

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1151 Parentage
SPONSOR(S): Health Quality Subcommittee, Richardson and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	10 Y, 0 N, As CS	Tuszynski	O'Callaghan
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Supreme Court of the United States has held that “same-sex couples may exercise the fundamental right to marry . . . on the same terms and conditions as opposite-sex couples.” The Supreme Court’s holding requires all 50 states to recognize same-sex marriages.

Vital statistics is usually an assigned responsibility of state health agencies and provides the foundation upon which many other parts of a public health program are constructed. Public health statistics have come to be regarded as an indispensable tool for the proper planning, management, and evaluation of many health programs. Because of the many legal, public health, research, and social welfare uses of vital records, each record should be prepared as completely and accurately as possible.

CS/HB 1151 makes multiple changes in statute to provide same-sex married couples with mechanisms to establish parentage and obtain birth certificates. The bill requires DOH to give parents the choice of designation of relationship to their child as mother, father, or parent.

The bill amends s. 742.11, F.S., relating to the presumed status of a child conceived by means of artificial or in-vitro insemination or donated eggs or pre-embryos. In this section “husband and wife” has been changed to “mother and her spouse” in relation to the woman carrying the child and her spouse, and also changes “husband and wife” to “spouses,” elsewhere in the section.

The bill amends s. 742.13, F.S., to change the definition of “commissioning couple” to mean the intended parents, instead of the intended mother and father.

The bill could have an indeterminate, negative fiscal impact on DOH related to any associated costs with engaging in rulemaking to alter the birth certificate form.

The bill provides for an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Same-sex marriage

Obergefell Case

Same-sex couples brought actions in Michigan, Ohio, Kentucky, and Tennessee alleging laws that prohibited same-sex marriage violated the Equal Protection and Due Process clauses of the Constitution. These cases were all found in favor of the same-sex couples. On appeal, the United States Court of Appeals for the Sixth Circuit¹ reversed every district court decision in favor of same-sex couples.² Those plaintiffs appealed to the Supreme Court of the United States, which consolidated the cases and granted certiorari.

In April 2015, the Supreme Court found four principles and traditions that demonstrate marriage is a fundamental right and that apply with equal force to same-sex couples:

1. The right to marry is inherent in the concept of individual autonomy;³
2. The right to marry supports a two-person union unlike any other in its importance to committed individuals;⁴
3. The right to marry safeguards children and families whether biological or adopted;⁵ and
4. The right to marry is a keystone of our social order.⁶

The Supreme Court held that “same-sex couples may exercise the fundamental right to marry . . . on the same terms and conditions as opposite-sex couples,”⁷ by finding that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.”⁸

Florida Cases

In February 2014, James Brenner and Charles Jones filed a federal lawsuit seeking to have their Canadian marriage recognized by the state of Florida so that they could name each other as a spouse for state retirement benefits.⁹ In March 2014, a second same-sex married couple, Steven Schlairet and Ozzie Russ, who were refused a marriage certificate in Washington County, Florida, filed a federal lawsuit seeking recognition of their same-sex marriage. Also in March, the American Civil Liberties Union filed a federal lawsuit on behalf of eight same-sex couples seeking Florida’s recognition of their marriages established in other jurisdictions.

All of these cases were brought in the United States District Court for the Northern District of Florida, and consolidated. In August 2014, the court ruled that the statutory and constitutional bans on same-sex marriage were unconstitutional, holding:

Marriage is a fundamental right as that term is used in cases arising under the Fourteenth Amendment’s Due Process and Equal Protection Clauses, that Florida’s

¹ The federal Sixth Circuit covers Kentucky, Michigan, Ohio, and Tennessee.

² *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. Nov. 6, 2014)

³ *Obergefell v. Hodges*, 135 S.Ct. 2584, 2599 (2015)

⁴ *Id.*

⁵ *Id.* at 2600

⁶ *Id.* at 2601

⁷ *Id.* at 2605

⁸ *Id.* at 2604

⁹ *Brenner v. Scott*, 999 F.Supp.2d 1278 (N.D. Fla. 2015).

same-sex marriage provisions thus must be reviewed under strict scrutiny, and that, when so reviewed, the provisions are unconstitutional.¹⁰

The court then issued a temporary stay of its own order,¹¹ pending resolution of a group of same-sex marriage cases that were petitioning for a writ of certiorari before the United States Supreme Court.¹² In October 2014, the United States Supreme Court denied a writ of certiorari to the same-sex marriage cases. The *Brenner* stay of order expired on January 6, 2015, at which point, through the *Brenner* ruling, Florida was ordered to recognize same-sex marriage.¹³

