



Health & Human Services Access Subcommittee

Meeting Packet

Tuesday, January 24, 2012

2:00 – 5:00 PM

Webster Hall (212 Knott)

**Dean Cannon
Speaker**

**Dennis K. Baxley
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Access Subcommittee

Start Date and Time: Tuesday, January 24, 2012 02:00 pm
End Date and Time: Tuesday, January 24, 2012 05:00 pm
Location: Webster Hall (212 Knott)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 4179 Florida Mental Health Act by Nuñez
HB 1163 Adoption by Adkins
HB 277 Abortions by Burgin
HB 839 Abortion by Davis
HB 1327 Abortion by Plakon
HB 1077 Service Animals by Kriseman
HB 1351 Homeless Youth by Glorioso

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, January 23, 2012.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 23, 2012.


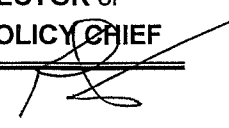
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4179 Florida Mental Health Act

SPONSOR(S): Nuñez

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		 Batchelor	Schoolfield 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 4179 repeals s. 394.4674, F.S. relating to a comprehensive plan and report for the deinstitutionalization of patients in a treatment facility who are over the age of 55 and do not meet the criteria for involuntary placement pursuant to s. 349.467, F.S. This law has been in effect since 1980.¹

The plan and report are no longer needed and the Department of Children and Family Services has not issued the report or plan in recent years. Current law² provides for the discharge of involuntary patients and specifies that anytime a patient is found to no longer meet the criteria for involuntary placement the patient shall be discharged unless they are placed on a voluntary or convalescent status.

The bill does not have a fiscal impact.

The bill provides an effective date of July 1, 2012.

¹ Ch.80-293, § 2, L.O.F.

² S. 394.469, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Children and Families (DCF) is designated the "Mental Health Authority" in the state. DCF is responsible for the planning, evaluation, and implementation of a statewide program of mental health, including community services, receiving and treatment facilities, child services, research and training. Additionally, DCF is responsible for establishing standards, providing technical assistance, and exercising supervision of mental health programs, and the treatment of patients at, community facilities, other facilities for persons who have mental illness, and any agency or facility providing services to patients.³

Section 394.4674, F.S., directs DCF to develop a comprehensive plan for the deinstitutionalization of patients in a treatment facility⁴ who are over age 55 and do not meet the criteria for involuntary placement pursuant to s. 349.467, F.S. This law was enacted in 1980⁵. The plan was required to include, at a minimum, the projected number of patients, the timetables for deinstitutionalization and the specific actions to be taken to accomplish deinstitutionalization. Further, DCF is required to submit a semiannual report to the Legislature until the conditions of the deinstitutionalization plan are met. DCF advises that a report has not been issued in recent years.⁶

Currently, s. 394.469, F.S., provides for the discharge of involuntary patients and specifies that anytime a patient is found to no longer meet the criteria for involuntary placement, the administrator shall:

- Discharge the patient, unless the patient is under a criminal charge, in which case the patient shall be transferred to the custody of the appropriate law enforcement officer;
- Transfer the patient to voluntary status on his or her own authority or at the patient's request, unless the patient is under criminal charge or adjudicated incapacitated; or
- Place an improved patient, except a patient under a criminal charge, on convalescent status in the care of a community facility.

Effect of Proposed Changes

The bill repeals s. 394.4674, F.S., which in 1980 directed DCF to develop a comprehensive plan for the deinstitutionalization of patients in a treatment facility who are over the age of 55 and who do not meet the criteria for involuntary placement. The repeal also eliminates the requirement for a semiannual report to the Legislature.

The repeal of this report and plan is not anticipated to have an effect on DCF or on the timely discharge of patients as requirement is outdated. Currently, section 394.469, F.S., provides guidelines for the discharge of involuntary placements.

³ S. 394.457, F.S.

⁴ "Treatment facility" means any state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs. s.394.455(32),F.S.

⁵ Ch.80-293,§ 2, L.O.F.

⁶ Email from Stephenie Colston, January 19, 2012. Department of Children and Families (on file with committee staff).

B. SECTION DIRECTORY:

Section 1: Repeals s. 394.4674, F.S. relating to Plan and Report.

Section 2: Provides an effective date of July 1, 2012.

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:

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

6

HB 4179

2012

1 A bill to be entitled
2 An act relating to the Florida Mental Health Act;
3 repealing s. 394.4674, F.S., relating to the
4 Department of Children and Family Services' plan for
5 the deinstitutionalization of mental health patients
6 and reports to the Legislature on the status of the
7 plan; providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

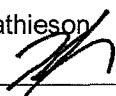

10

11 Section 1. Section 394.4674, Florida Statutes, is
12 repealed.

13 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Abortion
SPONSOR(S): Plakon
TIED BILLS: IDEN./SIM. **BILLS:** SB 1702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson 	Schoolfield 
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1327 creates the "Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act." The bill provides whereas clauses and legislative intent, and:

- Requires a physician performing a termination of pregnancy complete an affidavit attesting that the termination is not sought to select the sex or race of the fetus.
- Prohibits a person from knowingly performing such an act, intimidate or threaten someone to commit such an act, or finance or solicit moneys for such an act.
- Authorizes the Attorney General or state attorney to file in circuit court to enjoin certain acts.
- Creates a civil cause of action for recovery for the married father of the child, or maternal grandparents if the woman is younger than 18 years old.
- Creates a fine of up to \$10,000 for certain healthcare practitioners for failing to report a termination based on the sex or race of the fetus.

The bill appears to have no fiscal impact on the state.

The bill provides an effective date of October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sex and Race Selective Abortion

The issue of termination of pregnancy based on the sex or race of the fetus has generated international controversy. Most notably over centralized population control measures in China and social customs in India.¹ Critics of the Chinese population control measures suggest that these may be the cause of an emerging gender imbalance, in favor of male children.² In India, researchers have observed what is described as a “son preference,” over daughters because of socio-economic concerns.³ In response to these issues, both China and India have enacted legislative measures that proscribe discovery of the sex of the fetus, in certain circumstances.⁴

In Europe, legislation has been enacted by the United Kingdom to prevent termination of a fetus solely based on sex.⁵

In the United States, there is no federal prohibition on a termination of pregnancy that is sought for the sole purpose of sex or race of the fetus. At the time of publication, there is a measure before the U.S. House of Representatives, introduced by Rep. Trent Franks of the Second District of Arizona.⁶

Currently, there are four states in the Union that prohibit a termination of pregnancy based on the sex of the fetus. This is done in Arizona,⁷ Oklahoma,⁸ Illinois,⁹ and Pennsylvania.¹⁰ Of the four states that prohibit sex-selective terminations, only Arizona prohibits race-selective terminations.¹¹

¹ See, Amartya Sen, *More than 100 Million Women are Missing*, N.Y. REV. BOOKS, (December 1990) (Sen bases the number of 100 million on the difference in gender ratios of live births in China); Amartya Sen, *Missing Women – Revisited*, 327 *BMJ* 1237 (2003) (in 2003, Sen revisited the issue, observing that there had been an improvement in girl-child mortality, however, the impact of sex-selective abortions still meant that there was a disparity in gender ratios); Arindam Nandi and Anil Deolalikar, *Does a Legal Ban on Sex-Selective Abortion Improve Child Sex Ratios? Evidence from a Policy Change in India*, (University of California, Riverside Economics Department Working Paper, April, 2011) available at <http://economics.ucr.edu/2011.html> (Noting that in the absence of Indian legislation, the gender imbalance may have been more significant).

² David Smolin, *The Missing Girls of China: Population, Policy, Gender, Abortion, Abandonment, and Adoption in East-Asian Perspective*, 41 *CUMB. L. REV.* 1, (2010-2011).

³ See, Sunita Puri, Vicanne Adams, Susan Ivey, and Robert Nachtgall, “There is such a thing as too many daughters, but not too many sons:” *A Qualitative Study of Son Preference and Fetal Sex Selection among Indian Immigrants in the United States*, 71 *SOC. SCI & MED.*, 1169 at 1170-1172 (April, 2011); Prabhat Jha, Rajesh Kumar, Priya Vasa, Neeraj Dhringa, Deva Thiruchelvam, and Rahim Moineddin, *Low Male-to-Female Sex Ratio of Children Born in India: National Survey of 1.1 Million Households*, 367 *LANCET* 211, (January, 2006) (noting that prenatal sex determination followed by sex selective termination was the most likely explanation for the gender imbalance in Indian birth rates).

⁴ In 1994, India enacted The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, No. 57, Acts of Parliament, 1994. At the time of publication, it has not been possible to locate a primary source of Chinese law, however, the Stipulation on Forbidding Non-medical Aimed Fetus Sex Determination and Sex Selective Abortion from 2004, is cited in Smolin, *supra* note 11 at footnote 21.

⁵ Human Fertilisation and Embryology Act, 1990, 37 *Eliz. II, c. 37*, 1ZB(1)-(4)(b), sched. 2: United Kingdom.

⁶ H.R. 3541, 112th Cong. (2012). At the time of publication, Reps. Dennis Ross, Bill Posey and Jeff Miller from Florida are amongst the co-sponsors in the House. Similar measures were introduced in the 111th Congress (H.R. 1822, 111th Cong. (2009) but did not make it out of committee) and, the 110th Congress (H.R. 7016, 110th Cong. (2008) but did not make it out of committee).

⁷ ARIZ. REV. STAT. ANN. s. 13-3603.2 (2011). At the time of publication, there has been no litigation challenging the validity of this section of Arizona law.

⁸ OKLA. STAT. tit. 63, s. 1-731.2 (2011). At the time of publication, there has been no litigation challenging the validity of this section of Oklahoma law.

⁹ 720 *ILL. COMP. STAT.* 510/6-8 (2011). At the time of publication, there has been no litigation challenging the validity of this prohibition in Illinois law.

¹⁰ 18 *PA. CONS. STAT.* s. 3204(c), (2011). At the time of publication, there has been no litigation challenging the validity of this prohibition in Pennsylvania law.

There is some research suggesting that this may be a situation that might occur in the United States.¹² The research suggests that this may occur amongst families who have recently migrated.¹³

In Florida law, there is currently no explicit prohibition on a termination of pregnancy that is sought for the sole purpose of selecting the sex or race of the fetus.¹⁴

Effect of Proposed Changes

House Bill 1327 creates the “Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.” The bill contains 22 whereas clauses. The bill also contains a statement of legislative intent, providing that the purpose of this act is to protect unborn children from pre-natal discrimination.

The bill creates a new subsection in s. 390.0111, F.S., called “Sex and Race Selection.” The bill provides that a person may not knowingly:

- Perform or induce a termination of pregnancy that is based on the sex or race of the fetus;
- Use force or the threat of force to injure or intentionally intimidate any person for the purpose of obtaining a termination based on the sex or the race of the fetus; or
- Solicit or accept moneys to finance a termination based on the sex or the race of the fetus.

The bill amends s. 390.011, F.S., requiring that a physician may not terminate of pregnancy, without first completing an affidavit stating the termination not being performed because of the fetal sex or race, and that there is no knowledge of such a motivation.

The bill provides that a physician, physician’s assistant, nurse, counselor or other medical or mental health professional who knowingly fails to report violations of this subsection to law enforcement is subject to a fine of not more than \$10,000.

The bill creates a cause of action in circuit court for the Attorney General or state attorney to enjoin such an activity.

Further, the bill provides that a civil cause of action may be brought on behalf of the unborn child by the father who is married to the woman upon whom a sex or race selective termination was performed; or Maternal grandparents, if the woman upon whom a sex or race selective termination was performed, had not attained the age of 18. The court is authorized to award attorneys fees as costs in such an action. The bill defines appropriate relief to include monetary damages for all injuries, including psychological, physical and financial. The bill defines financial to include loss of companionship and support.

