63.088, F.S.; and procedures for terminating parental rights provided in s. 63.088, F.S. See also ss. 39.801-39.815, F.S. regarding provisions to terminate parental rights of dependent children.

<sup>25</sup> A registered child-caring agency as provided for in s. 409.176, F.S., is a residential child-caring agency or family foster home registered with an association that is certified by a Florida statewide child care organization which was in existence on January 1, 1984, and which publishes and requires compliance with its standards.

<sup>26</sup> See s. 39.812(1), F.S.

<sup>27</sup> See s. 63.097, F.S.

<sup>28</sup> Pursuant to s. 63.097(3), F.S., prior approval of the court is not required until the cumulative total of allowable amounts exceed \$2,500 in legal fees; \$500 in court costs; \$3000 in expenses; or \$1500 cumulative expenses incurred prior to the date the adoption entity was retained.

<sup>29</sup> See s. 63.097(5), F.S.

<sup>30</sup> See s. 63.212(1)(h)(2)i, F.S.

<sup>31</sup> See s. 63.212(1)(h)2.f., F.S.

**Effect of proposed changes:** The bill moves provisions relating to preplanned adoption agreements to its own section of the statutes and allows intended parents to agree to pay for lost wages due to the pregnancy and birth, and reasonable compensation for inconvenience, discomfort, and medical risk.

**Sanctions:** Current law places an affirmative duty on adoption entities to follow the requirements of chapter 63. In specified circumstances, the court must award reasonable attorney's fees and costs<sup>32</sup>, and forward any order imposing sanctions against an attorney to the Florida Bar. The law also imposes criminal penalties against any person who violates specified provisions.<sup>33</sup> A court may prohibit an adoption entity that has violated any provision of chapter 63 from placing a minor for adoption in the future.<sup>34</sup>

**Effects of proposed changes:** The bill makes award of attorney fees permissive rather than mandatory, and requires an evidentiary hearing to determine whether the actions or failures of the adoption entity directly contributed to a finding of fraud or duress. The bill requires any order imposing sanctions against the department to be forwarded to the Office of the Attorney General. The bill provides that any person injured by fraudulent representation in connection with an adoption is entitled to civil or criminal penalties as provided by law. Fraudulent representation shall not be a basis for dismissing a petition for termination of parental rights or adoption. Regarding criminal sanctions, the bill requires that the violation be willful and with criminal intent. Regarding the court's authority to prohibit an adoption entity from placing children for adoption in the future, the bill requires willful violation of any substantive provision relative to the rights of the parties and legality of the adoption process, and limits the prohibition to placement of children for adoption in Florida.

**Other miscellaneous changes made by the bill:** The bill also does the following:

- Eliminates provisions giving a grandparent with whom a child has lived for at least a 6 month period, first priority to adopt. Requires instead that a grandparent with whom a child has lived with for at least 6 months within the 24-month period immediately preceding the filing of the petition to terminate parental rights, is entitled to notice.
- Clarifies that parents who have had their parental rights terminated by petition of the Department of Children and Family Services under chapter 39, F.S., may have contact with a child upon agreement of the adoptive parents.
- Deletes duplicative language prohibiting screening or testing for the sickle-cell trait as a condition of employment, or for admission into any state educational institution or state-chartered educational institution.<sup>35</sup>
- Requires an intermediary to remove a child from a prospective adoptive home if deemed by the intermediary to be in the best interests of the child, prior to the court's entry of an order granting preliminary approval of the placement. Eliminates non-parties' rights to petition the court to review the appropriateness of the placement.
- Extends the time period within which an adoption entity must provide a written disclosure from 7 to 14 days, and conforms the disclosure to the provisions of this act. Deletes requirement that disclosure be repeated post birth.

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<sup>32</sup> See s. 63.039(2) & (3), F.S., which provide that if a court finds that a consent or an affidavit of non-paternity was obtained by fraud or duress attributable to the adoption entity, or if a person whose consent was required prevails in an action to set aside a judgment terminating parental rights or adoption, the court must award reasonable attorney's fees and costs.

<sup>33</sup> See s. 63.212(8), F.S., which imposes a 3<sup>rd</sup> degree felony penalty for violation of provisions relating to placing a child out-of-state, selling a child; charging a fee for referral; contracting for the purchase, sale, or transfer of a minor; failure to report to the court intended placement of a child; charging any fee other than those specifically allowed; and failure to disclose a preliminary or final home study. A 2<sup>nd</sup> degree misdemeanor penalty is imposed for advertising that a minor is available for adoption (except for an adoption entity).

<sup>34</sup> See s. 63.219, F.S.

<sup>35</sup> Identical or similar provisions prohibiting screening for the sickle-cell trait appear at ss. 448.076, 448.075, 626.9706, and 626.9707, F.S.