State legislatures, voters and more recently the courts have made sweeping changes over the past two decades in laws defining whether marriage is limited to relationships between a man and a woman or is extended to same-sex couples.¹⁴ Before the U.S. Supreme Court ruling on Oct. 6, 2014, declining to hear cases on same-sex marriage, 31 states had either constitutional or statutory provisions that explicitly defined marriage as between a man and a woman and just 19 states and the District of Columbia allowed same-sex marriage.¹⁵ After *Obergefell*, all states must recognize same-sex marriage.

Marital Presumption of Parentage

All states have a statute or common law rule that presumes children born during the marriage, absent any agreements between parties at childbirth, are the biological children of the husband.¹⁶ This marital presumption protects parents and children.¹⁷ Historically, without genetic testing to prove that the husband was not the child's biological parent, raising the issue of legitimacy could harm the child (and the reputation of the child's mother), but would not resolve the question.¹⁸ The advent of genetic testing has changed this.¹⁹ These tests exclude men who could not possibly be a child's genetic parent and establish with great certainty whether a particular man is a child's biological father.²⁰

In recent years, same-sex couples have begun to adopt children, bear children from in-vitro fertilization, and "blended" families consisting of multiple parents and stepparents are more commonplace. However, state statutes relating to parentage have not kept pace with the changing structure of the American family.

Vital Statistics and Birth Certificates

Vital statistics is usually an assigned responsibility of state health agencies and provides the foundation upon which many other parts of a public health program are constructed.²¹ Public health statistics have come to be regarded as an indispensable tool for the proper planning, management, and evaluation of many health programs.²²

The compilation of vital statistics is of ancient origin. Enumerations of people were carried out long before the birth of Christ, notably in China, Egypt, Persia, Greece, and Rome, primarily for purposes of taxation and to determine available military manpower.²³ Data related to births, deaths, and marriages

¹⁰ Id. at 1281

¹¹ Id. at 1292

¹² *Bogan v. Baskin*, 135 S.Ct. 316 (Oct. 6, 2014); *Walker v. Wolf*, 135 S.Ct. 316 (Oct. 6, 2014); *Herbert v. Kitchen*, 135 S.Ct. 396 (Oct. 14, 2014); *McQuigg v. Bostic*, 135 S.Ct. 314 (Oct. 6, 2014); *Rainey v. Bostic*, 135 S.Ct. 286 (Oct. 6, 2014); *Shaefer v. Bostic*, 135 S.Ct. 308 (Oct. 6, 2014); *Smith v. Bishop*, 135 S.Ct. 271 (Oct. 6, 2014).

¹³ See *Brenner v. Scott*, 999 F.Supp.2d 1278 (N.D. Fla. 2015).

¹⁴ National Conference of State Legislatures, *Same-sex marriage laws*, available at: <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx> (last accessed February 2, 2016).

¹⁵ Id.

¹⁶ Paula Roberts, *Truth and consequences: Part II: Questioning the paternity of Marital Children*, 37 Fam. L.Q. 55, 56 n.2 (2003) (referring to the rule as "one of the strongest and most persuasive presumptions known to the law").

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Florida Department of Health, Bureau of Vital Statistics, *Vital Registration Handbook 2015*, available at <http://www.floridahealth.gov/certificates/certificates/documents/HB2015v2.pdf> (last accessed February 2, 2016).

²² Id.

²³ Id.

were recorded in elementary form in the old church registers in England. The oldest known copy of these so-called "bills of mortality" can be seen in the British Museum and is dated November 1532.²⁴

The preservation of vital records increases in importance each year. Prior to World War II, birth records were needed infrequently.²⁵ Today a birth record is virtually a necessity. It is needed for admission to school, to obtain or renew a driver's license, a work permit, the right to vote, eligibility for retirement, social security benefits, to obtain a passport, to prove citizenship, to obtain public assistance for dependent children, and many other uses.²⁶

Because of the many legal, public health, research, and social welfare uses of vital records, each record should be prepared as completely and accurately as possible.²⁷ The Florida Statutes and Florida Administrative Code specify who may obtain certifications of individual records.²⁸

