

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 CS Adoption
SPONSOR(S): Mahon
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	6 Y, 0 N, w/CS	Davis	Collins
2) Civil Justice Committee	5 Y, 0 N, w/CS	Billmeier	Billmeier
3) Health & Families Council	9 Y, 0 N, w/CS	Davis	Moore
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1299 CS substantially amends Chapter 63, F.S., regarding adoption requirements. Some of the major provisions include:

- Changes the definition of “adoption entity.”
- Changes the definition of “primarily lives and works in Florida.”
- Revises duties of adoption entities to prospective adoptive parents.
- Revises conditions under which an adoption entity is the guardian of a minor; and authorizes the court to retain jurisdiction of a minor until the adoption is finalized within or outside of the state.
- Revises provisions relating to notice of petition to terminate parental rights pending adoption, required consent, and change of venue.
- Revises report and preliminary study requirements for placement of a minor by an adoption entity.
- Revises requirements for the affidavit of expenses and receipts; and revises applicability.
- Requires further proceedings if a petition for adoption is dismissed; and revises conditions under which a judgment terminating parental rights is voidable.
- Revises requirements concerning the disclosure of information pertaining to an adoption.

Information was not made available from the Department of Children and Family Services nor the affected entities as to the fiscal impact of the bill.

This bill takes effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - This bill requires unmarried biological fathers to take specified actions or risk losing parental rights.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The 2003 Florida Adoption Act (ch. 2003-58, L.O.F.) substantially revised the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involved the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaced existing constructive notice provisions as previously applied to fathers who could not be identified or located. The category of "fathers" for whom notice and consent may be required was revised to incorporate and conform to the new definition of "unmarried biological father." Many changes were made, including:

- Deletes the statutory duty of a mother placing a child to identify a potential unmarried biological father.
- Allows for pre-birth execution of an affidavit of nonpaternity.
- Broadens the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expands placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revises venue provisions to include 4 primary venue options and waiver of venue.
- Revises a number of statutory timeframes including reducing the statute of repose period from 2 years to 1 year for any challenge to an adoption or termination of parental rights, reduces in half the time period between the date of personal or constructive service and the date of a final hearing, and extends the time period from 7 to 14 days in which to make adoption disclosures to birth and prospective adoptive parents, extends from 24 hours to 7 days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Families (department), and changes the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement.
- Revises the statutory forms for consent to adoption, for adoption disclosure and for notice of service of process, and eliminates the statutory forms for affidavits of nonpaternity and the waiver of venue to conform to changes in the bill in those areas.
- Revises provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat fee representation and for birth mothers by expanding recovery of pre-birth and post-birth expenses.
- Deletes requirements that all proceedings for adoption be conducted by the same judge that conducted the termination proceedings.
- Allows private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.

Effect of HB 1299

Section 1 of this bill makes grammar and non-substantive changes to s. 63.022, F.S., relating to legislative intent.

Section 2 of this bill revises a number of definitions in s. 63.032, F.S. It redefines “adoption entity” to include attorneys licensed in other states who are involved in placing a child from another state into Florida. It amends the definition of “legal custody” to allow finalization of adoptions when legal custody is created by guardianship orders. This bill amends the definition of “parent” to conform it to the changes made to the adoption statute in 2003.

Section 2 creates a definition of “primarily lives and works in Florida” and defines the phrase as a person who lives and works in the state for at least 6 months and 1 day out of the year, military personnel who designate Florida as their place of residence, or United States citizens who designate Florida as their place of residence. According to a memorandum from the Adoption Committee of the Family Law Section of the Florida Bar, this clarification is important to the office enforcing the interstate compact on adoptions.¹

Section 3 amends s. 63.039, F.S., to make the adoption statute consistent with general venue statutes.

Section 4 of this bill amends s. 63.0423, F.S. The section provides a procedure for voiding an adoption of an abandoned child if a person gave false information that prevented a parent from asserting his or her parental rights. This bill adds clarifying language to make clear that his procedure only applies to abandoned children.

Section 5 of this bill makes a technical change to s. 63.0425, F.S.

