

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1042

INTRODUCER: Children, Families and Elder Affairs Committee

SUBJECT: Open Government Sunset Review/Putative Father Registry

DATE: February 4, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Favorable
2.			JU	
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

Senate Bill 1042 reenacts and narrows an existing public records exemption relating to information contained in the Florida Putative Father Registry. The exemption is narrowed to permit a birth mother to have access to any Registry entry in which she is identified as the birth mother.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:
s. 63.0541.

The bill provides for an effective date of October 1, 2008.

II. Present Situation:

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.¹ Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.²

Pursuant to the Open Government Sunset Review Act, an exemption may be created, revised or retained only if it serves an identifiable public purpose and it is no broader than necessary to

¹ Section 119.15(3), F.S.

² Section 119.15(5)(a), F.S.

meet the public purpose it serves.³ An identifiable public purpose is served if the exemption meets one of three specified purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory . . . or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁴

Putative Father Registry

In 2003, pursuant to the unanimous vote of the House and Senate, Florida enacted the Florida Putative Father Registry (the Registry).⁵ The Office of Vital Statistics in the Department of Health maintains the Registry. In order to establish parental rights, an unmarried biological father must file a claim of paternity form with the Registry before a petition for termination of parental rights is filed.⁶

The claim of paternity form includes the following information:

- Registrant's name, address, date of birth, and physical description;
- Mother's name, address, date of birth, and physical description;
- Date, place, and location of conception; and
- Name, date, and place of birth of the minor child or estimated date of birth of the expected minor child, if known.⁷

By filing with the Registry, the potential father claims paternity for the child and confirms his willingness to support the child.⁸ Additionally, he consents to DNA testing, and may ultimately be required to pay child support.⁹

The putative father may change his mind and, prior to the birth of the child, execute a notarized revocation of the claim of paternity.¹⁰ Once that revocation is received, the claim of paternity is

³ Section 119.15(6)(b), F.S.

⁴ *Id.*

⁵ Section 63.054, F.S.

⁶ Section 63.054(1), F.S.

⁷ Section 63.054(3), F.S. *See also*, Florida Putative Father Registry Claim of Paternity, Form DH 1965 (Rev.7/05), available at http://www.doh.state.fl.us/planning_eval/vital_statistics/Putative.htm (last visited June 13, 2007).

⁸ Section 63.054(1), F.S.

⁹ Section 63.054(2), F.S.

¹⁰ Section 63.054(5), F.S.

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.¹¹

Section 63.0541, F.S., provides that all information contained in the Registry is confidential and exempt from public disclosure, **except** that such information shall be disclosed to the following:

- An **adoption entity**, upon the filing of a request for a diligent search of the Florida Putative Father Registry in connection with the planned adoption of a child;
- The **registrant unmarried biological father**, upon receipt of a notarized request for a copy of his Registry entry only; and
- The **court**, upon issuance of a court order concerning a petitioner acting *pro se* in an action under this chapter.¹²

The statement of public necessity for making information contained in the Registry confidential and exempt was based on the Legislature's finding that the well-being of adopted persons and their birth and adoptive parents depends on the termination of existing parental rights, in accordance with due process law.¹³ The Legislature concluded that protecting the confidentiality and precluding the disclosure of information contained in the Registry would:

- Encourage unmarried biological fathers to register, in order to claim paternity and preserve their parental rights;
- Prevent unnecessary and unwarranted intrusion into the privacy of the individuals involved, by preventing the revelation of details about intimate, sexual relations; and
- Promote the collection of information "integral to the best interests" of the child who is the subject of the registration.

The Legislature concluded that due process and privacy rights outweighed any benefits of disclosure.¹⁴

In some states, individuals and entities other than those designated in Florida's statute are allowed access to information in their putative father registries. At least half the states that have putative father registries allow the birth mother to have access to information contained in it. Allowing the birth mother to have access to the information contained in the Registry does not implicate the public purpose of protecting sensitive information, since the information involves the birth mother.¹⁵

The exemption provided by s. 63.0541, F.S., is subject to review under the Open Government Sunset Review Act, and will sunset on October 2, 2008, unless saved from repeal through reenactment by the Legislature.

¹¹ *Id.*

¹² Section 63.0541(1), F.S.

¹³ Section 3, L.O.F. 2003-56. *See also*, The Florida Senate, Committee on Children, Families and Elder Affairs, *Open Government Sunset Review of Section 63.0541, F.S., Relating to the Florida Putative Father Registry* (Interim Project Report 2008-206)(October 2007).

¹⁴ *Id.*

¹⁵ *Id.*

III. Effect of Proposed Changes:

The bill reenacts and saves from repeal s. 63.0541, F.S., allowing the information in the Florida Putative Father Registry to remain confidential and exempt from public disclosure.

The bill narrows the exemption by expanding the exceptions to allow a birth mother, who provides a notarized request, to have a copy of any Registry entry in which she is identified as the birth mother.

The bill makes technical amendments, and provides an effective date of October 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

This bill retains an existing public records exemption. This bill complies with the requirement of Section 24 of Article I of the State Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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