B. SECTION DIRECTORY:

- Section 1:** Creates an unnumbered section of law, designating the “Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.”
- Section 2:** Creates an unnumbered section of law related to legislative findings.
- Section 3:** Amends s. 390.0111, F.S., relating to the termination of pregnancies.
- Section 4:** Provides an effective date of October 1, 2012.

¹¹ ARIZ. REV. STAT. ANN. s. 13-3603.2 (2012).

¹² See Puri, et al, *supra*, note 3, (Researchers interviewed 65 recent immigrants in CA, NJ and NY, and suggest that 89% of respondents terminated based on the sex of the fetus. It should also be noted that 58% of respondents had an education level of high school or less); Douglas Almond and Lena Edlund, *Son-Biased Sex Ratios in the 2000 United States Census*, 105 PNAS 5681, (April, 2008) (Researchers compared white, Chinese, Korean and Asian Indian birth rates at the first, second and third child, finding that for second and third children in Chinese, Korean and Asian Indian families, there appears to be a son preference – they interpreted this be as a result of prenatal sex-selection);

¹³ See, Puri et al, *supra* note 3, at 1170 (claiming that there may be a correlation between access to technology in the United States that they did not have access to in India, because of prohibitions, and the sex-selective termination).

¹⁴ See ch. 390, F.S.

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:

This bill may implicate Art. I, s. 23 of the Florida Constitution, which provides for an express right to privacy. Whilst the Florida Supreme Court recognized the State's compelling interest in regulating termination post-viability in *In re T.W.*, 551 So. 2d 1186 (1989), the issue of regulating termination as it pertains to the sex or race of the fetus is a novel question for the Florida and United States Supreme Courts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 33-219 contain whereas clauses, the accuracy of which cannot be verified.

Line 254 uses a mens rea standard of "knowingly" for the enumerated actions, so the use of "knowing" on line 255 is superfluous. However, line 258 uses a conflicting mens rea standard of "intentionally."

Line 263 creates a cause of action for the state attorney to enjoin certain acts, however, does not

specify which state attorney.

Lines 279-280 could be clarified by a reference to "healthcare practitioner" as defined by s. 456.001(4), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to abortion; providing a short title;
 3 providing findings and intent; amending s. 390.0111,
 4 F.S.; requiring a person performing a termination of
 5 pregnancy to first sign an affidavit stating that he
 6 or she is not performing the termination of pregnancy
 7 because of the child's sex or race and has no
 8 knowledge that the pregnancy is being terminated
 9 because of the child's sex or race; providing criminal
 10 penalties; prohibiting performing or inducing a
 11 termination of pregnancy knowing that it is sought
 12 based on the sex or race of the child or the race of a
 13 parent of that child, using force or the threat of
 14 force to intentionally injure or intimidate any person
 15 for the purpose of coercing a sex-selection or race-
 16 selection termination of pregnancy, and soliciting or
 17 accepting moneys to finance a sex-selection or race-
 18 selection termination of pregnancy; providing criminal
 19 penalties; providing for injunctions against specified
 20 violations; providing for civil actions by certain
 21 persons with respect to certain violations; specifying
 22 appropriate relief in such actions; authorizing civil
 23 fines of up to a specified amount against physicians
 24 and other medical or mental health professionals who
 25 knowingly fail to report known violations; providing
 26 that a woman on whom a sex-selection or race-selection
 27 termination of pregnancy is performed is not subject
 28 to criminal prosecution or civil liability for any

29 violation or for a conspiracy to commit a violation;
 30 conforming a cross-reference; providing an effective
 31 date.

32
 33 WHEREAS, women are a vital part of American society and
 34 culture and possess the same fundamental human rights and civil
 35 rights as men, and

36 WHEREAS, United States law prohibits the dissimilar
 37 treatment for males and females who are similarly situated and
 38 prohibits sex discrimination in various contexts, including the
 39 provision of employment, education, housing, health insurance
 40 coverage, and athletics, and

41 WHEREAS, sex is an immutable characteristic, and is
 42 ascertainable at the earliest stages of human development
 43 through existing medical technology and procedures commonly in
 44 use, including maternal-fetal bloodstream DNA sampling,
 45 amniocentesis, chorionic villus sampling or "CVS," and medical
 46 sonography. In addition to medically assisted sex-determinations
 47 carried out by medical professionals, a growing sex-
 48 determination niche industry has developed and is marketing low-
 49 cost commercial products, widely advertised and available, that
 50 aid in the sex determination of an unborn child without the aid
 51 of medical professionals. Experts have demonstrated that the
 52 sex-selection industry is on the rise and predict that it will
 53 continue to be a growing trend in the United States. Sex
 54 determination is always a necessary step to the procurement of a
 55 sex-selection abortion, and

56 WHEREAS, a "sex-selection abortion" is an abortion
 57 undertaken for purposes of eliminating an unborn child of an
 58 undesired sex. Sex-selection abortion is barbaric, and described
 59 by scholars and civil rights advocates as an act of sex-based or
 60 gender-based violence predicated on sex discrimination. By
 61 definition, sex-selection abortions do not implicate the health
 62 of the mother of the unborn, but instead are elective procedures
 63 motivated by sex or gender bias, and

64 WHEREAS, the targeted victims of sex-selection abortions
 65 performed in the United States and worldwide are overwhelmingly
 66 female. The selective abortion of females is female infanticide,
 67 the intentional killing of unborn females, due to the preference
 68 for male offspring or "son preference." Son preference is
 69 reinforced by the low value associated, by some segments of the
 70 world community, with female offspring. Those segments tend to
 71 regard female offspring as financial burdens to a family over
 72 their lifetime due to their perceived inability to earn or
 73 provide financially for the family unit as can a male. In
 74 addition, due to social and legal convention, female offspring
 75 are less likely to carry on the family name. "Son preference" is
 76 one of the most evident manifestations of sex or gender
 77 discrimination in any society, undermining female equality, and
 78 fueling the elimination of females' right to exist in instances
 79 of sex-selection abortion, and

80 WHEREAS, sex-selection abortions are not expressly
 81 prohibited by United States law and the laws of 48 states. Sex-
 82 selection abortions are performed in the United States. In a
 83 March 2008 report published in the Proceedings of the National

84 Academy of Sciences, Columbia University economists Douglas
 85 Almond and Lena Edlund examined the sex ratio of United States-
 86 born children and found "evidence of sex selection, most likely
 87 at the prenatal stage." The data revealed obvious "son
 88 preference" in the form of unnatural sex-ratio imbalances within
 89 certain segments of the United States population, primarily
 90 those segments tracing their ethnic or cultural origins to
 91 countries where sex-selection abortion is prevalent. The
 92 evidence strongly suggests that some Americans are exercising
 93 sex-selection abortion practices within the United States
 94 consistent with discriminatory practices common to their country
 95 of origin, or the country to which they trace their ancestry.
 96 While sex-selection abortions are more common outside the United
 97 States, the evidence reveals that female infanticide is also
 98 occurring in the United States, and

99 WHEREAS, the American public supports a prohibition of sex-
 100 selection abortion. In a March 2006 Zogby International poll, 86
 101 percent of Americans agreed that sex-selection abortion should
 102 be illegal, yet only two states have proscribed sex-selection
 103 abortion, and

104 WHEREAS, despite the failure of the United States to
 105 proscribe sex-selection abortion, the United States Congress has
 106 expressed repeatedly, through Congressional resolution, strong
 107 condemnation of policies promoting sex-selection abortion in the
 108 "Communist Government of China." Likewise, at the 2007 United
 109 Nation's Annual Meeting of the Commission on the Status of
 110 Women, 51st Session, the United States' delegation spearheaded a
 111 resolution calling on countries to eliminate sex-selective

112 abortion, a policy directly contradictory to the permissiveness
 113 of current United States' law, which places no restriction on
 114 the practice of sex-selection abortion. The United Nations
 115 Commission on the Status of Women has urged governments of all
 116 nations "to take necessary measures to prevent . . . prenatal
 117 sex selection," and

118 WHEREAS, a 1990 report by Harvard University economist
 119 Amartya Sen estimated that more than 100 million women were
 120 "demographically missing" from the world as early as 1990 due to
 121 sexist practices, including sex-selection abortion. Many experts
 122 believe sex-selection abortion is the primary cause. As of 2008,
 123 estimates of women missing from the world range in the hundreds
 124 of millions, and

125 WHEREAS, countries with longstanding experience with sex-
 126 selection abortion—such as the Republic of India, the United
 127 Kingdom, and the People's Republic of China—have enacted
 128 complete bans on sex-selection abortion, and have steadily
 129 continued to strengthen prohibitions and penalties. The United
 130 States, by contrast, has no law in place to restrict sex-
 131 selection abortion, establishing the United States as affording
 132 less protection from sex-based infanticide than the Republic of
 133 India or the People's Republic of China, whose recent practices
 134 of sex-selection abortion were vehemently and repeatedly
 135 condemned by United States congressional resolutions and by the
 136 United States' Ambassador to the Commission on the Status of
 137 Women. Public statements from within the medical community
 138 reveal that citizens of other countries come to the United
 139 States for sex-selection procedures that would be criminal in

140 their country of origin. Because the United States permits
 141 abortion on the basis of sex, the United States may effectively
 142 function as a "safe haven" for those who seek to have American
 143 physicians do what would otherwise be criminal in their home
 144 countries—a sex-selection abortion, most likely late-term, and

145 WHEREAS, the American medical community opposes sex-
 146 selection abortion. The American College of Obstetricians and
 147 Gynecologists, commonly known as "ACOG," stated in its February
 148 2007 Ethics Committee Opinion, Number 360, that sex-selection is
 149 inappropriate for family planning purposes because sex-selection
 150 "ultimately supports sexist practices." Likewise, the American
 151 Society for Reproductive Medicine has opined that sex-selection
 152 for family planning purposes is ethically problematic,
 153 inappropriate, and should be discouraged, and

154 WHEREAS, sex-selection abortion results in an unnatural
 155 sex-ratio imbalance. An unnatural sex-ratio imbalance is
 156 undesirable, due to the inability of the numerically predominant
 157 sex to find mates. Experts worldwide document that a significant
 158 sex-ratio imbalance in which males numerically predominate can
 159 be a cause of increased violence and militancy within a society.
 160 Likewise, an unnatural sex-ratio imbalance gives rise to the
 161 commoditization of humans in the form of human trafficking, and
 162 a consequent increase in kidnapping and other violent crime, and

163 WHEREAS, sex-selection abortions have the effect of
 164 diminishing the representation of women in the American
 165 population, and therefore, the American electorate, and

166 WHEREAS, sex-selection abortion reinforces sex
 167 discrimination and has no place in a civilized society, and

168 WHEREAS, minorities are a vital part of American society
 169 and culture and possess the same fundamental human rights and
 170 civil rights as the majority, and

171 WHEREAS, United States law prohibits the dissimilar
 172 treatment of persons of different races who are similarly
 173 situated. United States law prohibits discrimination on the
 174 basis of race in various contexts, including the provision of
 175 employment, education, housing, health insurance coverage, and
 176 athletics, and

177 WHEREAS, a "race-selection abortion" is an abortion
 178 performed for purposes of eliminating an unborn child because
 179 the child or a parent of the child is of an undesired race.
 180 Race-selection abortion is barbaric, and described by civil
 181 rights advocates as an act of race-based violence, predicated on
 182 race discrimination. By definition, race-selection abortions do
 183 not implicate the health of mother of the unborn, but instead
 184 are elective procedures motivated by race bias, and