Bureau of Vital Statistics

The Florida Vital Statistics Act²⁹ authorizes the Department of Health (DOH) to establish the Bureau of Vital Statistics (Bureau), which is responsible for the uniform and efficient registration, compilation, storage, and preservation of all vital records in Florida.³⁰ Vital records are certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, or name change. The Bureau must:³¹

- Uniformly enforce the law throughout the state;
- Establish registration districts throughout the state, which districts may be consolidated or subdivided to facilitate registration;
- Appoint a local registrar of vital statistics for each registration district in the state;
- Procure the complete registration of all vital records in each registration district and in the Bureau;
- Investigate cases of irregularity or violation of law and, when necessary, report cases of violations to the state attorney in the registration district in which the violation occurs;
- Approve all forms used in registering, recording, certifying, and preserving vital records;
- Prepare and publish an annual report of vital statistics; and
- Accept, use, and produce all records, reports, and documents necessary in paper or electronic form, and adopt and enforce all rules necessary for the acceptance, use, production, issuance, recording, maintenance, and processing of such records, reports, and documents.

The Bureau is under the direction of a state registrar to ensure uniform and efficient compilation and storage of all vital records in the state. Each county has a local registrar of vital statistics and multiple deputy registrars at the local county health department (CHD).³²

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Chapter 382, F.S.

³⁰ Section 382.003, F.S.

³¹ *Id.*

³² *Supra* at note 21.

Registration of Live Birth

A certificate for each live birth that occurs must be filed within 5 days after such birth with the local registrar.³³ A birth record must be filed by the hospital administrator or designated representative of the facility where the birth occurred, a physician, a midwife, or other person in attendance at the birth.³⁴ If there is no licensed medical person in attendance at the birth, the father, mother, or person in charge of the premises where the birth occurred, must report the facts of birth to the local registrar within the required 5 days.³⁵

If the mother of a child is married at the time of birth, she must list her husband as the father of the child, unless paternity has been determined otherwise by the court.³⁶ If the mother of a child is unmarried at the time of birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit of paternity signed by both the mother and the person to be named as the father on the birth certificate.³⁷

Adoption and Birth Certificates

Upon the receipt of the report or certified copy of an adoption decree, DOH shall prepare and file a new birth certificate that:³⁸

- Bears the same file number as the original birth certificate;
- Contains identical information to the original birth certificate that was not changed by the adoption; and
- Contains the all the identifying information relating to the adoptive parents, without referring or designating them as being adoptive.

In 2010, the prohibition on adoption by same-sex couples was ruled unconstitutional,³⁹ and DOH began issuing amended birth certificates to same-sex adoptive couples with a decree of adoption. In 2015, HB 7013 passed both chambers of the Legislature and repealed the 1977 ban on adoption by homosexuals.⁴⁰

Current Litigation

In August 2015, the *Brennan* plaintiffs filed a motion for clarification and a separate group of Plaintiffs brought a federal lawsuit in the United States District Court for the Northern District of Florida⁴¹ on the issue of whether, in light of *Obergefell v. Hodges*, DOH must issue a birth certificate naming same-sex married parents. The plaintiffs are same-sex couples who allege that the Bureau refuses to comply with s. 382.013(2)(a), F.S., and not issue accurate birth certificates for children born to same-sex married parents.⁴² The plaintiffs contend that this refusal to issue accurate two-parent birth certificates to children born to same-sex spouses harms married same-sex couples and their children by impairing the couple's ability to perform basic and essential parental tasks like enrolling their children in school, daycare, or extracurricular activities, and authorizing medical treatment, and that this is a violation of their due process and equal protection rights under the Fourteenth Amendment.⁴³ The plaintiffs, citing *Obergefell v. Hodges*, state that their marriages must be recognized "on the same terms and conditions as opposite-sex couples."⁴⁴ DOH contends in response to the lawsuits that the "gender specific

³³ S. 382.013, F.S.

³⁴ Id.

³⁵ Id.

³⁶ S. 382.013(2), F.S.

³⁷ Id.

³⁸ S. 382.015(1), F.S.

³⁹ See *In re Gill*, 45 So. 3d 79 (Fla. 3d DCA 2010)

⁴⁰ Ch. 2015-130, Laws of Fla.

⁴¹ *Chin, et al. v. Armstrong*, 2015-cv-00399, Complaint and Jury Demand for Declaratory and Injunctive Relief (N.D. Fla. 2015).

⁴² Id. at 2

⁴³ Id.

⁴⁴ Id.

language of the statute appears to preclude married same-sex couples from being listed as parents on birth certificates.”