Section 6 amends s. 63.052(1), F.S. Under s. 63.052(1), F.S., once parental rights have been terminated, a child is permanently committed to an adoption entity by a court order. This means the court must place the child with an adoption entity rather than placement by virtue of consents signed by birth parents designating a placement. This bill removes that language requiring permanent placement with an adoption entity. The Adoption Committee believes this creates consistency with the 2003 revisions to the statute. This bill also amends s. 63.052(7), F.S., to clarify that the adoption court’s jurisdiction ends when the adoption is finalized either in Florida or in another state.

Section 7 removes what the Adoption Committee considers to be “misleading” language from s. 63.053, F.S.

Section 8 of this bill amends s. 63.054, F.S., relating to actions required by an unmarried biological father to establish parental rights. Current law requires the father his address on file with the Florida Putative Father Registry and removes lack of notice as a ground to contest an adoption unless the person petitioning for parental rights has “actual or constructive” notice of the father’s address. This bill removes “constructive” notice from the statute.

Section 9 of this bill amends s. 63.062, F.S., to make clear that a party who most consent to an adoption to timely assert its rights to contest the adoption or those rights are irrevocably waived. It also makes changes to venue rules to make this section conform to other venue provisions within the adoption statute.

Section 10 of this bill amends s. 63.082, F.S. It provides that notice and consent provisions do not apply if the child was conceived as a result of violations of criminal laws of another state or violation of s. 794.05, F.S. It also makes technical and conforming changes.

Section 11 amends s. 63.085, F.S., to make technical changes.

Section 12 amends s. 63.087(2), F.S., to clarify confusing provisions within the venue statute. It amends s. 63.097(3), F.S., to permit the filing of a joint petition for termination of parental rights and adoption. It makes conforming and technical changes to s. 63.087, F.S.

Section 13 of this bill amends s. 63.088, F.S., to make technical changes.

¹ Memorandum from the Adoption Committee of the Family Law Section of the Florida Bar, March 21, 2005 (on file with the Civil Justice Committee). References to the “Adoption Committee” in this analysis refer to information provided in the March 21 memorandum.

Section 14 of this bill amends s. 63.089, F.S., to make technical and conforming changes. Provisions relating to the change in the definition of abandonment have been removed from this bill.

Section 15 amends s. 63.092, F.S. Current law requires an adoption entity to file a report to the court on any intended placement of a minor for adoption with any person who is not a relative or stepparent. The report must be filed prior to placement or within 48 hours thereafter. This bill changes the time limit from 48 hours to 2 business days and adds language to state that failure to file this report within 2 business days is not grounds to deny the petition if the report is later filed and there is no prejudice to any party. It also amends the statute to permit psychologists, clinical social workers, marriage or family therapists, and mental health counselors to perform home studies.

Section 16 of this bill amends s. 63.102, F.S., relating to "short form" adoptions. It permits petitions to be filed later than 60 days after parental rights are terminated in cases where the minor child has been placed by the department.

Section 17 amends s. 63.112, F.S., to require that any order terminating parental rights be filed when the adoption petition as filed and not only orders entered under chapter 39.

Section 18 of this bill permits the court, pursuant to s. 63.122, F.S., to order certain information be deleted from the notice of hearing and the copy of the petition served with the notice in order to protect the privacy of the petitioner, parent, or minor.

Section 19 of this bill amends s. 63.125, F.S., allows all licensed professionals qualified to conduct a home study to conduct home studies. This will allow out of state entities to conduct home studies if they are qualified.

Section 20 of this bill amends s. 63.132, F.S., to provide that an affidavit of expenses and receipts is not required when finalizing a chapter 39 adoption.

Section 21 of this bill amends s. 63.135, F.S., to remove specific requirements from the affidavit and require that information provided be consistent with the Uniform Child Custody Jurisdictional and Enforcement Act.

Section 22 clarifies s. 63.142, F.S., to provide that the adoption court does not have jurisdiction to determine other custody issues if the adoption petition is dismissed.

Sections 23 and 24 of this bill make technical and clarifying changes to ss. 63.152 and 63.162, F.S. Section 24 also creates a procedure of the Department of Health to provide records to the Department of Children and Family Services.

Section 26 makes a technical change regarding inheritance rights to clarify that an adopted person has the same rights of inheritance as a blood descendant.

