HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 159 Rights of Parents and Legal Guardians
SPONSOR(S): Murman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Birtman	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This joint resolution amends Article 1, section 23 of the State Constitution to:

- Clarify that the rights of parents and legal guardians may only be limited as provided by law, and not by the privacy provision nor any other provision of the state constitution; and
- Clarifies that the authority of the government to secure or advance the rights of parents or legal guardians may not be limited by the privacy provision nor any other provision of the state constitution.

Pursuant to s.1, Article XI of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

This joint resolution appears to have minimal fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[x]	No[]	N/A[]
4. Increase personal responsibility?	Yes[x]	No[]	N/A[]
5. Empower families?	Yes[x]	No[]	N/A[]

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

B. EFFECT OF PROPOSED CHANGES:

Florida's Right to Privacy: Article I, section 23 of the State Constitution reads:

> 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. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

No parallel right is enunciated within the text of the federal constitution, as privacy rights are generally considered as part of the 'penumbra' of other rights enumerated by the Bill of Rights,[1] which have emerged through case law. The U.S. Supreme Court has held the right of privacy to be a fundamental right, subject to strict scrutiny.[2] Notwithstanding the right of privacy, the U.S. Supreme Court applied a less rigorous "undue burden" standard in determining that parental consent and notification statutes meet all federal constitutional requirements as long as they make exceptions for emergencies and provide for an adequate judicial bypass of the consent requirement.[3]

Florida courts have construed Florida's right to privacy as stronger than the corresponding federal right,[4] and determined that "the amendment embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution."[5] Consequently, the Florida Supreme Court has interpreted Florida's right to privacy as fundamental, worthy of the highest level of protection.[6]

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[1] See Griswold v. Connecticut, 85 S.Ct. 1678 (1965).
[2] See Roe v. Wade, 410 U.S. 113 (1972).
[3] See Planned Parenthood of Southeastern Pennsylvania v. Casey, 120 L.Ed.2d 674 (1992). The Court deemed a parent's veto power over a minor's decision to have an abortion an "undue burden" on the right to terminate a pregnancy.
[4] The Florida Supreme Court has enumerated three rationales supporting this view: First, the Florida Constitution goes beyond the federal constitution to provide an express textual reference to the right to privacy. In re T.W., a Minor, 551 So.2d 1186 (Fla. 1989). Second, the fact that the right to privacy was added to the Florida Constitution following the United States Supreme Court's decision in Roe v. Wade, 410 U.S. 113 (1973), indicates that persons voting for the Florida amendment believed that federal protections were inadequate. T.W., 551 So.2d at 1191. Third, the drafters of the right to privacy amendment rejected the use of the phrases "unwarranted governmental intrusion" or "unreasonable governmental intrusion" in order to make the provision as strong as possible. Id. at 1191-92.
[5] Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d 544 (Fla. 1985).
[6] When reviewing the validity of legislative enactments, Florida courts will apply one of three levels of scrutiny: 1) ordinary scrutiny presumes the legislation is constitutional. The challenging party must prove that the legislation does not bear a reasonable relationship to a legitimate state interest. 2)Mid-level scrutiny applies to certain types of speech and classifications. Under mid-level scrutiny the legislation is presumed unconstitutional; the state must prove that the legislation is substantially related to an important government interest. 3) Strict scrutiny applies to fundamental rights and suspect classifications. Under a strict scrutiny analysis legislation is presumed unconstitutional; the state must prove that

Florida courts use a 'strict scrutiny' analysis when evaluating government intrusions into fundamental privacy rights: Legislation which affects fundamental rights is presumed unconstitutional.[7] To intrude, the government must show: 1) that is has a compelling state interest, and 2) that it has used the least intrusive means to further that interest. This test shifts the burden of proof to the state to justify the intrusion.[8]

Using a strict scrutiny analysis, Florida courts have repeatedly found that Florida's right to privacy insulates personal decisions from interference by the government as follows:

- Parental consent/parental notice of abortion – In 1989, the Florida Supreme Court held that the right to privacy regarding abortion applies to minors and struck down a statute which placed restrictions upon a minor's right to obtain an abortion. The law in question mandated parental consent and the appointment of a guardian ad litem, or alternatively required the minor to petition for a court order.[9] Recently, the Florida Supreme Court struck down a statute which required a minor to notify her parents prior to undergoing an abortion, or convince a court that she is sufficiently mature to make the decision herself, or that if she is immature, that the abortion is nevertheless in her best interests.[10] The question of whether or not a state's express constitutional right of privacy could have an effect on a minor's access to abortion has not been addressed by the United States Supreme Court.
- Familial association rights – The Florida Supreme Court has found that the State Constitution's right to privacy protects the fundamental right of parents to raise their children, absent a showing of harm.[11]

Thus constitutional tension is created when the privacy rights of parents to raise their children conflicts with the privacy rights of minors. This joint resolution resolves the conflict in favor of parents by clarifying that the State Constitution shall not be construed to limit the right or authority of parents or legal guardians; such limitation could only be imposed by the Legislature by general law. The joint resolution also clarifies that the State Constitution shall not be construed to limit the authority of the government to advance or secure such a right or authority of parents or legal guardians.

Regardless of the state provisions, the federal protections for both minors and parents cannot be nullified by state constitutional provisions, nor by general state law.

C. SECTION DIRECTORY:

See "Effect of Proposed Changes" above.

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the legislation furthers a compelling state interest through the least intrusive means. North Florida Women's Health and Counseling Services, Inc. v. State, 2003 WL 21546546 (Fla. 2003).

[7] Harris v. McRae, 448 U.S. 297, 312 (1980).

[8] Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999).

[9] In re T.W., 551 So.2d 1186 (Fla. 1989).

[10] See North Florida Women's Health and Counseling Services, Inc. v. State, 2003 WL 21546546 (Fla. 2003). In the opinion for the Court, Justice Shaw opines that the law failed to further a compelling state interest in light of the fact that since In re T.W. was decided, virtually nothing had changed in the statutory provisions authorizing less restrictive treatment for other comparable procedures and practices. Justice Lewis, who concurred in result only, wrote that the effect of the majority opinion is to prohibit the state from ever acting to protect the health and welfare of minors through involvement of parents in the reproductive arena.

[11] Beagle v. Beagle, 678 So.2d 1271 (Fla. 1996) (Florida Supreme Court struck statute which allowed grandparent visitation over the objection of the parents in an intact family. This is the first in a long line of cases which hold the grandparent visitation statute unconstitutional as the statute does not require a showing of harm.); Padgett v. Department of Health and Rehabilitative Services, 577 So.2d 565 (Fla. 1991) (Florida Supreme Court held that the State has a compelling interest in protecting a child against the clear threat of abuse, neglect, and death, which interest outweighs a parent's privacy interest. In this case, the Court upheld a statute which allowed parental rights to be terminated based on the prior termination of rights to another child.)

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The State Constitution requires that a proposed amendment to the constitution be published in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.[12] The Division of Elections estimates that the cost of compliance would be approximately $35,000.[13]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This joint resolution does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority to raise revenues; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Accuracy of the ballot summary: The ballot summary must be sufficient to provide fair notice of the contents and effect of the amendment.[14] Further, the ballot summary must fully advise the electorate of all consequences of the proposal.[15]

B. RULE-MAKING AUTHORITY:

None.

[12] See Article XI, section (5)(c) of the State Constitution.
[13] Estimate based on 2002 advertising rates.
[14] See Advisory Opinion to the Attorney General re: Stop Early Release of Prisoners, 642 So.2d 724 (Fla. 1994).
[15] See Armstrong v. Harris, 773 So.2d 7 (Fla. 2000).

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.