- Deletes requirement that all proceedings for adoption be conducted by the same judge that conducted the termination proceedings.
- Extends the time period by which the court must mail a copy of the judgment terminating parental rights to the Department of Children and Family Services, from 24 hours to 7 days.
- Changes the time requirement for filing of the final home investigation to 90 days after placement, instead of 90 days after the date the petition was filed.
- Clarifies that the Department of Children and Family Services must be given notice of hearing on the advisability of disclosing or not disclosing information pertaining to an adoption, in the case of adoptions other than those handled by the department or a child-placing agency licensed by the department.
- Clarifies that the department is not prohibited from inspecting and copying official records maintained by an agency licensed by the department.
- Allows the department to contract with more than one licensed child-placing agency to operate the state adoption information center.
- Conforms provisions regarding the adoption of abandoned infants to the provisions of this bill.
- Combines the termination of parental rights and adoption proceedings regarding the adoption of relatives, adults, or stepchildren.
- Clarifies that forgiveness by a parent of vested child support arrearages owed in a step-parent adoption does not constitute a felony.

#### C. SECTION DIRECTORY:

Section 1 amends s. **63.022**, F.S., to provide legislative intent.

Section 2 amends s. **63.032**, F.S., to revise the definitions of “abandoned”, “adoption entity”, “intermediary”, “relative”, “to place”, “placement”, “primarily lives and works outside Florida”, “suitability of an intended placement”, and “unmarried biological father”.

Section 3 amends s. **63.039**, F.S., to conform provisions regarding duties of adoption entities to prospective adoptive parents; allows the court to award attorney’s fees only after hearing and entry of a final order.

Section 4 amends s. **63.042**, F.S., to prohibit adoption by the birth parent of the person to be adopted.

Section 5 amends s. **63.0423**, F.S., to revise references to newborn infants left at a hospital or fire station as ‘abandoned infants’, and to conform to other provisions of the bill.

Section 6 amends s. **63.0425**, F.S., to revise provisions relating to grandparents’ right to adopt.

Section 7 amends s. **63.0427**, F.S., to revise provisions relating to an adopted minor’s right to continued communication with other relatives.

Section 8 amends s. **63.043**, F.S., to delete provisions prohibiting mandatory screening for sickle-cell trait.

Section 9 amends s. **63.052**, F.S., to revise provisions relating to the designation of guardians for minors placed for adoption.

Section 10 creates s. **63.053**, F.S., to set forth legislative findings regarding the rights and responsibilities of unmarried biological fathers.

Section 11 creates s. **63.054**, F.S., creating the Florida Putative Father Registry.

Section 12 amends s. **63.062**, F.S., to conform to provisions relating to persons required to consent to adoption to the Florida Putative Father Registry requirements; to provide requirements regarding the consent of unmarried biological fathers; and to revise provisions regarding venue.

Section 13 creates s. **63.063**, F.S., to require parents to be responsible for their own actions; to provide for fraud or misrepresentation; and to allow an unmarried biological father to contest an action under specified circumstances.

Section 14 creates s. **63.064**, F.S., to allow waiver of consent.

Section 15 amends s. **63.082**, F.S., to revise provisions regarding a minor parent’s power to consent; and to allow an adoption entity to intervene in a dependency case.

Section 16 amends s. **63.085**, F.S., to extend the time by which an adoption entity must provide a written disclosure; and to revise the disclosure form.

Section 17 amends s. **63.087**, F.S., to revise provisions relating to the proceeding to terminate parental rights pending adoption.

Section 18 amends s. **63.088**, F.S., to revise provisions relating to notice to conform to the provisions of the Florida Putative Father Registry; to revise provisions relating to constructive notice.

Section 19 amends s. **63.089**, F.S., to require a search of the Florida Putative Father Registry as a prerequisite to the termination of parental rights hearing; to shorten the timeframe of the hearing; to revise provisions relating to a finding of abandonment; and to revise provisions relating to relief from judgment.

Section 20 amends s. **63.092**, F.S., extending the time to file a report to the court.

Section 21 amends s. **63.097**, F.S., increasing the allowable fees, costs, and expenses assessed by an adoption entity.

Section 22 amends s. **63.102**, F.S., to allow stepchild, relative, and adult petitions for adoption to be combined with the proceeding terminating parental rights.

Section 23 amends s. **63.112**, F.S., to conform to other provisions of this bill.

Section 24 amends s. **63.122**, F.S., to conform to other provisions of this bill.

Section 25 amends s. **63.125**, F.S., to require a final home investigation within 90 days after placement.

Section 26 amends s. **63.132**, F.S., to delete a requirement that the affidavit of costs and receipts filed by the adoption entity be mailed to the Department of Children and Family Services.

Section 27 amends s. **63.135**, F.S., to require information to be submitted to the court in all adoption proceedings.

Section 28 amends s. **63.142**, F.S., to allow telephonic appearance at the adoption hearing; to revise provisions regarding the voidability of adoption judgments.

Section 29 amends s. **63.152**, F.S., to delete the requirement that child-placing agencies prepare a certified statement of adoption in order to apply for a new birth record.

Section 30 amends s. **63.162**, F.S., clarifying that the Department of Children and Family Services can inspect and copy official records maintained by a licensed agency.

Section 31 amends s. **63.167**, F.S., to allow the Department of Children and Family Services to contract with more than one agency to operate the state adoption information center.

Section 32 amends s. **63.182**, F.S., to shorten the statute of repose to 1 year, regardless of the grounds.