Section 27 of this bill amends s. 63.192, F.S., to give effect to certain foreign orders to allow completion of adoptions in Florida.

Sections 28 and 29 of this bill make technical changes to ss. 63.207 and 63.212, F.S.

Section 30 of this bill amends s. 63.213, F.S., to prohibit an attorney from representing an intended mother and intended father and the volunteer mother in the same adoption arrangement.

Section 31 of this bill amends s. 63.219, F.S., to permit the court to enjoin persons who have willfully violated provisions of chapter 63 from engaging in further placement activities in Florida.

Section 32 creates s. 63.236, F.S., to provide that petitions filed before the effective date of this bill will be governed under the law in effect at the time of filing of the petition.

Sections 33 and 34 of this bill amend s. 409.166, F.S., and s. 409.176, F.S., to permit adoption intermediaries to be involved in placing special needs children.

Sections 35-38 creates a new section of law which prohibits a person or entity, except a licensed physician, fertility clinic, or attorney from:

- receiving compensation in advising or assisting in donor or gestational carrier arrangements;
- advertising that a donor is sought for or available for matching; or

- charging a fee for making a referral in connection with a donor or carrier agreement.

The section also amends requirements relating to gestational surrogates.

Section 39 provides an effective date of July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 63.022, F.S., revising legislative intent.

Section 2. Amends s. 63.032, F.S., revising the definitions.

Section 3. Amends s. 63.039, F.S., revising duties of adoption entities to prospective adoptive parents.

Section 4. Amends s. 63.0423, F.S., relating to procedures for adoption of abandoned infants.

Section 5. Amends s. 63.0425, F.S., relating to grandparents' right to notice.

Section 6. Amends s. 63.052, F.S., relating to adoptions finalized outside the state.

Section 7. Amends s. 63.053, F.S., providing conditions under which an unmarried biological father shall lose parental rights.

Section 8. Amends s. 63.054, F.S., relating to actions required by an unmarried biological father to establish parental rights.

Section 9. Amends s. 63.062, F.S., relating to persons required to consent to adoption.

Section 10. Amends s. 63.082, F.S., relating to consent for adoption or affidavit of nonpaternity; and revising requirements for withdrawing a consent for adoption.

Section 11. Amends s. 63.085, F.S., to revise provision relating to who may sign a valid consent for adoption.

Section 12. Amends s. 63.087, F.S., to revise provisions governing the proceedings for terminating parental rights pending adoption.

Section 13. Amends s. 63.088, F.S., to revise procedures for terminating parental rights.

Section 14. Amends s. 63.089, F.S., to revise hearing requirements for terminating parental rights.

Section 15. Amends s. 63.092, F.S., to revise report and preliminary study requirements for placement of a minor by an adoption entity.

Section 16. Amends s. 63.102, F.S., F.S., to revise requirements for filing a petition for adoption.

Section 17. Amends s. 63.112, F.S., relating to requirements for the petition documents for an adoption.

Section 18. Amends s. 63.122, F.S., relating to information contained in the notice of hearing.

Section 19. Amends s. 63.125, F.S., providing for certain licensed professionals to contribute to final home investigation reports.

Section 20. Amends s. 63.132, F.S., revising requirements for the affidavit of expenses and receipts.

Section 21. Amends s. 63.135, F.S., revising requirements for information provided to the court for adoption proceedings.

Section 22. Amends s. 63.142, F.S., requiring further proceedings if a petition for adoption is dismissed.

Section 23. Amends s. 63.152, F.S., relating to applications for birth records.

Section 24. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings.

Section 25. Amends s. 63.172, F.S., relating to the effect of a judgment of adoption.

Section 26. Amends s. 63.182, F.S., relating to standing.

