

**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.)

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Prepared By: The Professional Staff of the Governmental Operations Committee

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BILL: CS/SB 1042

INTRODUCER: Judiciary Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Open Government Sunset Review/Putative Father Registry

DATE: March 13, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	<b>Favorable</b>
2.	Daniell	Maclure	JU	<b>Fav/CS</b>
3.	Rhea	Wilson	GO	<b>Favorable</b>
4.			RC	
5.				
6.				

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**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill is the result of an Open Government Sunset Review performed by the Children, Families, and Elder Affairs Committee. Section 63.0541, F.S., makes confidential and exempt all information contained in the Florida Putative Father Registry. The current law provides exceptions to the exemption. The exemption will sunset on October 2, 2008, unless saved from repeal through reenactment by the Legislature.

The bill reenacts the exemption for information in the Florida Putative Father Registry and expands access under the exception by permitting a birth mother to have access to any Putative Father Registry entry in which she is identified as the birth mother. Additionally, the bill clarifies the statute by removing superfluous language.

This bill substantially amends section 63.0541, Florida Statutes.

## II. Present Situation:

### Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>1</sup> In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

The Public Records Act<sup>2</sup> specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency<sup>3</sup> records are available for public inspection. Section 119.011(11), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sounds recordings, ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.<sup>5</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>6</sup> A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>8</sup> provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>9</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.<sup>10</sup> An exemption meets the statutory criteria if it:

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<sup>1</sup> Sections 1390, 1391, F.S. (Rev. 1892).

<sup>2</sup> Chapter 119, F.S.

<sup>3</sup> Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

<sup>4</sup> *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

<sup>5</sup> Art. 1, § 24(c), Fla. Const.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 119.15, F.S.

<sup>9</sup> Section 119.15(6)(b), F.S.

<sup>10</sup> *Id.*

- 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 which 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.<sup>11</sup>

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.<sup>12</sup>

### **Putative Father Registry**

In 2003, Florida enacted the Florida Putative Father Registry (the Registry).<sup>13</sup> The Office of Vital Statistics in the Department of Health maintains the Registry. In order to establish parental rights and preserve the right to notice and consent to an adoption, an unmarried biological father must file a claim of paternity form with the Registry before a petition for termination of parental rights is filed.<sup>14</sup>

The claim of paternity form, which must be signed under oath by the registrant, includes the following information:

- Registrant's name, address, date of birth, and physical description;
- Mother's name, address, date of birth, and physical description, if known;
- 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.<sup>15</sup>

By filing with the Registry, the potential father claims paternity for the child and confirms his willingness to support the child.<sup>16</sup> Additionally, he consents to DNA testing, and may ultimately be required to pay child support.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Section 119.15(6)(a), F.S.

<sup>13</sup> Section 63.054, F.S. The putative father registry replaced the "Scarlet Letter Law," which required birth mothers to publish their sexual histories to locate the father of a child being put up for adoption. Randolph Pendleton, *Bush Signs Bill Repealing 'Scarlet Letter Law,'* THE ORLANDO SENTINEL, May 31, 2003, at B5.

<sup>14</sup> Section 63.054(1), F.S.

<sup>15</sup> Section 63.054(3), F.S. *See also* Florida Putative Father Registry Claim of Paternity, Form DH 1965, *available at* [http://www.doh.state.fl.us/planning\\_eval/vital\\_statistics/Putative.htm](http://www.doh.state.fl.us/planning_eval/vital_statistics/Putative.htm) (last visited Feb. 26, 2008).

<sup>16</sup> Section 63.054(1), F.S.

<sup>17</sup> Section 63.054(2), F.S.

The putative father may change his mind and, prior to the birth of the child, execute a notarized revocation of the claim of paternity.<sup>18</sup> 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.<sup>19</sup>

As of July 2007, a total of 515 (or an average of 129 per year) unmarried biological fathers had registered with the Registry.<sup>20</sup>

### **Public Records Exemption to the Putative Father Registry**

The public records exemption to the Registry was also passed in 2003.<sup>21</sup> 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.<sup>22</sup>

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 of law.<sup>23</sup> 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.<sup>24</sup>

The Legislature concluded that due process and privacy rights outweighed any benefits of disclosure.<sup>25</sup> 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.

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<sup>18</sup> Section 63.054(5), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Comm. on Children, Families, and Elder Affairs, Fla. Senate, *Open Government Sunset Review of Section 63.0541, F.S., Relating to the Florida Putative Father Registry* 6 (Interim Project Report 2008-206) (October 2007).

<sup>21</sup> Chapter 2003-56, Laws of Fla.

<sup>22</sup> Section 63.0541(1), F.S.

<sup>23</sup> Chapter 2003-56, § 3, Laws of Fla. *See also* Comm. on Children, Families, and Elder Affairs, *supra* note 20, at 3.

<sup>24</sup> Chapter 2003-56, § 3, Laws. of Fla.

<sup>25</sup> *Id.*

At least 24 states, including Florida, have statutes authorizing the establishment of putative father registries.<sup>26</sup> 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 of the states that have putative father registries allow the birth mother to have access to information contained in it.<sup>27</sup> 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.<sup>28</sup>

### **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 also makes technical changes to remove superfluous language from s. 63.0541, F.S., 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 article I, section 24 of the Florida 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.

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<sup>26</sup> CHILD WELFARE INFORMATION GATEWAY, *The Rights of Presumed (Putative) Fathers: Summary of State Laws* 3 (October 2004), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/putativeall.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/putativeall.pdf) (last visited Feb. 26, 2008). (The Child Welfare Information Gateway report does not take into account Virginia, which established a putative father registry effective July 1, 2007, but this analysis reflects that update.) Approximately 26 states do not have statutory putative father registries, but state law mandates that a putative father file a notice of paternity claim. *Id.*

<sup>27</sup> *Id.* at 4.

<sup>28</sup> Comm. on Children, Families, and Elder Affairs, *supra* note 20, at 5.

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.)

**CS by Judiciary on March 5, 2008:**

The committee substitute removes superfluous language from the statute.

B. Amendments:

None.