Section 33 repeals s. **63.185**, F.S., which required a person to primarily live and work in Florida in order to adopt a child, except for the adoption of a special-needs child.

Section 34 amends s. **63.207**, F.S., to allow prospective adoptive parents who live out-of-state to finalize the adoption in this state.

Section 35 amends s. **63.212**, F.S., allows out-of-state placement as long as the requirements of the Interstate Compact for the Adoption of Children have been met; to clarify that the forgiveness of vested child support arrearages owed by a parent are not precluded; and to delete duplicative language regarding pre-planned adoption arrangements, which has been moved to new s. 63.213.

Section 36 creates s. **63.213**, F.S., which is the new location of provisions regarding pre-planned adoption agreements.

Section 37 amends s. **63.219**, F.S., to allow sanctions for willful violation of substantive provisions of the chapter relative to the rights of parties and legality of the adoption process.

Section 38 amends s. **63.235**, F.S., to require that petitions filed before October 1, 2003 shall be governed by the law in effect at the time the petition was filed.

Section 39 provides an effective date of October 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill allows the Department of Health, Office of Vital Statistics to charge a nominal fee for indexing, filing and searching the registry. It is unknown how much revenue this may generate.

2. Expenditures:

The Department of Health, Office of Vital Statistics reports the following:

	Year 1	Year 2
Total non-recurring expenses <sup>36</sup> :	\$ 44,561	
Total recurring expenses <sup>37</sup> :	<u>\$ 55,773</u>	<u>\$71,697</u>
Total:	\$100,334	\$71,697

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

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowable fees paid to adoption entities and birth mothers are increased by this bill, which may result in higher costs to adoptive parents.

#### D. FISCAL COMMENTS:

The Department of Health reports that it will need to develop a database system to enter, update, and track information as required by this bill, and estimate that they will need two additional staff.

The Office of Vital Statistics of the Department of Health reports that of the approximately 205,000 births in Florida in 2001, 80,209 were to unmarried mothers. The Office of Vital Statistics processed approximately 6000 adoption actions in 2001. The Department processed 351 registry searches in 2002 under the current limited paternity registry. Information based on figures obtained from Texas Vital Statistics, which also operates a paternity registry, leads the Department to expect to process 30-40 registrations per year and perform 6000-8000 searches of the registry per year.<sup>38</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect municipal or county government.

<sup>36</sup> The Department of Health, Office of Vital Statistics reports the following expected non-recurring expenses: upgrade of software and database - \$30,000; rule promulgation - \$5000; education training of staff - \$500; art work for brochures - \$4500; personnel expenses - \$3061; OCO - \$1500.

<sup>37</sup> The Department of Health, Office of Vital Statistics reports the following expected recurring expenses: 1 records center manager - \$29,566; 1 OPS - \$10,076; printing of brochures - \$7000; office supplies - \$1000; personnel expenses - \$8,131.

<sup>38</sup> Texas Vital Statistics filed 53 paternity claims and conducted 10,602 registry searches in 2002.

2. Other: **Right to Privacy:** Article I, Section 23 of the State Constitution provides that “every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” Florida’s right to privacy protects two different types of interests. First, it protects individuals from government interference when making personal decisions. The Florida Supreme Court has found that the right to privacy protects the fundamental right of parents to raise their children.<sup>39</sup> Second, the right to privacy protects persons from compelled disclosure of private information. Any person wishing to assert the right to privacy must show state action and a reasonable expectation of privacy. Once these two elements have been established, the person’s right to privacy rises to the level of a fundamental right. To intrude, the government must show that it has a compelling state interest, and that it has used the least intrusive means to further that interest.

The constructive notice provisions of the current law have been challenged as violative of a birth-mother’s privacy rights. This legislation removes those provisions in exchange for requiring unmarried birth fathers to register with the confidential Putative Father Registry. The sponsor is expected to file a floor amendment clarifying that both parents are entitled to constitutional privacy rights.

**B. RULE-MAKING AUTHORITY:**

The bill gives the Department of Health rule-making authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Department of Health, Office of Vital Statistics has identified a possible conflict with section 382.013(2)(c), F.S., which requires the Office to accept and file affidavits of paternity executed by the mother and the person to be named as the father on the birth certificate. Such properly executed affidavit results in preparation of the birth certificate. The Department believes that this bill doesn’t recognize such affidavits, thereby creating the possibility that one individual could register as the father of the child with the Putative Father Registry, yet another person would be named on the birth certificate. The person named on the birth certificate is currently not entitled to notice or consent. The sponsor is expected to file a floor amendment that adds persons on birth certificates to those that must be given notice or consent.

The Department of Health, Office of Vital Statistics also notes that child support enforcement activities are conducted by the Department of Revenue as required by Title IV-D of the Social Security Act. The Department of Revenue utilizes the affidavit of paternity required by s. 382.013(2)(c), F.S., as the basis of paternity for purposes of securing child support payments.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2003, the Judiciary Committee adopted a strike-all amendment and nine amendments to that strike-all. This analysis is to the bill as amended.

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<sup>39</sup> See *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996) and *Von Eiff v. Azicri*, 720 So.2d 510 (Fla. 1998).