185 WHEREAS, no state has enacted law to proscribe the
 186 performance of race-selection abortions, and

187 WHEREAS, race-selection abortions have the effect of
 188 diminishing the number of minorities in the American population
 189 and therefore, the American electorate, and

190 WHEREAS, race-selection abortion reinforces racial
 191 discrimination and has no place in a civilized society, and

192 WHEREAS, the history of the United States includes examples
 193 of both sex discrimination and race discrimination. The people
 194 of the United States ultimately responded in the strongest
 195 possible legal terms by enacting constitutional amendments

HB 1327

2012

196 correcting elements of such discrimination. Women, once
 197 subjected to sex discrimination that denied them the right to
 198 vote, now have suffrage guaranteed by the Nineteenth Amendment
 199 to the United States Constitution. African-Americans, once
 200 subjected to race discrimination through slavery that denied
 201 them equal protection of the laws, now have that right
 202 guaranteed by the Fourteenth Amendment to the United States
 203 Constitution. The elimination of discriminatory practices has
 204 been and is among the highest priorities and greatest
 205 achievements of American history, and

206 WHEREAS, implicitly approving the discriminatory practices
 207 of sex-selection abortion and race-selection abortion by
 208 choosing not to prohibit them will reinforce these inherently
 209 discriminatory practices, and evidence a failure to protect a
 210 segment of certain unborn Americans because those unborn are of
 211 a sex or racial makeup that is disfavored. Sex-selection and
 212 race-selection abortions trivialize the value of the unborn on
 213 the basis of sex or race, reinforcing sex and race
 214 discrimination, and coarsening society to the humanity of all
 215 vulnerable and innocent human life, making it increasingly
 216 difficult to protect such life. Thus, this state has a
 217 compelling interest in acting—indeed it must act—to prohibit
 218 sex-selection abortion and race-selection abortion, NOW,
 219 THEREFORE,

220
 221 Be It Enacted by the Legislature of the State of Florida:
 222

223 Section 1. This act may be cited as the "Susan B. Anthony
 224 and Frederick Douglass Prenatal Nondiscrimination and Equal
 225 Opportunity for Life Act".

226 Section 2. The Legislature declares that there is no place
 227 for discrimination and inequality in human society in the form
 228 of abortions due to a child's sex or race. Sex-selection and
 229 race-selection abortions are elective procedures that do not in
 230 any way implicate a woman's health. The purpose of this act is
 231 to protect unborn children from prenatal discrimination in the
 232 form of being subjected to an abortion based on the child's sex
 233 or race by prohibiting sex-selection or race-selection
 234 abortions. The intent of this act is not to establish or
 235 recognize a right to an abortion or to make lawful an abortion
 236 that is currently unlawful.

237 Section 3. Subsections (6) through (13) of section
 238 390.0111, Florida Statutes, are renumbered as subsections (7)
 239 through (14), respectively, a new subsection (6) is added to
 240 that section, and present subsections (2) and (10) of that
 241 section are amended, to read:

242 390.0111 Termination of pregnancies.—

243 (2) PERFORMANCE BY PHYSICIAN; REQUIRED AFFIDAVIT.—

244 (a) A ~~No~~ termination of pregnancy may not ~~shall~~ be
 245 performed at any time except by a physician as defined in s.
 246 390.011.

247 (b) A person may not knowingly perform a termination of
 248 pregnancy before that person completes and signs an affidavit
 249 stating that he or she is not performing the termination of
 250 pregnancy because of the child's sex or race and has no

251 | knowledge that the pregnancy is being terminated because of the
 252 | child's sex or race.

253 | (6) SEX AND RACE SELECTION.—

254 | (a) A person may not knowingly do any of the following:

255 | 1. Perform or induce a termination of pregnancy knowing
 256 | that it is sought based on the sex or race of the child or the
 257 | race of a parent of that child.

258 | 2. Use force or the threat of force to intentionally
 259 | injure or intimidate any person for the purpose of coercing a
 260 | sex-selection or race-selection termination of pregnancy.

261 | 3. Solicit or accept moneys to finance a sex-selection or
 262 | race-selection termination of pregnancy.

263 | (b) The Attorney General or the state attorney may bring
 264 | an action in circuit court to enjoin an activity described in
 265 | paragraph (a).

266 | (c) The father of the unborn child who is married to the
 267 | mother at the time she receives a sex-selection or race-
 268 | selection termination of pregnancy, or, if the mother has not
 269 | attained 18 years of age at the time of the termination of
 270 | pregnancy, the maternal grandparents of the unborn child, may
 271 | bring a civil action on behalf of the unborn child to obtain
 272 | appropriate relief with respect to a violation of paragraph (a).
 273 | The court may award reasonable attorney fees as part of the
 274 | costs in an action brought pursuant to this subsection. For the
 275 | purposes of this subsection, "appropriate relief" includes
 276 | monetary damages for all injuries, whether psychological,
 277 | physical, or financial, including loss of companionship and
 278 | support, resulting from the violation.

279 (d) A physician, physician's assistant, nurse, counselor,
 280 or other medical or mental health professional who knowingly
 281 does not report known violations of this subsection to
 282 appropriate law enforcement authorities shall be subject to a
 283 civil fine of not more than \$10,000.

284 (e) A woman on whom a sex-selection or race-selection
 285 termination of pregnancy is performed is not subject to criminal
 286 prosecution or civil liability for any violation of this
 287 subsection or for a conspiracy to violate this subsection.

288 (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in
 289 subsections (3) and (8) ~~(7)~~:

290 (a) Any person who willfully performs, or actively
 291 participates in, a termination of pregnancy procedure in
 292 violation of the requirements of this section commits a felony
 293 of the third degree, punishable as provided in s. 775.082, s.
 294 775.083, or s. 775.084.

295 (b) Any person who performs, or actively participates in,
 296 a termination of pregnancy procedure in violation of the
 297 provisions of this section which results in the death of the
 298 woman commits a felony of the second degree, punishable as
 299 provided in s. 775.082, s. 775.083, or s. 775.084.

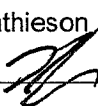

300 Section 4. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 839 Abortion

SPONSOR(S): Davis

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson 	Schoolfield 
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

This bill amends chapter 390, F.S., relating to termination of pregnancies. The bill creates the "Pain-Capable Unborn Child Protection Act," which:

- Requires physicians to make a determination of post fertilization age of a fetus before performing an abortion.
- Prohibits abortions from being performed after the fetus has reached a post fertilization age of 20 weeks, with exceptions for medical necessity or to preserve the life of the unborn.
- Requires physicians that perform abortions to report information relating to the abortion to the Department of Health (DOH).
- Requires DOH to provide a public report containing all of the information reported from abortion providers.
- Establishes criminal and administrative penalties for violating the provisions of this bill relating to the improper performance of an abortion.
- Requires DOH to adopt rules to implement the provisions of the bill.

The bill appears to have no fiscal impact.

The effective date of the bill is July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Fetal Pain

In calendar year 2010, the Department of Health (DOH) reported that there were 214,519 live births in the state of Florida.¹ In the same year, the Agency for Health Care Administration (AHCA) reported that there were a total of 79,908 terminations performed in the state.² Of the total number, 73,883 were performed at a gestational age of 12 weeks or younger, and 6,025 at a gestational age of 13-24 weeks.³

The concept of fetal pain and the capacity of the fetus to recognize pain are the subjects of both ongoing research and significant debate. There are studies that suggest that a fetus may have the physical structures to be capable to feel pain by the gestational age of between 20-24 weeks.⁴ This research focuses on the connection of nociceptors (the central nervous system's pain messengers) in the extremities of the fetal body to the central nervous system.⁵ Researchers have made the following observations:

- The fetus reacts to noxious stimuli in the womb with what would appear to be a recoil response in an adult or child,⁶
- There is an increase in stress hormones in the fetus in response to noxious stimuli,⁷ and
- Fetal anesthesia may be administered to a fetus that is undergoing surgery in the womb, which results in a decrease in fetal stress hormones.⁸

However, there is also research suggesting that despite the presence of such a physical structure within the fetus, it still lacks the capacity to recognize "pain."⁹ Specifically, that the fetus lacks the

¹ Email from AHCA on file with Health and Human Services Committee staff, November 1, 2011.

² *Id.*

³ *Id.*

⁴ See, Laura Myers, Linda Bulich, Philip Hess and Nicole Miller, *Fetal Endoscopic Surgery: Indications and Anaesthetic Management*, 18 BEST PRACTICE & RESEARCH CLINICAL ANAESTHESIOLOGY 231, 241 (June 2004) (first requirement for nociceptors, is the presence of sensory receptors which diffuse throughout the fetus from between 7-14 gestational weeks); K.J.S. Anand and P.R. Hickey, *Pain and its effect in the Human Neonate and Fetus*, 317 NEW ENG. J. MED. 132, 1322 (November, 1987) (Noting that by 20 gestational weeks, sensory receptors have spread to all cutaneous and mucous surfaces of the fetus); Sampsa Vanhatalo and Onno van Nieuwenhuizen, *Fetal Pain?*, 22 BRAIN & DEVELOPMENT 145, 146 (2000) (noting nociceptors have spread across fetal body by 20 gestational weeks).

⁵ See, Phebe Van Scheltema, Sem Bakker, FPHA Vandenbussche and D Oepkes, *Fetal Pain*, 19 FETAL AND MATERNAL MEDICINE REVIEW 311, 313(2008) (noting that the connection is completed with the cortex by gestational week 24-26); Vivette Glover, *Fetal Pain: Implications for Research and Practice*, BR. J. OBSTET. GYNAECOL. 881, 885 (1999) (noting that activation of the thalamic fibres, and connection to the cortex occurs between 17-20 gestational weeks).

⁶ See, Ritu Gupta, Mark Kilby and Griselda Cooper, *Fetal Surgery and Anaesthetic Implications*, 8 CONTINUING EDUCATION IN ANAESTHESIA, CRITICAL CARE AND PAIN 71, 74 (2008) (noting that at 22 gestational weeks, the fetus may respond to painful stimuli); Xenophon Giannakouloupoulos and Waldo Sepulveda, *Fetal Plasma Cortisol and Beta-Endorphin Response to Intrauterine Needling*, 344 LANCET 77, (July, 1994) (noting that fetus reacted with body movement when needled in the womb, in a way that it did not when the placenta was needled).

⁷ See, Kha Tran, *Anaesthesia for Fetal Surgery*, 15 SEMINARS IN FETAL & NEONATAL MEDICINE 40, 44 (2010) (noting that invasive fetal procedures clearly elicit a stress response); Michelle White and Andrew Wolf, *Pain and Stress in the Human Fetus*, 18 BEST PRACTICE & RESEARCH CLINICAL ANAESTHESIOLOGY 205, (June, 2004) (noting that is not known if a fetus can feel pain, but there is a detectable stress response); Myers et al, *supra* note 4, at 242 (noting stress responses from 18 weeks gestation); Giannakouloupoulos et al, *supra* note 6, at 77-81; Gupta et al, *supra* note 6, at 74.

