

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 599 Adoption  
**SPONSOR(S):** Healthcare Council and Mahon  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2030

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Families</u>	<u>8 Y, 0 N</u>	<u>Preston</u>	<u>Mitchell</u>
2) <u>Healthcare Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Preston</u>	<u>Gormley</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill substantially amends Chapter 63, Florida Statutes, regarding adoption requirements. Some of the major provisions include:

- Amending “legal custody” to allow finalization of adoptions when legal custody is created by guardianship orders, and amending the definition of “parent” to conform it to the changes made to the adoption statute in 2003.
- Clarifying that 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 only applies to abandoned children.
- Permitting the filing of a joint petition for termination of parental rights and adoption.
- Providing 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.
- Allowing 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.
- Clarifying that the adoption court does not have jurisdiction to determine other custody issues if the adoption petition is dismissed.
- Giving effect to certain foreign orders to allow completion of adoptions in Florida.

The bill appears to have no fiscal impact on state or local government.

The bill has an effective date of July 1, 2007

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower families** – The bill may lend more stability to the adoption process.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

The 2003 Florida Adoption Act<sup>1</sup> 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."

##### **Effect of the Bill**

The bill makes a number of changes, both clarifying the 2003 Florida Adoption Act and amending current law. Those changes include:

- Amending "legal custody" to allow finalization of adoptions when legal custody is created by guardianship orders, and amending the definition of "parent" to conform it to the changes made to the adoption statute in 2003.
- Creating 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.<sup>2</sup>
- Clarifying that 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 only applies to abandoned children.
- Removing language requiring permanent placement with an adoption entity. The Adoption Committee believes this creates consistency with the 2003 revisions to the statute. The 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.
- Amending s. 63.054, F.S., relating to actions required by an unmarried biological father to establish parental rights. Current law requires the father to have 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. The bill removes "constructive" notice from the statute.
- Permitting the filing of a joint petition for termination of parental rights and adoption.

<sup>1</sup> See Chapter 2003-58, Laws of Florida.

<sup>2</sup> Memorandum from the Adoption Committee of the Family Law Section of the Florida Bar, March 21, 2005 (on file with the House Constitution and Civil Law Committee). References to the "Adoption Committee" in this analysis refer to information provided in the March 21 memorandum.

- Providing 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.
- Permitting the court, 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.
- Allowing 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.
- Clarifying that the adoption court does not have jurisdiction to determine other custody issues if the adoption petition is dismissed.
- Giving effect to certain foreign orders to allow completion of adoptions in Florida.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 49.011, Florida Statutes, relating to service of process by publication.

**Section 2.** Amends s. 63.022, Florida Statutes, relating to legislative intent.

**Section 3.** Amends s. 63.032, Florida Statutes, relating to definitions

**Section 4.** Amends s. 63.039, Florida Statutes, relating to duty of adoption entity to prospective parents.

**Section 5.** Amends s. 63.0423, Florida Statutes, relating to procedures with respect to abandoned infants.

**Section 6.** Amends s. 63.0425, Florida Statutes, relating to grandparent's right to notice.

**Section 7.** Amends s. 63.052, Florida Statutes, relating to designation of guardians.

**Section 8.** Amends s. 63.053, Florida Statutes, relating to the rights and responsibilities of an unmarried biological father.

**Section 9.** Amends s. 63.054, Florida Statutes, relating to actions necessary to establish paternal rights, and the Florida Putative Father Registry.

**Section 10.** Amends s. 63.062, Florida Statutes, relating to persons required to consent to adoption.

**Section 11.** Amends s. 63.063, Florida Statutes, relating to responsibilities of parties and fraud or misrepresentation.

**Section 12.** Amends s. 63.082, Florida Statutes, relating to execution of consent to adoption or affidavit of nonpaternity, family social and medical history, and withdrawal of consent.

**Section 13.** Amends s. 63.085, Florida Statutes, relating to disclosure by adoption entity.

**Section 14.** Amends s. 63.087, Florida Statutes, relating to termination of parental rights pending adoption.

**Section 15.** Amends s. 63.088, Florida Statutes, relating to diligent search.

**Section 16.** Amends s. 63.089, Florida Statutes, relating to termination of parental rights hearings, grounds, dismissal of petition and judgment.

**Section 17.** Amends s. 63.092, Florida Statutes, relating to reports to the court of intended placement by an adoption entity and at-risk placement.

