

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 315 Adoption

SPONSOR(S): Horner and others

TIED BILLS: IDEN./SIM. BILLS: SB 530

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee		Schoonover	Schoolfield
2)	Health & Family Services Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill creates a section of law in ch. 63, F.S., to prohibit an adoption agency or entity, whether public or private, from making adoption suitability determinations based on the lawful possession, storage, or use of a firearm or ammunition. The bill also prohibits an adoption agency or entity from requiring the adoptive parent or prospective adoptive parent to disclose such firearm and ammunition information. Further the bill restricts the adoption agency or entity from restricting the lawful possession, storage, or use of a firearm or ammunition as a condition for a person to adopt.

The bill does not appear to have a fiscal impact of state or local governments.

The bill becomes effective upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Adoption

Ch. 63, F.S., known as the Florida Adoption Act, applies to all adoptions, both public and private, involving the following entities: Department of Children and Families (DCF); child-caring agencies registered under s. 409.176; an intermediary such as an attorney; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

It is the established intent of the Legislature to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placement, and to hold parents accountable for meeting the needs of children.¹ It is also the intent of the Legislature that in every adoption, the child's best interest should govern the court's determination in placement, with the court making specific findings as to those best interests.² The Legislature also intends to protect and promote the well-being of the persons being adopted.³ Safeguards are established to ensure that that the minor is legally free for adoption, that the required persons consent to the adoption, or that the parent-child relationship is terminated by judgment of the court.⁴

The Department of Children and Families has promulgated several administrative rules that aide in the recruitment, screening, application, and evaluation process of adoptive parents.⁵ The rules reference an application to adopt found on DCF form CF-FSP 5071.⁶ The form includes necessary identifying information and does not include any information regarding the ownership or possession of firearms or ammunition. In evaluating the applicants, the rules do not address evaluating prospective parents' ownership of firearms or ammunition.⁷ However, some of the adoption agencies in Florida added

¹ s. 63.022(1)(a), F. S.

² s. 63.022(2), F.S.

³ s. 63.022(3), F.S.

⁴ s. 63.022(4), F.S.

⁵ 65C-16.005, F.A.C.

⁶ 65C-16.004, F.A.C.

⁷ 65C-16.005, F.A.C.

questions regarding possession and storage of firearms and ammunition to the home study process while evaluating prospective adoptive parents.⁸

A preliminary home study is required prior to placing the minor into an intended home. It must be made to determine the suitability of the intended adoptive parents and may be completed prior to identification of a prospective adoptive minor. The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, or a licensed professional. Unless good cause is shown, a home study is not required for adult adoptions or when the petitioner for adoption is a stepparent or a relative. A favorable home study is valid for one year after the date of its completion.⁹

The preliminary home study must include, at a minimum the following:¹⁰

- An interview with the intended adoptive parents
- Records checks of DCF's central abuse hotline
- Criminal history check through FDLE and FBI
- An assessment of the physical environment of the home
- A determination of the financial security
- Proof of adoptive parent counseling and education
- Proof that information on adoption and the adoption process has been provided
- Proof that information on support services available has been provided
- Copy of each signed acknowledgement of receipt of adoption entity disclosure forms

Following a favorable preliminary home study, a minor may be placed in the home pending entry of the judgment of adoption by the court. If the home study is unfavorable, placement shall not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.

To ascertain whether the adoptive home is a suitable home for the minor and whether it is in the best interest of the child, a final home investigation must be conducted before the adoption becomes final. The investigation is conducted in the same manner as the preliminary home study.¹¹ Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and the petitioner.¹² The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.¹³

The final home investigation must include:¹⁴

- Information from preliminary home study.
- Following the minor's placement, two scheduled visits with the minor and the minor's adoptive parent or parents. One visit must be in the home to determine suitability of the placement.
- Family social and medical history.
- Other information relevant to suitability of placement.
- Information required by rules promulgated by DCF.

Firearms and Ammunition

Current law requires anyone who owns or stores a loaded firearm to keep it safely stored away from any minor who may access it without permission. Specifically, s. 790.174, F.S. states:

“(1) A person who stores or leaves, on a premise under his or her control, a loaded firearm, as defined in s. 790.001, and who knows or reasonably should know that a

⁸ On 11-11-2009, Children's Home Society of Florida, a licensed adoption agency, issued a memo to its staff instructing staff to no longer make nor keep any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

⁹ s. 63.092(3), F.S.

¹⁰ Id.

¹¹ s. 63.125(1), F.S.

¹² s. 63.125(2), F.S.

¹³ s.63.125(3), F.S.

¹⁴ s. 63.125(5), F.S.

minor is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.”

Further, a state governmental agency and its agents, both public and private cannot keep a list or record of firearms and/or their owners. Specifically, s. 790.335, F.S. states:

“(2) No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record of registry of the owners of those firearms.”

If one of the entities is in violation by knowingly and willfully keeping or causing to be kept any list, record, or registry, they may be assessed a fine of not more than \$5 million.¹⁵

Additionally, s. 790.33, F.S. states that “Legislature is responsible for the whole field of regulation of firearms and ammunition, including ownership and possession.” Therefore, a state governmental agency and its agents, without proper statutory authority from the Legislature, cannot regulate the storage, use, and possession of firearms and ammunition.

Neither statutory language nor administrative rules exist regarding the ownership of firearms and ammunition and its bearing on adoption. However and in comparison, the DCF promulgated a rule relating to the foster home safety and the location of firearms and ammunition. Rule 65C-13.030(5)(h)(6), Florida Administrative Code states:

“Dangerous weapons shall be secured in a location inaccessible to children. Storage of guns shall comply with the requirements in Section 790.174, F.S. Weapons and ammunition shall be locked and stored separately, and in a place inaccessible to children.”

A December 1, 2009 DCF memorandum acknowledges the lack of statutory authority for their rule requiring separate storage of firearms and ammunition and states it will take action to correct 65C-13.030(5)(h)(6), Florida Administrative Code.¹⁶

Effect of Proposed Changes

This bill creates s. 63.0422, F.S., to prohibit conditions on adoption relating to firearms and ammunition. Specifically, the bill will prohibit an adoption agency or entity, whether public or private, from considering the lawful possession, storage, or use of a firearm or ammunition in determining a person’s suitability to adopt. The policies created by this bill already exist elsewhere in statute; specifically ss. 790.174, 790.335, and 790.33, F.S.

Additionally, the bill will prohibit an adoption agency or entity, whether public or private from requiring an adoptive parent or prospective parent to disclose information relating to a person’s lawful possession, storage, or use of a firearm or ammunition as a condition to adopt. The effect of this change reiterates in the adoption statutes the prohibition against governmental entities and their agents from knowingly and willfully keeping or causing to be kept any list, record, or registry.¹⁷

¹⁵ s. 790.335(4)(c), F.S.

¹⁶ Memorandum from DCF General Counsel and Director of Children’s Legal Services to the Director of the Office of Family Safety (Dec.1, 2009) (on file with FL House of Representatives Health Care Services Policy Committee).

¹⁷ s. 790.335, F.S.

Lastly, the bill will prohibit an adoption agency or entity from restricting the lawful possession, storage, or use of a firearm as a condition for a person to adopt. The effect of this change reiterates in the adoption statutes the prohibition against regulation of firearm possession, storage, or use by anyone other than the Legislature.¹⁸

B. SECTION DIRECTORY:

Section 1. Creates s. 63.0422, relating to adoption.

Section 2. Provides an effective date 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

¹⁸ s. 790.33, F.S.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.