⁸ See, Gupta et al, *supra* note 6, at 74; Giannakouloupoulos et al, *supra* note 6, at 80; Van Scheltema et al, *supra* note 5, at 320; Tran, *supra* note 7, 44. *But see* I. Glenn Cohen and Sadath Sayeed, *Fetal Pain, Viability, and the Constitution*, 39 THE JOURNAL OF LAW, MEDICINE AND ETHICS 235, 239-240 (2011) (noting that just because it is not administered during a termination now, does not mean it may not happen in the future).

anatomical architecture necessary to subjectively experience pain – essentially recognize the stimuli as painful.¹⁰ However, there is some research that suggests a functioning cortex is not necessary to experience pain.¹¹ In a 2005 review of the evidence, the American Medical Association concluded that:

...pain is an emotional and psychological response that requires conscious recognition of a stimulus. Consequently, the capacity for conscious perception of pain can only arise after the thalamocortical pathways begin to function, which may occur in the third trimester around 29-30 weeks gestational age.”¹²

In a 2010 review of research and recommendations for practice, the Royal College of Obstetricians and Gynaecologists of the United Kingdom, noted the following in relation to fetal awareness:

Connections from the periphery to the cortex are not intact before 24 weeks of gestation. Most pain neuroscientists believe that the cortex is necessary for pain perception; cortical activation correlates strongly with pain experience and an absence of cortical activity generally indicates an absence of pain experience. The lack of cortical connections before 24 weeks, therefore, implies that pain is not possible until after 24 weeks. Even after 24 weeks, there is continuing development and elaboration of intracortical networks.¹³

Anaesthesia is routinely administered to the fetus, the mother or both, during pre-natal surgery.¹⁴ As noted previously, research has shown that there is a corresponding reduction in the production of stress hormones in the fetus when anaesthesia is used.¹⁵

The “Pain-Capable Unborn Child Protection Act” is model legislation that prohibits abortion after 20 weeks postfertilization age based on the scientific evidence mentioned above. This has been passed by Alabama, Idaho, Kansas, Nebraska and Oklahoma.¹⁶ In addition to these states, Alaska, Arkansas, Georgia, Indiana, Louisiana, Michigan, Mississippi, South Dakota, Texas and Utah require providers to give women either written or verbal information regarding fetal pain to women seeking an abortion.¹⁷

⁹ See Stuart Derbyshire, *Foetal Pain*, 24 BEST PRACTICE & RESEARCH CLINICAL OBSTETRICS & GYNAECOLOGY 647, (October, 2010) (noting that the capacity to feel pain requires conceptual subjectivity, which a fetus may not have); Curtis Lowery, Mary Hardman, Nirvana Manning, Barbara Clancy, Whit Hall and K.J.S. Anand, *Neurodevelopmental Changes of Fetal Pain*, 31 SEMINARS IN PERINATOLOGY 275, (October, 2007) (noting the difference between a cortical response to pain, which occurs at 29-30 gestational weeks); Van Scheltema et al, *supra* note 5, 313 (the presence of anatomical structures alone is insufficient to demonstrate a capacity to feel pain).

¹⁰ Susan Lee, Henry Ralston, Eleanor Drey, John Partridge and Mark Rosen, *Fetal Pain. A Systematic Multidisciplinary Review of the Evidence*, 294 JAMA 947, 949 (August 2005).

¹¹ See, Van Scheltema et al, *supra* note 5; B. Merker, *Consciousness without a cerebral cortex: A challenge for neuroscience and medicine*, 30 BEHAVIOURAL AND BRAIN SCIENCES 63-81 (2007) ; Stuart Derbyshire, *supra* note 9.

¹² Lee et al *supra* note 10, at 952.

¹³ Royal College of Obstetricians and Gynaecologists. *Fetal Awareness: Review of Research and Recommendations for Practice*. London: RCOG Press; 2010, 11.

¹⁴ See, Myers, et al., *supra* note 4; Van Scheltema, et al., *supra* note 5; Tran, *supra* note 7.

¹⁵ *Supra* note 8.

¹⁶ See, Alabama, ALA. CODE s. 26-23B-1 (2011); Idaho, IDAHO CODE ANN. s.18-501 (2011); Kansas, KAN. STAT. ANN s. 65-6724 (2011); Nebraska, NEB. REV. ST., s. 28-3102 (2011); Oklahoma, 63 OKL. ST. ANN. s. 1-745.1 (2011). The Idaho law was subject to a constitutional challenge, but dismissed for lack of standing. See, *McCormack v. Hiedeman*, 2011cv00397, (D. Idaho, September 23, 2011). However, a class action suit has been filed. See, *McCormack v. Hiedeman*, 2011cv00433, (D. Idaho, 2011)

¹⁷ See, Alaska, ALASKA STAT. s. 18.05.032 (2011); Arkansas, ARK. CODE ANN. s. 20-16-1102 (2011); Georgia, GA. CODE ANN. s. 31-9A-3 (2011); Indiana, IND. CODE s. 16-34-2-1.1 (2011); Louisiana, LA. REV. STAT. ANN. s. 40:1299.36.6 (2011); Michigan, MICH. COMP. LAWS s. 333.17015 (2011); Mississippi, MISS. CODE ANN. s. 41-41-43 (2011); South Dakota, S.D. CODIFIED LAWS s. 34-23A-10.1 (2011); Texas, TEX. HEALTH & SAFETY CODE ANN. s. 171.012 (Vernon, 2011); Utah, UTAH CODE ANN. s. 76-7-305 (2011).

Caselaw Related to Abortion

The Viability Standard

In the seminal case regarding abortion, *Roe v. Wade*, the United States Supreme Court established a rigid trimester framework dictating how, if at all, states can regulate abortion.¹⁸ One of the primary holdings in the case was that, in the third trimester, when the fetus is considered viable, the state interest in the life of the child allows it to prohibit abortions as long as the life or health of the mother is not at risk.¹⁹

Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than that of the third trimester, in *Planned Parenthood v. Casey*²⁰ the United States Supreme Court rejected the trimester framework in favor of limiting the states' ability to regulate abortion pre-viability.²¹

Thus, while upholding the underlying holding in *Roe* that states can “[r]egulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[,]”²² the Court determined that the line for this authority should be drawn at “viability,” because “[T]o be sure, as we have said, there may be some medical developments that affect the precise point of viability...but this is an imprecision with tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter.”²³

Furthermore, the Court recognized that “In some broad sense, it might be said that a woman who fails to act before viability has consented to the State’s intervention on behalf of the developing child.”²⁴

The Medical Emergency Exception

In *Doe v. Bolton*, an early United States Supreme Court decision decided around the time of *Roe*, the Supreme Court was faced with determining, among other things, whether a Georgia statute criminalizing abortions (pre- and post-viability) except when determined to be necessary based upon a physician’s “best clinical judgment” was unconstitutionally void for vagueness for inadequately warning a physician under what circumstances an abortion could be performed.²⁵

In its reasoning, the Court agreed with the District Court decision that the exception was not unconstitutionally vague, by recognizing that:

[t]he medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.

This broad determination of what constituted a medical emergency was later tested in the *Casey* case, albeit in a different context. One question before the Supreme Court in *Casey* was whether the medical emergency exception to a 24-hour waiting period for an abortion was too narrow in that there were

¹⁸ 410 U.S. 113 (1973).

¹⁹ *Id.* at 164-165.

²⁰ 505 U.S. 833 (1992).

²¹ The standard developed in the *Casey* case was the “undue burden” standard, which provides that a state regulation cannot impose an undue burden on, meaning it cannot place a substantial obstacle in the path of, the woman’s right to choose. *Id.* at 876-79.

²² *See Roe*, 410 U.S. at 164-65.

²³ *See Casey*, 505 U.S. at 870.

²⁴ *Id.*

²⁵ 410 U.S. 179 (1973) Other exceptions, such as in cases of rape and when, “The fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect.” *Id.* at 183. *See also, U.S. v. Vuitch*, 402 U.S. 62, 71-72 (1971)(determining that a medical emergency exception to a criminal statute banning abortions would include consideration of the mental health of the pregnant woman).

some potentially significant health risks that would not be considered “immediate.”²⁶ The exception in question provided that a medical emergency is:

[t]hat condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.²⁷

In evaluating the more objective standard under which the physician is to determine the existence of a medical emergency, the Court in *Casey* determined that the exception would not significantly threaten the life and health of a woman and imposed no undue burden on the woman’s right to choose.²⁸

Since *Casey*, the scope of the medical emergency exception, particularly whether the broader requirement in *Doe* that the woman’s mental health should be considered, is not entirely settled. For example, in 1997, the Sixth Circuit Court of Appeal, which is not binding on Florida, affirmed a United States District Court case wherein the trial court determined an Ohio statute restricting post-viability abortions was unconstitutional for, among other reasons, failure to include a medical emergency exception that incorporates the mental health of the mother.²⁹

The United States Supreme Court denied the petition for writ of certiorari³⁰ on March 23, 1998;³¹ however, Justice Thomas, with whom Justices Scalia and the Chief Justice joined, wrote a strong dissenting opinion within which Justice Thomas claimed that the 6th Circuit Court of Appeal, “[w]renched this Court’s prior statements out of context in finding the statute’s mental health exception constitutionally infirm.” Justice Thomas recognized that the 6th Circuit used dicta within the *Doe v. Bolton*³² opinion to stand for the proposition a similar medical emergency exception approved in the later decided *Casey* case requires a mental health exception.

Even more recently, in *Gonzales v. Carhart*,³³ the United States Supreme Court upheld a federal law banning partial birth abortions which did not include a medical emergency exception. Justice Kennedy’s opinion for the Court acknowledged that, “The law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community.”³⁴

The United States Supreme Court has not yet had a case regarding regulation of abortion in consideration of fetal pain; however, in *Gonzalez v. Carhart*, the Supreme Court recognized that, “The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty.”³⁵

²⁶ *Id.* at 880. The Court also considered a medical emergency exception related to informed consent requirements in pre-viability cases. Some courts have construed the Court’s reasoning in *Casey* to require a mental health component to the medical emergency exception for obtaining informed consent because the Court recognized that psychological well-being is a facet of health and it is important that a woman comprehend the full consequences of her decision so as to reduce the risk that the woman will later discover that the decision was not fully informed, which could cause significant psychological consequences. *Id.* at 881-885.

²⁷ *Id.* at 879.

²⁸ *Id.* at 880.

²⁹ See *Voinovich v. Women’s Medical Professional Corporation*, 130 F.3d 187 (6th Cir. 1997).

³⁰ Which means that the Court declined to take up the issue on appeal.

³¹ See *Voinovich v. Women’s Medical Professional Corporation*, 523 U.S. 1036 (1998).

³² 410 U.S. 179 (1973).

³³ 550 U.S. 124 (2007).

³⁴ *Id.* at 163.

³⁵ *Id.* (Citations Omitted).

Applicable Florida Caselaw

Article I, Section 23 of the Florida Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."³⁶

In *In re T.W.* the Florida Supreme Court, determined that

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.³⁷

The court recognized that after viability, the state can regulate abortion in the interest of the unborn so long as the mother's health is not in jeopardy.³⁸

In *Womancare of Orlando v. Agwunobi*,³⁹ an almost identical medical emergency exception to that in the *Casey* case was upheld when Florida's parental notification statute was challenged.⁴⁰ Florida's parental notification statute, s. 390.01114, F.S., defines medical emergency as, "a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function."

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Additionally, any laws enacted for the purpose of creating a public records exemption must be in a separate bill related solely to creating the exemption.⁴¹

Limits on Abortion

Florida law prohibits abortions in the third trimester⁴² of pregnancy unless the abortion is performed as a medical necessity.⁴³ Current law provides that if an abortion is performed during viability,⁴⁴ the person

³⁶ See *In re T.W.*, 551 So.2d 1186, 1192 (Fla. 1989)(holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

³⁷ *Id.* at 1193-94.

³⁸ *Id.* at 1194.

³⁹ 448 F.Supp. 2d 1293, 1301 N.D. Fla. (2005).

⁴⁰ One of the underlying issues in the case was whether the parenting notice statute was unconstitutionally vague in that it allegedly failed to give physicians adequate guidance about when the medical emergency provision applies. It was this question for which the court determined that the medical emergency definition was sufficient. The medical emergency provision applies as an exception to obtaining parental notice.

⁴¹ Section 24(c), Art. I of the State Constitution.