- Section 27.** Amends s. 63.192, F.S., relating to recognition of foreign judgment or decree affecting adoption.
- Section 28.** Amends s. 63.207, F.S., relating to out-of-state placement.
- Section 29.** Amends s. 63.212, F.S., relating to penalties for violations of the adoption statute.
- Section 30.** Amends s. 63.213, F.S., revising provisions relating to legal representation in preplanned adoption agreements.
- Section 31.** Amends s. 63.219, F.S., permitting the court to enjoin persons who violate the adoption statute from participating in further placement activities.
- Section 32.** Amends s. 63.236, F.S., providing that any petition for termination of parental rights filed before the effective date of the act is governed by the law in effect at the time the petition was filed.
- Section 33.** Amends s. 409.166, F.S., redefining the term special needs to remove children of racially mixed percentage.
- Section 34.** Amends s. 409.176, F.S., providing that licensing provisions do not apply to certain licensed child placing agencies.
- Section 35.** Amends s. 742.14, F.S., providing that the donor of an embryo relinquishes all parental rights and obligations to the embryo or the resulting children at the time of the donation.
- Section 36.** Amends s. 742.15, F.S., authorizing a physician in a state outside this state to advise a commissioning couple concerning a gestational surrogate.
- Section 37.** Amends s. 742.16, F.S., relating to gestational surrogacy.
- Section 38.** Amends 742.18, F.S., prohibiting a person or entity, except a licensed physician, fertility clinic, or attorney from doing certain specified acts.
- Section 39.** Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments section.
2. Expenditures:
See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments section.
2. Expenditures:
See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Information was not made available from the department nor the affected entities as to the fiscal impact of the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide rulemaking authority to the Department of Children and Families; however, s. 63.233, F.S., specifically gives the department authority to adopt rules to “implement the provisions of this chapter.”

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Future of Florida’s Families Committee adopted a strike everything after the enacting clause amendment to conform the bill to CS/SB 2154. The original house bill was identical to the senate bill with the following exceptions:

- Provides that a judgment of adoption is voidable under certain circumstances if a court finds that a person whose consent is required gave false information.
- Revises requirements concerning the disclosure of information pertaining to an adoption.
- Provides that any petition for termination of parental rights filed before the effective date of the act is governed by the law in effect at the time the petition was filed.
- Redefines the term “special needs” to remove children of racially mixed percentage.
- Provides that licensing provisions do not apply to certain licensed child placing agencies.
- Provides that the donor of an embryo relinquishes all parental rights and obligations to the embryo or the resulting children at the time of the donation.
- Authorizes a physician in a state outside this state to advise a commissioning couple concerning a gestational surrogate.
- Prohibits a person or entity, except a licensed physician, fertility clinic, or attorney from doing certain specified acts.

This analysis is written to reflect the bill as a committee substitute.

The Civil Justice Committee considered the bill on April 13, 2005. The committee adopted a "strike all" amendment that removed many provisions from the bill. Significant changes include:

- Removing a change to s. 63.062(3)(b), F.S., that would have changes the duty of the adoption entity from making a diligent search for the putative father and instead making a "good faith" search.
- Removing a change in the definition of "abandoned in various sections of the bill.
- Removing a change to s. 63.162, F.S., that arguably created a public records exemption in violation of art. I, s. 24, Fla. Const.
- Removing a proposed change to s. 63.064, F.S., that increased the authority of the court to waive the requirement that a parent consent to the adoption.
- Removing a proposed change to s. 63.082(7)(b), relating to withdrawal of consent to adoption.
- Removing a proposed change to court jurisdiction in adoption cases in s. 63.087(1), F.S.
- Removing a proposed change to s. 63.088(4), F.S., relating to inquiries required before an adoption can proceed.
- Removing proposed changes to s. 63.097, F.S., relating to fees charged by attorneys and adoption entities.
- Removing proposed changes to s. 63.132(1), F.S., relating to fees that can be charged against the adoptive parent.
- Removed various provisions which the Department of Children and Family Services believed would lead to "baby selling."

This bill, as amended, was reported favorably as a committee substitute.

On April 22, 2005, the Health and Families Council adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute changed:

- The provisions to codify Florida Supreme Court case law regarding who has standing to set aside an adoption. The interest required to set aside a judgment of adoption must be direct, immediate, and financial.
- The putative fathers requirements to maintain a current address with the registry and permits the court to set the appropriate venue for adoption cases. It provides that a putative father who does not comply with provisions related to the registry is deemed to have irrevocably waived his parental rights.
- The provisions related to foreign adoptions.
- Numerous provisions to correct "glitches" in the adoption statutes.

The analysis reflects the bill as a committee substitute.