Artificial or In-vitro Insemination

Both artificial insemination and in-vitro insemination are methods to attempt pregnancy without natural insemination through sexual intercourse. Artificial insemination is a form of assisted reproductive technology that allows the introduction of donor sperm either via intracervical or intrauterine insemination into a woman’s body. In-vitro insemination is a form of assisted reproductive technology in which eggs are removed from a woman’s body (or donor eggs are used), mixed with sperm to create embryos, and then placed into the woman’s body.⁴⁵

Section 742.11, F.S., states that any child born within wedlock who has been conceived by either of these means, using donated eggs or sperm, is irrebuttably presumed to be the child of the husband and wife, provided they have both consented in writing to the artificial or in-vitro insemination and the use of donated eggs or pre-embryos, except in the case of gestational surrogacy.

Effect of Proposed Changes

Birth Certificates and Registration

CS/HB 1151 amends s. 382.015, F.S., to change the term “paternity” to “parentage” and the term “husband” to “spouse.” The change recognizes same-sex marriages and the gender-neutral language allows same-sex married couples the ability to both be included on a birth certificate. The bill requires DOH to allow the parent or parents signing the birth certificate to choose a designation of relationship. The parents can choose from mother, father, or parent.

The bill also amends s. 382.013, F.S., to change the term “paternity” to “parentage,” the term “husband” to “spouse,” the term “father” to “former spouse” (in relation to child support), and the phrase “mother and father” to “parents.” This change recognizes same-sex marriages and the gender-neutral language conforms the language of the birth registration statute to the certificate of live birth changes.

Artificial or In-vitro Insemination

The bill amends s. 742.11, F.S., relating to the presumed status of a child conceived by means of artificial or in-vitro insemination or donated eggs or pre-embryos. In this section “husband and wife” has been changed to “mother and her spouse” in relation to the woman carrying the child and her spouse, and also changes “husband and wife” to “spouses,” elsewhere in the section. This language recognizes same-sex married couples and their ability to use assisted reproductive technology to create a family.

The bill also amends the following statutes to conform with the changes to the birth certificate changes:

- Section 742.011, F.S., relating to determination of parentage to use gender neutral language;
- Section 742.091, F.S., relating to marriage of parents to use gender-neutral language;
- Section 742.105, F.S., relating to the effect of a determination of paternity, changing the title to the effect of a determination of parentage, and the use of “paternity” to “parentage” within the section; and
- Section 742.13, F.S., relating to definitions to change the phrase “mother and father” to “parents” in the definition of commissioning couple.

The bill provides for an effective date of July 1, 2016.

B. SECTION DIRECTORY:

⁴⁵ U.S. National Library of Medicine, MedlinePlus Health Topics, *Assisted Reproductive Technology*, available at: <https://www.nlm.nih.gov/medlineplus/assistedreproductivetechnology.html> (last accessed January 20, 2016).

- Section 1:** Amends s. 382.015, F.S., relating to new certificates of live birth; duty of clerks of court and department.
- Section 2:** Amends s. 382.013, F.S., relating to birth registration.
- Section 3:** Amends s. 742.011, F.S., relating to determination of parentage proceedings.
- Section 4:** Amends s. 742.091, F.S., relating to marriage of parents.
- Section 5:** Amends s. 742.105, F.S., relating to effect of a determination of parentage from a foreign jurisdiction.
- Section 6:** Amends s. 742. 11, F.S., relating to presumed status of child conceived by means of artificial or in vitro insemination or donated eggs or pre-embryos.
- Section 7:** Amends s. 742.13, F.S., relating to definitions.
- Section 8:** Provides for an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill could create an indeterminate, negative fiscal impact on DOH related to any associated costs with engaging in rulemaking to alter the birth certificate form.

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:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 2, 2016, the Health Quality Subcommittee adopted a strike-all amendment. The amendment made the following changes:

- Amends the sections of statute relating to the preparation of birth certificates, registration of live births and paternity, determination of paternity proceedings, and presumed status of a child conceived by means of artificial or in-vitro insemination to change language in these sections to use the terms:
 - “Parentage” in place of “paternity”;
 - “Spouse” or “former spouse” in place of “husband” or “father”;
 - “Spouses” in place of “husband and wife”; and
 - “Parents” in place of “mother and father.”
- Amends the section of law pertaining to certificates of live birth to require the Department of Health to include on the certificates certain designations of relationship from which the parents may select.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee Substitute as passed by the Health Quality Subcommittee.