⁴² In Florida, the third trimester is defined as the weeks of pregnancy after the 24th week (weeks 25-birth).⁴² However, AHCA data indicates that of the 125 abortions performed in the 25th week or after in 2009, 121 of them were elective, i.e., not for a medical emergency. Although Florida defines the third trimester as any week after the 24th week of pregnancy, the American Congress of

that performs the abortion must use the degree of professional, skill, care, and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. A person who violates either of these provisions commits a third degree felony.⁴⁵ In regards to preserving the life of the fetus when an abortion is performed during viability, the woman's life and health are considered to be an overriding and superior consideration in making this determination.⁴⁶

Current law provides no express cause of action related to abortion, except for partial birth abortions.⁴⁷

Informed Consent Requirements

Current law provides that prior to the performance of any abortion, the physician who is to perform the abortion, or a referring physician, must inform the patient of:

- The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of the probable gestational age of the fetus.
- The probable gestational age of the fetus at the time the termination of pregnancy is to be performed, as determined by an ultrasound.
- The medical risks to the woman and fetus of carrying the pregnancy to term.⁴⁸

The patient must acknowledge in writing that this information has been provided to her before she gives informed consent for an abortion.⁴⁹ This information is not required to be provided if the abortion is being performed because of a medical emergency.⁵⁰ The method of determining the probable gestational age as required above, is specified in law as an ultrasound.⁵¹ Failure to meet this requirement can result in a fine imposed by AHCA and other administrative penalties, as defined in s. 408.831, F.S.⁵² Physicians who fail to inform the patient of the provisions described above are subject to disciplinary action.⁵³

Reporting Requirements

Currently, facilities that perform abortions are required to submit a monthly report to AHCA that contains the number of abortions performed, the reason for the abortion, and the gestational age of the fetus.⁵⁴ The agency is required to keep this information in a central location from which statistical data can be drawn.⁵⁵ If the abortion is performed in a location other than an abortion clinic, the physician who performed the abortion is responsible for reporting the information.⁵⁶ The reports are confidential

Obstetricians and Gynecologists list the third trimester as weeks 29-40; the second trimester as weeks 14-28; and the first trimester as weeks 0-13. First and Second trimester abortions are currently permitted in Florida without limitations except that certain informed consent and parental notice, where applicable, requirements must be met prior to an abortion being performed unless that is a medical emergency.

⁴³ S. 390.0111(1), F.S.

⁴⁴ Viability is defined in s. 390.0111(4), F.S. as the state of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb.

⁴⁵ A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined by the court to be a habitual offender, the term of imprisonment shall not exceed 10 years. Ss. 775.082, 775.083, 775.084, F.S.

⁴⁶ S. 390.0111(4), F.S.

⁴⁷ F.S. 390.0111(11), F.S.

⁴⁸ S. 390.0111(3)(a), F.S.

⁴⁹ S. 390.0111(3)3., F.S.

⁵⁰ S. 390.0111(3)(a), F.S.

⁵¹ SS. 390.0111(3)(a)1.b.(I)-(IV), F.S.

⁵² S. 390.018, F.S.

⁵³ A violation of this is subject to disciplinary action under s. 458.0331, F.S., for Medical Doctors or s. 459.015, F.S., for Osteopathic Physicians.

⁵⁴ S. 390.0112 (1), F.S.

⁵⁵ *Id.*

⁵⁶ S. 390.0112(2), F.S.

and exempt from public records requirements.⁵⁷ Fines may be imposed for violations of the reporting requirements.⁵⁸ Currently AHCA collects and maintains the data but is not required to report it.

Effect of Proposed Changes

The bill creates the "Pain-Capable Unborn Child Protection Act." The Act contains legislative findings that:

- By 20 weeks after fertilization, there is substantial evidence that an unborn child has the physical structures necessary to experience pain.
- By 20 weeks after fertilization, there is substantial evidence that unborn children seek to evade certain stimuli in a manner that would be interpreted as a response to pain in an infant or an adult.
- Anesthesia is routinely administered to unborn children who are aged 20 weeks postfertilization and older who undergo prenatal surgery.
- Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli and these responses were reduced when pain medication was administered.
- The state has a compelling state interest in protecting the lives of unborn children from the state at which substantial medical evidence indicates that they are capable of feeling pain.

Limit on Abortion

The bill prohibits a person from performing or attempting⁵⁹ to perform an abortion if it has been determined that the probable post fertilization age of the fetus is 20 or more weeks. An exception is provided if, in reasonable medical judgment,⁶⁰ a medical emergency⁶¹ exists. The bill clarifies that such a condition cannot be considered if it is based on a claim or diagnosis that the patient will engage in conduct that would result in her death or the substantial and irreversible physical impairment of a major bodily function. The bill also provides an exception allowing an abortion to be performed after 20 weeks postfertilization age if it is necessary to preserve the life of an unborn child.⁶²

The bill requires that a physician determine the probable postfertilization⁶³ age of the fetus prior to performing an abortion, or to rely on the determination of postfertilization age from another physician. The bill defines postfertilization age as the age of an unborn child as calculated from the fertilization of the human ovum.⁶⁴ In determining the age, the bill requires the physician to make inquiries of the patient and to perform medical examinations and tests that the physician would consider necessary to making an accurate determination of postfertilization age. The bill authorizes disciplinary action⁶⁵ for any physician that fails to comply with these provisions.

If an abortion is performed at a postfertilization age of 20 weeks or more, the physician must perform the abortion in a manner that provides the best opportunity for the unborn child to survive, unless it

⁵⁷ S. 390.0112(3), F.S.

⁵⁸ S. 390.0112(4), F.S.

⁵⁹ The bill defines "attempt to perform or induce abortion" as "an act, or an omission of a statutorily required act, that, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion."

⁶⁰ Reasonable medical judgment is defined in the bill as "a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved."

⁶¹ Medical emergency is defined in the bill as "a condition in which the abortion is necessary to prevent death, or prevent substantial and irreversible physical impairment of a major bodily function."

⁶² An unborn child or fetus is defined in the bill as "an individual organism of the species homo sapiens from fertilization until live birth."

⁶³ Currently, Florida law uses gestational age as a baseline for abortion regulations and restrictions whereas this bill restricts abortion based on "postfertilization age." Postfertilization age is calculated from the fertilization of the human ovum (egg), while gestational age is calculated upon the first day of the pregnant woman's last menstrual cycle.

⁶⁴ An ovum is defined as the female sex cell, when fertilized by a spermatozoon (the male sex cell), an ovum is capable of developing into a new individual of the same species. Stedmans Medical Dictionary ovum (27th ed. 2000).

⁶⁵ A violation of this is subject to disciplinary action under s. 458.0331 or s. 459.015, F.S.

would provide greater risk of the mother's death or the substantial and irreversible impairment of the mother's major bodily functions than would other available methods. This risk cannot be considered based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function. Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of the provisions in this paragraph commits a third degree felony.⁶⁶ A penalty cannot be assessed against the patient on whom the abortion was performed or attempted.

Cause of Action

The bill provides a private cause of action for any woman upon whom an abortion was performed in intentional or reckless violation of the provisions of the paragraph above, or the father of the unborn child who was aborted, against the person who performed the abortion for actual damages. Any woman upon whom an abortion was attempted in intentional or reckless violation of the paragraph above may sue for actual damages.

The woman upon whom the abortion was performed may bring a cause of action for injunctive relief against any person who has intentionally violated this section. The cause of action may also be maintained by a spouse, parent, sibling, guardian, or current or former licensed health care provider of the woman, or by the Attorney General or a state attorney with appropriate jurisdiction. The bill provides that an injunction granted under these circumstances will prevent the violator from performing or attempting to perform any more prohibited abortions in this state.

The bill provides that if judgment is rendered in favor of the plaintiff in any action described above, the court shall render a judgment for attorney's fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the lawsuit was frivolous and brought in bad faith, the court shall render a judgment for attorney's fees in favor of the defendant against the plaintiff. Neither damages nor attorney's fees may be assessed against a woman upon whom an abortion was performed or attempted unless the court finds that the suit was frivolous and brought in bad faith.

The bill requires the court to determine, in any civil or criminal proceeding or action brought, if the woman upon whom an abortion was performed or attempted shall be kept anonymous from the public, if she does not give her consent to such disclosure. If the court determines that the woman should remain anonymous, they must issue orders to seal the court records as well as exclude individuals from the courtroom or hearing rooms as necessary to protect her identity. The court orders must also include specific written findings as to the necessity for protecting the identity of the woman; why the order is essential to that end; how the order is narrowly tailored to protect her identity; and why no reasonable less restrictive alternative for protecting her identity exists. If a woman whom an abortion was performed or attempted does not give her consent for public disclosure of her identity, anyone other than a public official that brings a court action, shall do so under a pseudonym. The bill clarifies that the identity of the plaintiff will not conceal the identity of the plaintiff or witnesses from the defendant or attorneys for the defendant.

Reporting Requirements

The bill provides reporting requirements for physicians that perform abortions. The following information must be reported to DOH on a schedule and in accordance with forms and rules adopted by DOH:

- If a determination of probable postfertilization age⁶⁷ was required to be made, the probable postfertilization age, and the method and basis of the determination.

⁶⁶ A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined by the court to be a habitual offender, the term of imprisonment shall not exceed 10 years. Ss. 775.082, 775.083, 775.084, F.S.

⁶⁷ According to this bill, probable postfertilization age of the unborn child means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time an abortion is planned to be performed.

- If a determination was not required to be made, the basis of the determination that a medical emergency existed.
- If the probable postfertilization age was determined to be 20 weeks or more, the basis for the determination that the pregnant woman had a condition that so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function; or the basis for determining that the abortion was necessary to preserve the life of an unborn child.
- The abortion method used and, if the abortion was after 20 weeks postfertilization age, whether the abortion method was one that, based on reasonable medical judgment, provided the best opportunity for the unborn child to survive. If such a method was not used, the basis of determination that the abortion method used would pose a greater risk of either death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman than other available methods.

The bill provides that the failure of a physician to report this information 30 days passed the due date, as determined by DOH, will result in a late fee of \$500 for each additional 30-day period, or portion of a 30-day period that the report is overdue. A physician that fails to provide a report, or provides an incomplete report, 1 year after the due date, may be directed by a court of competent jurisdiction to submit a complete report within a time period stated by the court, or be subject to civil contempt.⁶⁸ A physician that fails to comply with these requirements is also subject to disciplinary action under ss. 458.331 or 459.015. Intentional or reckless falsification of any of the required reports results in a second degree misdemeanor.⁶⁹

The bill requires DOH to issue a public report providing statistics for the previous calendar year compiled from all of the information reported as required by physicians that perform abortions and described above. The report is required to be provided by June 30 of each year. The report must also contain the reports of each previous year's report, adjusted to reflect any late or corrected information. The department must ensure that the information included in the report does not lead to the identification of any woman upon whom an abortion was performed.

Finally, the bill requires DOH to adopt rules to necessary to comply with the requirements set forth in the bill. DOH must adopt the rules within 90 days after the effective date of this bill. The effective date for the bill is July 1, 2012.

B. SECTION DIRECTORY:

- Section 1:** Creates an unnumbered section of law, designating the "Pain-Capable Unborn Child Protection Act."
- Section 2:** Creates an unnumbered section of law related to legislative findings.
- Section 3:** Amends s. 390.011, F.S., relating to definitions.
- Section 4:** Amends s. 390.0111, F.S., relating to termination of pregnancies.
- Section 5:** Amends s. 765.113, F.S., relating to restrictions on providing consent.
- Section 6:** Creates an unnumbered section of law, requiring rulemaking by the Department of Health.
- Section 7:** Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁶⁸ Civil contempt is the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court. *See* 16 Fla. Prac., Sentencing § 13:6 (2010-2011 ed.).

