HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7151   PCB CJ 06-02   Adoption
SPONSOR(S): Civil Justice Committee; Mahon
TIED BILLS: None.   **IDEN./SIM. BILLS:** SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Civil Justice Committee	7 Y, 0 N	Shaddock	Bond
1) Future of Florida's Families Committee	7 Y, 0 N	Davis	Collins
2) Justice Council	11 Y, 0 N	Shaddock	De La Paz
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides a mechanism for the Department of Health to receive a notification of the filing of a petition for termination of parental rights. Moreover, the bill corrects the provisions regarding 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 does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill strengthens families inheritance rights by clarifying that an adopted person has the same rights of inheritance as a blood descendant.

Provides limited government -- The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

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]

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 possible 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. Plus, 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]

All hearings and records in adoption proceedings are confidential.[5] Court hearings are held in closed court, and all papers and records pertaining to the adoption, whether part of the permanent record of the court or a file in the office of an adoption entity, are confidential and subject to inspection only upon court order.

Generally, identifying information regarding the birth parents, adoptive parents, and adoptee may not be disclosed unless that person has authorized in writing the release of that information. Yet, a court may, upon petition of an adult adoptee, for good cause shown, appoint an intermediary or a licensed child-placing agency to contact a birth parent who has not registered with the adoption registry and advise them of the availability of the registry.

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.

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[1] Section 63.054 (1), F.S.
[2] *Id.*
[3] Section 63.054 (5), F.S.
[4] *Id.*
[5] Section 63.162, F.S.

Effect of Bill

In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

The bill directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

The bill modifies the statute of repose consistent with the Florida Supreme Court's ruling in *Stefanos v. Rivera-Berrios,* 673 So. 2d 12, 13 (Fla. 1996). The bill and *Stefanos* provide that for a person to be entitled to notice and have the ability to intervene in an adoption proceeding that person must have an interest which is immediate and direct.[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] This bill's limitations apply to all adoptions, including those in which a judgment of adoption has already been entered.

C. SECTION DIRECTORY:

Section 1 amends s. 63.054, F.S., to require notification of a filing of a petition for termination of parental rights.

Section 2 amends s. 63.062(4), F.S., relating to an affidavit of non-paternity.

Section 3 amends s. 63.182, F.S., relating to the statute of repose.

Section 4 provides this bill will be effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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[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] *Stefanos*, 673 So. 2d 13.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

- In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

- Alters the provisions regarding who may execute an irrevocable affidavit of paternity.

- Directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry.

- Makes a change regarding inheritance rights to clarify that an adopted person has the same rights of inheritance as a blood descendant.

- Removes the provision that would authorize the Department of Health to release an original sealed birth certificate on court order only to the Department of Children and Family Services.

The bill was then reported favorably.