

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/SB 408

INTRODUCER: Judiciary Committee and Senator Campbell

SUBJECT: Adoption

DATE: April 27, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	Fav/6 amendments
2.	Chinn	Maclure	JU	Fav/CS
3.				
4.				
5.				
6.				

I. Summary:

The bill provides a mechanism for the Department of Health to receive notification of the filing of a petition for termination of parental rights. Additionally, the bill clarifies provisions relating to who may execute an irrevocable affidavit of paternity.

The bill also modifies the statute of repose related to adoption by providing that the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. Absent such a showing a person with indirect interest lacks standing to set aside a judgment of adoption.

This bill substantially amends the following sections of the Florida Statutes: 63.054, 63.062, and 63.182.

II. Present Situation:

Putative Father Registry

Florida has established a Putative Father Registry (“Registry”) to attempt to preserve the rights of unmarried biological fathers in adoption cases. The Registry is established and operated through the Office of Vital Statistics of the Department of Health. If a man is concerned that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a “registrant” with the Registry.¹

¹ Section 63.054(1), F.S.

By filing with the Registry, the potential father is claiming paternity for the child and confirms his willingness to support the child. Additionally, he consents to DNA testing, and may ultimately be required to pay child support. A claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.²

The putative father may change his mind and prior to the birth of the child execute a notarized revocation of the claim of paternity.³ Once that revocation is received, the claim of paternity is deemed null and void. Additionally, if a court determines that a registrant is not the father of a minor, the court will order the man's name removed from the Registry.⁴

Statute of Repose Relating to Adoptions

The statute of repose provides that an action to set aside a judgment of adoption or a judgment terminating parental rights may not be filed more than one year after the entry of the judgment terminating parental rights.

III. Effect of Proposed Changes:

Florida law requires an unmarried biological father who wishes to preserve his right to notice of and consent to adoption of his biological child to file a notarized claim of paternity form with the Florida Putative Father Registry ("Registry"). The notarized claim must be filed with the Registry maintained by the Office of Vital Statistics of the Department of Health before a petition for termination of parental rights is filed. This bill provides that in a proceeding for termination of parental rights, the petitioner must file a copy of the petition with the Office of Vital Statistics and clarifies that the Office of Vital Statistics may not record a claim of paternity after the filing date of the petition.

Current law also requires that, if a court determines that a registrant is not the father of a child, the court must order the "Department" to remove the registrant's name from the Registry. The bill requires that a registrant's name must also be removed if the court determines that a person has no parental rights. Further, the bill clarifies that it is the Department of Health that is charged with the responsibility of removing a registrant's name from the Registry upon an order from the court.

The bill revises the provisions regarding who may execute an irrevocable affidavit of paternity for a child so that a father under s. 63.062(1)(b), F.S., or any other man, may execute an irrevocable affidavit of nonpaternity in lieu of providing consent for adoption. The practical effect of this would be that the father or other man would waive any notice to all court proceedings relating to placement of the child in the future.

The bill modifies the statute of repose consistent with the Florida Supreme Court's ruling in *Stefanos v. Rivera-Berrios*.⁵ The bill provides that, for a person to be entitled to notice and to

² *Id.*

³ Section 63.054(5), F.S.

⁴ *Id.*

⁵ 673 So. 2d 12, 13 (Fla. 1996).

have the ability to intervene in an adoption proceeding, that person must have an interest which is direct, financial, and immediate.⁶ A showing of an indirect, inconsequential, or contingent interest is inadequate, and a person with this indirect interest lacks standing to set aside a judgment of adoption.⁷ The limitations provided in the bill apply to all adoptions, including those for which a judgment of adoption has already been entered.

The bill provides an effective date of upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶ The Fourth District Court of Appeal in *Rickard v. McKesson*, 774 So. 2d 838 (Fla. 4th DCA 2000) held that a person with contingent interests had a right to be involved in an adoption proceeding. Such a holding appears to be in conflict with *Stefanos* and would be modified by this bill.

⁷ The language provided in the bill tracks with the Florida Supreme Court's opinion in *Stefanos*, that "[a] showing of indirect, inconsequential or contingent interest is wholly inadequate." See 673 So. 2d at 13.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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