⁶⁹ A second degree misdemeanor is punishable by a fine not exceeding \$500 or imprisonment not exceeding 60 days. Ss. 775.082, 775.083, F.S.

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:

The bill may implicate Art. I, Section 23, of the Florida Constitution, which provides for an express right to privacy. While the Florida Supreme Court recognized the State's compelling interest in regulating abortion post-viability in *In re T.W.*, 551 So.2d 1186 (1989), the issue of regulating abortions in consideration of fetal pain has not been before the Florida Supreme Court or the United States Supreme Court.

B. RULE-MAKING AUTHORITY:

The bill requires DOH to promulgate rules to implement the provisions of this bill. They are required to develop the applicable rules within 90 days of the effective date of the bill, which is July 1, 2012. The bill provides sufficient rule-making authority to DOH and AHCA to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an exception for an abortion that can be performed after 20 weeks post fertilization age, if the abortion is necessary to preserve the life of the unborn child. Florida law defines "abortion" as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus. Therefore, in the case of the exception described above, it would not be considered an abortion, as defined in Florida law.

House Bill 277 provides a definition for medical emergency that is amended into the same sections of law, but is different from the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to abortion; providing a short title;
 3 providing legislative findings; amending s. 390.011,
 4 F.S.; providing definitions; amending s. 390.0111,
 5 F.S.; requiring a physician performing or inducing an
 6 abortion to first make a determination of the probable
 7 postfertilization age of the unborn child; providing
 8 an exception; providing for disciplinary action
 9 against noncompliant physicians; prohibiting an
 10 abortion if the probable postfertilization age of the
 11 woman's unborn child is 20 or more weeks; providing an
 12 exception; providing recordkeeping and reporting
 13 requirements for physicians; providing for rulemaking;
 14 requiring an annual report by the Department of
 15 Health; providing financial penalties for late
 16 reports; providing for civil actions to require
 17 reporting; providing for disciplinary action against
 18 noncompliant physicians; providing criminal penalties
 19 for intentional or reckless falsification of a report;
 20 providing criminal penalties for any person who
 21 intentionally or recklessly performs or attempts to
 22 perform an abortion in violation of specified
 23 provisions; providing that a penalty may not be
 24 assessed against a woman involved in such an abortion
 25 or attempt; providing for civil actions by certain
 26 persons for intentional or reckless violations;
 27 providing for actions for injunctive relief by certain
 28 persons for intentional violations; providing for

29 award of attorney fees in certain circumstances;
 30 requiring that in every civil or criminal proceeding
 31 or action brought under the court rule on whether the
 32 anonymity of any woman upon whom an abortion was
 33 performed or attempted shall be preserved from public
 34 disclosure if she does not give her consent to such
 35 disclosure; requiring specified findings if a court
 36 determines that the anonymity of the woman should be
 37 preserved from public disclosure; conforming cross-
 38 references; amending s. 765.113, F.S.; conforming a
 39 cross-reference; requiring rulemaking by the
 40 Department of Health by a specified date; providing an
 41 effective date.

42

43 Be It Enacted by the Legislature of the State of Florida:

44

45 Section 1. This act may be cited as the "Pain-Capable
 46 Unborn Child Protection Act."

47 Section 2. The Legislature finds that:

48 (1) By 20 weeks after fertilization there is substantial
 49 evidence that an unborn child has the physical structures
 50 necessary to experience pain.

51 (2) There is substantial evidence that, by 20 weeks after
 52 fertilization, unborn children seek to evade certain stimuli in
 53 a manner that in an infant or an adult would be interpreted as a
 54 response to pain.

55 (3) Anesthesia is routinely administered to unborn
 56 children who have developed 20 weeks or more past fertilization
 57 who undergo prenatal surgery.

58 (4) Even before 20 weeks after fertilization, unborn
 59 children have been observed to exhibit hormonal stress responses
 60 to painful stimuli. Such responses were reduced when pain
 61 medication was administered directly to such unborn children.

62 (5) This state has a compelling state interest in
 63 protecting the lives of unborn children from the stage at which
 64 substantial medical evidence indicates that they are capable of
 65 feeling pain.

66 Section 3. Section 390.011, Florida Statutes, is amended
 67 to read:

68 390.011 Definitions.—As used in this chapter, the term:

69 (1) "Abortion" means the termination of human pregnancy
 70 with an intention other than to produce a live birth or to
 71 remove a dead fetus.

72 (2) "Abortion clinic" or "clinic" means any facility in
 73 which abortions are performed. The term does not include:

74 (a) A hospital; or

75 (b) A physician's office, provided that the office is not
 76 used primarily for the performance of abortions.

77 (3) "Agency" means the Agency for Health Care
 78 Administration.

79 (4) "Attempt to perform or induce an abortion" means an
 80 act, or an omission of a statutorily required act, that, under
 81 the circumstances as the person believes them to be, constitutes
 82 a substantial step in a course of conduct planned to culminate

83 in the performance or induction of an abortion.

84 ~~(5)(4)~~ "Department" means the Department of Health.

85 (6) "Fertilization" means the fusion of a human
 86 spermatozoon with a human ovum.

87 ~~(7)(5)~~ "Hospital" means a facility as defined in s.
 88 395.002(12) and licensed under chapter 395 and part II of
 89 chapter 408.

90 (8) "Medical emergency" means a condition that, in
 91 reasonable medical judgment, so complicates the medical
 92 condition of the pregnant woman as to necessitate the immediate
 93 termination of her pregnancy to avert her death or for which a
 94 delay will create a serious risk of substantial and irreversible
 95 physical impairment of a major bodily function. A condition is
 96 not a medical emergency if it is based on a claim or diagnosis
 97 that the woman will engage in conduct that would result in her
 98 death or in substantial and irreversible physical impairment of
 99 a major bodily function.

100 ~~(9)(6)~~ "Partial-birth abortion" means a termination of
 101 pregnancy in which the physician performing the termination of
 102 pregnancy partially vaginally delivers a living fetus before
 103 killing the fetus and completing the delivery.

104 ~~(10)(7)~~ "Physician" means a physician licensed under
 105 chapter 458 or chapter 459 or a physician practicing medicine or
 106 osteopathic medicine in the employment of the United States.

107 (11) "Postfertilization age" means the age of an unborn
 108 child as calculated from the fertilization of the human ovum.

109 (12) "Probable postfertilization age of the unborn child"
 110 means what, in reasonable medical judgment, will with reasonable

111 probability be the postfertilization age of the unborn child at
 112 the time an abortion is planned to be performed.

113 (13) "Reasonable medical judgment" means a medical
 114 judgment that would be made by a reasonably prudent physician,
 115 knowledgeable about the case and the treatment possibilities
 116 with respect to the medical conditions involved.

117 (14)~~(8)~~ "Third trimester" means the weeks of pregnancy
 118 after the 24th week of pregnancy.

119 (15) "Unborn child" or "fetus" means an individual
 120 organism of the species homo sapiens from fertilization until
 121 live birth.

122 Section 4. A new subsection (1) is added to section
 123 390.0111, Florida Statutes, subsections (1) through (13) of that
 124 section are renumbered as subsections (2) through (14),
 125 respectively, and present subsection (10) and paragraph (b) of
 126 present subsection (11) of that section are amended, to read:

127 390.0111 Termination of pregnancies.—

128 (1) PAIN-CAPABLE UNBORN CHILD PROTECTION.—

129 (a)1. Except in the case of a medical emergency that
 130 prevents compliance with this subsection, an abortion may not be
 131 performed or induced or be attempted to be performed or induced
 132 unless the physician performing or inducing it has first made a
 133 determination of the probable postfertilization age of the
 134 unborn child or relied upon such a determination made by another
 135 physician. In making such a determination, a physician shall
 136 make such inquiries of the pregnant woman and perform or cause
 137 to be performed such medical examinations and tests as a
 138 reasonably prudent physician, knowledgeable about the case and

139 the medical conditions involved, would consider necessary to
 140 perform in making an accurate diagnosis with respect to
 141 postfertilization age.

142 2. Failure by any physician to conform to any requirement
 143 of this paragraph constitutes grounds for disciplinary action
 144 under s. 458.331 or s. 459.015.

145 (b) A person may not perform or induce or attempt to
 146 perform or induce an abortion upon a woman when it has been
 147 determined, by the physician performing or inducing the abortion
 148 or by another physician upon whose determination that physician
 149 relies, that the probable postfertilization age of the woman's
 150 unborn child is 20 or more weeks unless, in reasonable medical
 151 judgment she has a condition that so complicates her medical
 152 condition as to necessitate the abortion of her pregnancy to
 153 avert her death or to avert serious risk of substantial and
 154 irreversible physical impairment of a major bodily function.
 155 Such a condition may not be deemed to exist if it is based on a
 156 claim or diagnosis that the woman will engage in conduct that
 157 would result in her death or in substantial and irreversible
 158 physical impairment of a major bodily function. With respect to
 159 this exception, the physician shall terminate the pregnancy in
 160 the manner that, in reasonable medical judgment, provides the
 161 best opportunity for the unborn child to survive, unless, in
 162 reasonable medical judgment, termination of the pregnancy in
 163 that manner would pose a greater risk either of the death of the
 164 pregnant woman or of the substantial and irreversible physical
 165 impairment of a major bodily function of the woman than would
 166 another available method. Such greater risk may not be deemed to

167 exist if it is based on a claim or diagnosis that the woman will
 168 engage in conduct that would result in her death or in
 169 substantial and irreversible physical impairment of a major
 170 bodily function.

171 (c) Any physician who performs or induces or attempts to
 172 perform or induce an abortion shall report to the department, on
 173 a schedule and in accordance with forms and rules and
 174 regulations adopted by the department, the following:

175 1. If a determination of probable postfertilization age
 176 was made, the probable postfertilization age determined and the
 177 method and basis of the determination.

178 2. If a determination of probable postfertilization age
 179 was not made, the basis of the determination that a medical
 180 emergency existed.

181 3. If the probable postfertilization age was determined to
 182 be 20 or more weeks, the basis of the determination that the
 183 pregnant woman had a condition that so complicated her medical
 184 condition as to necessitate the abortion of her pregnancy to
 185 avert her death or to avert serious risk of substantial and
 186 irreversible physical impairment of a major bodily function, or
 187 the basis of the determination that it was necessary to preserve
 188 the life of an unborn child.

189 4. The method used for the abortion and, in the case of an
 190 abortion performed when the probable postfertilization age was
 191 determined to be 20 or more weeks, whether the method of
 192 abortion used was one that, in reasonable medical judgment,
 193 provided the best opportunity for the unborn child to survive
 194 or, if such a method was not used, the basis of the

195 determination that termination of the pregnancy in that manner
 196 would pose a greater risk either of the death of the pregnant
 197 woman or of the substantial and irreversible physical impairment
 198 of a major bodily function of the woman than would other
 199 available methods.

200 (d) By June 30 of each year, the department shall issue a
 201 public report providing statistics for the previous calendar
 202 year compiled from all of the reports covering that year
 203 submitted in accordance with paragraph (c). Each such report
 204 shall also provide the statistics for all previous calendar
 205 years during which this subsection was in effect, adjusted to
 206 reflect any additional information from late or corrected
 207 reports. The department shall take care to ensure that none of
 208 the information included in the public reports could reasonably
 209 lead to the identification of any pregnant woman upon whom an
 210 abortion was performed.

211 (e) Any physician who fails to submit a report under
 212 paragraph (c) by the end of 30 days after the due date shall be
 213 subject to a late fee of \$500 for each additional 30-day period
 214 or portion of a 30-day period the report is overdue. Any
 215 physician required to report in accordance with this subsection
 216 who has not submitted a report, or has submitted only an
 217 incomplete report, more than 1 year after the due date, may be
 218 directed by a court of competent jurisdiction to submit a
 219 complete report within a time period stated by court order or be
 220 subject to civil contempt. Failure by any physician to conform
 221 to any requirement of this subsection constitutes grounds for
 222 disciplinary action under s. 458.331 or s. 459.015. Intentional

223 or reckless falsification of any report required under paragraph
 224 (c) is a misdemeanor of the second degree, punishable as
 225 provided in s. 775.082 or s. 775.083.