- Section 18.** Amends s. 63.097, Florida Statutes, relating to fees.
- Section 19.** Amends s. 63.102, Florida Statutes, relating to filing of petition for adoption or declaratory statement and venue.
- Section 20.** Amends s. 63.112, Florida Statutes, relating to the petition for adoption.
- Section 21.** Amends s. 63.122, Florida Statutes, relating to notice of hearing on petition.
- Section 22.** Amends s. 63.125, Florida Statutes, relating to final home investigation.
- Section 23.** Amends s. 63.132, Florida Statutes, relating to affidavit of expenses and receipts.
- Section 24.** Amends s. 63.135, Florida Statutes, relating to information to be submitted to the court.
- Section 25.** Amends s. 63.142, Florida Statutes, relating to hearing and judgment of adoption.
- Section 26.** Amends s. 63.152, Florida Statutes, relating to application for new birth record.
- Section 27.** Amends s. 63.162, Florida Statutes, relating to hearings and records in adoption proceedings.
- Section 28.** Amends s. 63.182, Florida Statutes, relating to statute of repose.
- Section 29.** Amends s. 63.192, Florida Statutes, relating to recognition of foreign judgment affecting adoption.
- Section 30.** Amends s. 63.207, Florida Statutes, relating to out-of-state placement.
- Section 31.** Amends s. 63.212, Florida Statutes, relating to prohibited acts and penalties for violation.
- Section 32.** Amends s. 63.213, Florida Statutes, relating to preplanned adoption agreement.
- Section 33.** Creates s. 63.236, Florida Statutes, relating to petitions filed before effective date.
- Section 34.** Amends s. 382.017, Florida Statutes, relating to foreign births.
- Section 35.** Amends s. 383.50, Florida Statutes, relating to treatment of abandoned newborns.
- Section 36.** Amends s. 409.176, Florida Statutes, relating to registration of residential child-caring agencies.
- Section 37.** Amends s. 742.021, Florida Statutes, relating to venue, process, and complaints.
- Section 38.** Amends s. 742.10, Florida Statutes, relating to establishment of paternity for children born out of wedlock.
- Section 39.** Provides for severability.
- Section 40.** Provides for an effective date of July 1, 2007.

## 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:

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.

### D. STATEMENT OF THE SPONSOR

No statement submitted.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on Healthy Families adopted 8 amendments by the bill sponsor that do the following:

**Amendment 1** – Removes the proposed addition to Chapter 63, no longer making a parent’s consent to a private adoption in cases where a child is in DCF custody the basis for a transfer of custody.

**Amendment 2** – Removes the proposed changes to Chapter 63 requiring the dependency court to relinquish jurisdiction to the Chapter 63 court in such cases.

**Amendment 3** – Changes the requirement for monthly supervision reports to be filed with the Court and not the department in cases covered by Amendments 1 and 2.

**Amendment 4** – In situations where a parent is trying to withdraw a consent, and the court finds that immediately returning the child to the person would endanger the child, current law states the court shall enter and order of continued placement with the prospective adoptive parents. The amendment adds that this placement is if the prospective adoptive parents so desire the continued placement and the court finds the placement in the child’s best interest.

**Amendment 5** – Changes the proposed “may not”, back to the currently existing “shall not”, with regard to disclosure of identifying information on court dockets, indices, or other records outside the court file.

**Amendment 6** – Restores current law related to the definition of “special needs child”, removing attorneys from the adoption entities that can place children who then can be qualified as “special needs”

**Amendment 7** – Adds disclosure requirements for all adoption entities to provide background information to prospective adoptive parents prior to the finalization of the adoption.

**Amendment 8** – Returns child-caring agencies registered under Chapter 409 (Christian Child Caring Agencies) to this subsection, affording them the continued ability to provide home study services.

HB 599 was reported favorable with 8 amendments.

On April 18, 2007, the Healthcare Council adopted 6 amendments to the bill that do the following:

- **Amendment 9** – Amends definitions and adds new definitions relating to adoption.
- **Amendment 10** – Restores current law.
- **Amendment 11** – Clarifies that the state of repose applies to the adoption of a minor.
- **Amendment 12** – Provides for severability.
- **Amendment 13** – Provides that a certificate of foreign birth for an adoptee born in a foreign country may be issued without a judgment of adoption by a court of competent jurisdiction of this state if the adopting parents submit certain documentation.
- **Amendment 14** – Increases the number of days that an infant may be considered an abandoned newborn.

The bill was reported favorable as amended as a Council Substitute and the analysis reflects the CS.