226 (f) Any person who intentionally or recklessly performs or
 227 attempts to perform an abortion in violation of paragraph (b)
 228 commits a felony of the third degree, punishable as provided in
 229 s. 775.082, s. 775.083, or s. 775.084. A penalty may not be
 230 assessed against the woman upon whom the abortion was performed
 231 or attempted to be performed.

232 (g)1. Any woman upon whom an abortion was performed in
 233 violation of this subsection or the father of the unborn child
 234 who was the subject of such an abortion may maintain an action
 235 against the person who performed the abortion in an intentional
 236 or a reckless violation of this subsection for actual damages.
 237 Any woman upon whom an abortion was attempted in violation of
 238 this subsection may maintain an action against the person who
 239 attempted to perform the abortion in an intentional or a
 240 reckless violation of this subsection for actual damages.

241 2. The woman upon whom an abortion was performed or
 242 attempted in violation of this subsection has a cause of action
 243 for injunctive relief against any person who has intentionally
 244 violated this subsection. Such a cause of action may also be
 245 maintained by a spouse, parent, sibling, guardian, or current or
 246 former licensed health care provider of such a woman or by the
 247 Attorney General or a state attorney with appropriate
 248 jurisdiction. An injunction granted under this subparagraph
 249 shall prevent the violator from performing or attempting more
 250 abortions in violation of this subsection in this state.

251 3. If judgment is rendered in favor of the plaintiff in an
 252 action described in this section, the court shall also render
 253 judgment for reasonable attorney fees in favor of the plaintiff
 254 against the defendant.

255 4. If judgment is rendered in favor of the defendant and
 256 the court finds that the plaintiff's suit was frivolous and
 257 brought in bad faith, the court shall also render judgment for
 258 reasonable attorney fees in favor of the defendant against the
 259 plaintiff.

260 5. Neither damages nor attorney fees may be assessed
 261 against the woman upon whom an abortion was performed or
 262 attempted except as provided in subparagraph 4.

263 (h) In every civil or criminal proceeding or action
 264 brought under this subsection, the court shall rule whether the
 265 anonymity of any woman upon whom an abortion was performed or
 266 attempted shall be preserved from public disclosure if she does
 267 not give her consent to such disclosure. The court, upon motion
 268 or sua sponte, shall make such a ruling and, upon determining
 269 that her anonymity should be preserved, shall issue orders to
 270 the parties, witnesses, and counsel and direct the sealing of
 271 the record and exclusion of individuals from courtrooms or
 272 hearing rooms to the extent necessary to safeguard her identity
 273 from public disclosure. Each such order shall be accompanied by
 274 specific written findings explaining why the anonymity of the
 275 woman should be preserved from public disclosure, why the order
 276 is essential to that end, how the order is narrowly tailored to
 277 serve that interest, and why no reasonable less restrictive
 278 alternative exists. In the absence of written consent of the

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279 woman upon whom an abortion was performed or attempted, anyone,
 280 other than a public official, who brings an action under
 281 paragraph (g) shall do so under a pseudonym. This paragraph does
 282 not require the concealment of the identity of the plaintiff or
 283 of witnesses from the defendant or from attorneys for the
 284 defendant.

285 (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in
 286 subsections (1), (4), ~~(3)~~ and (8) ~~(7)~~:

287 (a) Any person who willfully performs, or actively
 288 participates in, a termination of pregnancy procedure in
 289 violation of the requirements of this section commits a felony
 290 of the third degree, punishable as provided in s. 775.082, s.
 291 775.083, or s. 775.084.

292 (b) Any person who performs, or actively participates in,
 293 a termination of pregnancy procedure in violation of the
 294 provisions of this section which results in the death of the
 295 woman commits a felony of the second degree, punishable as
 296 provided in s. 775.082, s. 775.083, or s. 775.084.

297 (12)~~(11)~~ CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
 298 RELIEF.—

299 (b) In a civil action under this section, appropriate
 300 relief includes:

301 1. Monetary damages for all injuries, psychological and
 302 physical, occasioned by the violation of subsection (6) ~~(5)~~.

303 2. Damages equal to three times the cost of the partial-
 304 birth abortion.

305 Section 5. Subsection (2) of section 765.113, Florida
 306 Statutes, is amended to read:

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307 765.113 Restrictions on providing consent.—Unless the
 308 principal expressly delegates such authority to the surrogate in
 309 writing, or a surrogate or proxy has sought and received court
 310 approval pursuant to rule 5.900 of the Florida Probate Rules, a
 311 surrogate or proxy may not provide consent for:



312 (2) Withholding or withdrawing life-prolonging procedures
 313 from a pregnant patient prior to viability as defined in s.
 314 390.0111~~(5)~~~~(4)~~.

315 Section 6. Notwithstanding any other provision of law,
 316 within 90 days after the effective date of this act the
 317 Department of Health shall adopt rules to assist in compliance
 318 with s. 390.0111(1)(c), (d), and (e), Florida Statutes, as
 319 created by this act.

320 Section 7. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 277 Abortions
SPONSOR(S): Burgin
TIED BILLS: IDEN./SIM. **BILLS:** SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson 	Schoolfield 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends ch. 390, F.S., relating to the termination of pregnancies. The bill:

- Expands the category of prohibited terminations in Florida, to include those when the fetus has attained viability.
- Changes the phrase “termination of pregnancy” to abortion throughout Florida Statutes.
- Requires that informed consent be completed 24 hours prior to a procedure.
- Requires all abortion clinics provide conspicuous notice on any advertisements that the clinic is prohibited from performing abortions in the third trimester or after viability and requires the Agency for Health Care Administration (AHCA) to implement a rule to enforce this provision.
- Adds new statutory requirements for all abortion clinics and physicians by requiring 3 hours annual continuing education relating to ethics, requiring a physician to own and operate an abortion clinic, and requiring any abortion performed after viability to be performed in a hospital.
- Transfers the criminal statutory prohibitions found in ss. 797.02 and 797.03, F.S., and conforms them to other changes in the bill.
- Amends current reporting requirements for facilities that perform abortions to conform to standards set by the U.S. Centers for Disease Control.
- Requires AHCA to submit a report, using collected information from abortion clinics or physician’s offices performing abortions, to the U.S. Centers for Disease Control, and also report this information to the Governor and other constitutional officers.
- Repeals the penalty for Partial Birth Abortions, in ch. 782, F.S., relating to homicide, that conflicts with the criminal penalty in ch. 390 F.S.
- Provides a severability clause.

The bill appears to have no fiscal impact.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Abortion

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.¹ A termination of pregnancy must be performed by a physician² licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.³ A person or hospital may object to participation in a termination procedure, without liability for such objection.⁴

In Florida, a termination of pregnancy may not be performed in the third trimester unless there is a medical emergency.⁵ Florida law defines the third trimester to mean the weeks of pregnancy after the 24th.⁶ Medical emergency is a situation in which:

- To a reasonable degree of medical certainty, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman,⁷ and is a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or
- The good faith clinical judgment of the physician, that a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.⁸

A partial birth abortion is a termination of pregnancy in which the physician performing the termination of pregnancy partially vaginally delivers a living fetus before killing the fetus and completing the delivery.⁹ Partial birth abortions are prohibited in the state.¹⁰ There is a statutory exception for such a procedure that is necessary to save the life of a mother who is endangered by a physical disorder, illness or injury, and when no other medical procedure would suffice.¹¹

In 2010, DOH reported that there were 214,519 live births in the state of Florida.¹² For the same time period, AHCA reported that there were 79,908 termination procedures performed in the state.¹³

Regulation of Abortion

The Department of Health (DOH) and professional boards regulate healthcare practitioners under ch. 456, F.S. and various individual practice acts.¹⁴ A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the DOH.¹⁵ Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession

¹ S. 390.011(1), F.S.

² S. 390.0111(2), F.S.

³ S. 390.011(7), F.S.

⁴ S. 390.0111(8), F.S.

⁵ S. 390.0111(1), F.S.

⁶ S. 390.011(7), F.S.

⁷ S. 390.0111(1)(a), F.S.

⁸ S. 390.01114(2)(d), F.S.

⁹ S. 390.011(6), F.S.

¹⁰ S. 390.0111(5), F.S.

¹¹ S. 390.0111(5)(c), F.S.

¹² Email from AHCA on file with Health and Human Services Committee staff, November 1, 2011.

¹³ *Id.*

¹⁴ S. 456.004, F.S.

¹⁵ S. 456.001, F.S.

the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

AHCA licenses and regulates abortion clinics in the state, under ch. 390, F.S., and part II of ch. 408, F.S.¹⁶ There are 68 clinics licensed by the state, the majority of which are owned by entities organized as partnerships or corporations.¹⁷ All abortion clinics and physicians performing abortions are subject to the following requirements:

- A termination can only be performed in a validly licensed hospital, abortion clinic, or in a physician's office.¹⁸
- An abortion clinic must be operated by a person with a valid and current license.¹⁹
- Any third trimester procedure must only be performed in a hospital.²⁰
- No termination shall be performed in the third trimester of pregnancy, unless medically necessary.²¹
- A termination must be performed by a physician as defined in s. 390.011, F.S.²²
- Proper medical care must be given and used for a fetus for a termination performed during viability.²³
- Experimentation on a fetus is prohibited.²⁴
- Except when there is a medical emergency, a termination may only be performed after a patient has given voluntary and written informed consent.²⁵ Consent includes verification of the fetal age via ultrasound imaging.²⁶
- Fetal remains are to be disposed of in a sanitary and appropriate manner.²⁷
- Parental notice must be given 48 hours before performing a termination procedure on a minor,²⁸ unless waived by a parent or otherwise ordered by a judge.

In addition, pursuant to s. 390.012, F.S., AHCA is directed to prescribe standards for abortion clinics that include:

- Adequate private space for interviewing, counseling, and medical evaluations;
- Dressing rooms for staff and patients;
- Appropriate lavatory areas;
- Areas for preprocedure handwashing;
- Private procedure rooms;
- Adequate lighting and ventilation for procedures;
- Surgical or gynaecological examination tables and other fixed equipment;
- Postprocedure recovery rooms that are equipped to meet the patients' needs;
- Emergency exits to accommodate a stretcher or gurney;
- Areas for cleaning and sterilizing instruments;
- Adequate areas for the secure storage of medical records and necessary equipment and supplies; and
- Conspicuous display of the clinic's license.²⁹

Both DOH and AHCA have authority to impose fines or take licensure action against individuals and clinics that are in violation of statutes or rules.³⁰

¹⁶ S. 408.802(3) provides for the applicability of the Health Care Licensing Procedures Act to abortion clinics.

¹⁷ AHCA, Florida Health Finder Report, All Abortion Clinics as of October 31, 2011 (on file with the House Health and Human Services Committee).

¹⁸ S. 797.03 (1), F.S.

¹⁹ S. 797.03 (2), F.S.

²⁰ S. 797.03(3), F.S. The violation of any of these provisions results in a second degree misdemeanor.

²¹ S. 390.0111(1), F.S.

²² S. 390.0111(2), F.S.

²³ S. 390.0111(4), F.S.

²⁴ S. 390.0111(6), F.S.

²⁵ S. 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.

²⁶ S. 390.0111(3)(a)1.b., F.S.

²⁷ S. 390.0111(8), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor.

²⁸ S. 390.01114(3), F.S. A physician who violates this provision is subject to disciplinary action.

²⁹ S. 390.012(3)(a)1., F.S. Rules related to abortion are found in ch. 59A-9, F.A.C.

³⁰ See s. 390.018, F.S.

Data Collection and Reporting Requirements

Currently facilities that perform terminations are required to submit a monthly report to AHCA containing the following:

- Number of abortions performed,
- Reason for performance,³¹ and
- Gestational age of the fetus.³²

AHCA is required to keep this information in a central location from which statistical data can be drawn.³³ If the abortion is performed in a location other than a medical facility, the physician who performed the abortion is responsible for reporting the information to the agency.³⁴ The reports are confidential and exempt from public records requirements.³⁵ Fines may be imposed for violations of the reporting requirements.³⁶

The Centers for Disease Control and Prevention (CDC), compiles statistics voluntarily reported by the 50 states, the District of Columbia and New York City, related to termination of pregnancies to produce a national estimate.³⁷ The last national estimate was completed in 2008.³⁸ The CDC requests the following information from states in the U.S. Standard Report of Induced Termination of Pregnancy:

- Facility name (clinic or hospital);
- City, town or location;
- County;
- Hospital or clinic's patient identification number (used for querying for missing information without identifying the patient);
- Age;
- Marital status;
- Date of termination;
- Residence of patient;
- Ethnicity;
- Race;
- Education attainment;
- Date of last menses;
- Clinical estimate of gestation;
- Previous pregnancy history;
- Previous abortion history;
- Type of abortion procedure; and
- Name of attending physician and name of person completing report.³⁹

The CDC uses this data to provide an annual Abortion Surveillance Report (ASR). The CDC notes that they receive data from some states, but not all.⁴⁰ Currently, Florida only reports the annual number of terminations that occur in the state,⁴¹ and is therefore absent from all but three of the charts in the ASR. For example, the

³¹ AHCA break terminations in the state out into the following classifications for reason: elective; emotional/psychological health of the mother; incest; physical health of mother that is not life endangering; rape; serious fetal genetic defect, deformity, or abnormality; social or economic reasons; or a life endangering physical condition. See "Reported Induced Terminations of Pregnancy, By Reason, By Weeks of Gestation, Florida Jan-Dec 2010, AHCA. (On file with the Health and Human Services Access Subcommittee, November 1, 2011).

³² S. 390.0112 (1), F.S.

³³ *Id.*

³⁴ S. 390.0112(2), F.S.

³⁵ S. 390.0112(3), F.S.

³⁶ S. 390.0112(4), F.S.

³⁷ http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm site accessed January 18, 2012.

³⁸ http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6015a1.htm?s_cid=ss6015a1_w site accessed January 18, 2012.

³⁹ Centers for Disease Control, Handbook on the Reporting of Induced Termination of Pregnancy, www.cdc.gov/nchs/data/misc/hb_itop.pdf site accessed January 18, 2012.

⁴⁰ The 2008 data set did not include California, Florida, Maryland, New Hampshire, or Wyoming.

http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6015a1.htm?s_cid=ss6015a1_w site accessed January 18, 2012.

⁴¹ www.cdc.gov/nchs/data/misc/hb_itop.pdf site accessed January 18, 2012.

following chart illustrates reported abortions by known age group and reporting area of occurrence. No information from Florida is presented because the state neither collects, nor reports such data.⁴²

State/Area	Age group (yrs)														Total abortions reported by known age	
	<15		15--19		20--24		25--29		30--34		35--39		≥40		No.	% of all reported abortions
	No.	(%)†	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)		
Alabama	105	(0.9)	1,965	(17.4)	3,886	(34.5)	2,818	(25.0)	1,485	(13.2)	793	(7.0)	216	(1.9)	11,268	(100.0)
Alaska	13	(0.7)	340	(19.4)	583	(33.3)	417	(23.8)	205	(11.7)	140	(8.0)	55	(3.1)	1,753	(99.7)
Arizona	67	(0.6)	1,772	(17.2)	3,610	(35.0)	2,384	(23.1)	1,311	(12.7)	871	(8.4)	308	(3.0)	10,323	(96.8)
Arkansas	48	(1.0)	818	(17.1)	1,532	(32.0)	1,136	(23.8)	704	(14.7)	398	(8.3)	145	(3.0)	4,781	(99.9)
Colorado	58	(0.5)	2,036	(17.6)	3,978	(34.4)	2,612	(22.6)	1,506	(13.0)	1,010	(8.7)	360	(3.1)	11,560	(99.8)
Connecticut	66	(0.5)	2,576	(18.6)	4,563	(33.0)	3,181	(23.0)	1,914	(13.8)	1,138	(8.2)	389	(2.8)	13,827	(95.7)
Delaware	35	(0.8)	859	(18.7)	1,556	(33.8)	1,130	(24.5)	557	(12.1)	365	(7.9)	101	(2.2)	4,603	(100.0)
District of Columbia¶	13	(0.5)	431	(16.9)	767	(30.0)	632	(24.8)	376	(14.7)	239	(9.4)	95	(3.7)	2,553	(100.0)
Georgia	216	(0.6)	5,208	(14.5)	11,076	(30.9)	9,286	(25.9)	5,642	(15.7)	3,425	(9.5)	1,035	(2.9)	35,888	(100.0)
Hawaii	25	(0.8)	656	(20.1)	1,073	(32.8)	683	(20.9)	419	(12.8)	291	(8.9)	120	(3.7)	3,267	(99.8)
Idaho	---	---	274	(18.5)	511	(34.5)	317	(21.4)	211	(14.2)	118	(8.0)	---	---	1,481	(100.0)
Illinois††	299	(0.7)	7,378	(17.4)	13,130	(31.0)	10,392	(24.5)	6,245	(14.7)	3,815	(9.0)	1,154	(2.7)	42,413	(99.3)
Indiana	60	(0.5)	1,734	(15.9)	3,766	(34.4)	2,627	(24.0)	1,558	(14.3)	901	(8.2)	287	(2.6)	10,933	(99.4)
Iowa	29	(0.4)	1,129	(17.4)	2,259	(34.9)	1,505	(23.2)	801	(12.4)	558	(8.6)	194	(3.0)	6,475	(100.0)
Kansas	58	(0.5)	1,702	(16.1)	3,682	(34.7)	2,561	(24.2)	1,496	(14.1)	845	(8.0)	260	(2.5)	10,604	(100.0)
Kentucky	35	(0.8)	685	(16.0)	1,414	(33.1)	1,036	(24.3)	616	(14.4)	355	(8.3)	128	(3.0)	4,269	(99.9)
Louisiana	60	(0.9)	1,095	(16.3)	2,432	(36.2)	1,675	(25.0)	861	(12.8)	451	(6.7)	139	(2.1)	6,713	(98.5)
Maine	7	(0.3)	467	(17.8)	921	(35.2)	597	(22.8)	323	(12.3)	238	(9.1)	67	(2.6)	2,620	(99.9)
Massachusetts	56	(0.2)	3,670	(15.4)	7,934	(33.2)	5,616	(23.5)	3,375	(14.1)	2,274	(9.5)	949	(4.0)	23,874	(100.0)
Michigan	141	(0.5)	4,752	(18.3)	8,528	(32.8)	5,919	(22.8)	3,714	(14.3)	2,259	(8.7)	652	(2.5)	25,965	(100.0)
Minnesota	50	(0.4)	1,857	(14.3)	4,308	(33.3)	3,304	(25.5)	1,813	(14.0)	1,152	(8.9)	464	(3.6)	12,948	(100.0)
Mississippi	23	(0.8)	452	(16.3)	1,002	(36.2)	678	(24.5)	380	(13.7)	179	(6.5)	56	(2.0)	2,770	(99.9)
Missouri	42	(0.6)	1,165	(15.7)	2,588	(34.9)	1,848	(24.9)	948	(12.8)	602	(8.1)	220	(3.0)	7,413	(100.0)
Montana	12	(0.6)	395	(18.6)	753	(35.5)	479	(22.6)	271	(12.8)	160	(7.5)	54	(2.5)	2,124	(100.0)
Nebraska	13	(0.5)	433	(15.4)	973	(34.6)	664	(23.6)	395	(14.0)	248	(8.8)	87	(3.1)	2,813	(100.0)
Nevada	49	(0.5)	1,619	(15.7)	3,181	(30.8)	2,497	(24.2)	1,616	(15.6)	1,000	(9.7)	376	(3.6)	10,338	(95.8)
New Jersey	121	(0.4)	4,601	(16.2)	8,782	(30.8)	7,230	(25.4)	4,156	(14.6)	2,557	(9.0)	1,028	(3.6)	28,475	(100.0)
New Mexico	37	(0.7)	1,014	(19.2)	1,897	(35.8)	1,192	(22.5)	644	(12.2)	363	(6.9)	148	(2.8)	5,295	(98.1)
New York	640	(0.5)	21,116	(17.0)	37,897	(30.5)	29,910	(24.1)	18,905	(15.2)	11,476	(9.2)	4,360	(3.5)	124,304	(99.5)
New York City	457	(0.5)	14,276	(16.0)	25,998	(29.2)	21,949	(24.6)	14,459	(16.2)	8,665	(9.7)	3,247	(3.6)	89,051	(99.5)
New York State	183	(0.5)	6,840	(19.4)	11,899	(33.8)	7,961	(22.6)	4,446	(12.6)	2,811	(8.0)	1,113	(3.2)	35,253	(99.6)
North Carolina	158	(0.5)	4,818	(15.8)	10,376	(33.9)	7,440	(24.3)	4,408	(14.4)	2,678	(8.8)	696	(2.3)	30,574	(96.1)
North Dakota	8	(0.6)	250	(18.0)	518	(37.4)	310	(22.4)	155	(11.2)	102	(7.4)	43	(3.1)	1,386	(100.0)
Ohio	188	(0.6)	5,144	(17.5)	9,945	(33.9)	7,192	(24.5)	3,835	(13.1)	2,245	(7.7)	776	(2.6)	29,325	(99.0)
Oklahoma	34	(0.5)	1,033	(16.1)	2,215	(34.5)	1,490	(23.2)	887	(13.8)	594	(9.2)	174	(2.7)	6,427	(99.2)
Oregon	30	(0.3)	1,812	(17.2)	3,213	(30.4)	2,563	(24.3)	1,609	(15.2)	985	(9.3)	349	(3.3)	10,561	(99.5)
Pennsylvania	236	(0.6)	6,674	(17.2)	13,463	(34.7)	8,987	(23.2)	5,135	(13.2)	3,184	(8.2)	1,122	(2.9)	38,801	(100.0)
Rhode Island	18	(0.4)	780	(17.3)	1,583	(35.2)	1,044	(23.2)	569	(12.6)	349	(7.8)	159	(3.5)	4,502	(100.0)
South Carolina	31	(0.4)	1,224	(17.1)	2,352	(32.9)	1,727	(24.1)	994	(13.9)	618	(8.6)	213	(3.0)	7,159	(99.6)
South Dakota	---	---	137	(16.2)	295	(34.8)	185	(21.8)	131	(15.4)	69	(8.1)	---	---	848	(100.0)
Tennessee	111	(0.6)	2,858	(15.7)	6,118	(33.6)	4,620	(25.4)	2,540	(14.0)	1,501	(8.2)	449	(2.5)	18,197	(99.7)
Texas	223	(0.3)	10,177	(12.5)	27,543	(33.9)	21,010	(25.9)	12,210	(15.0)	7,334	(9.0)	2,658	(3.3)	81,155	(99.7)
Utah	15	(0.4)	621	(16.1)	1,172	(30.5)	971	(25.2)	566	(14.7)	353	(9.2)	150	(3.9)	3,848	(98.4)
Vermont	---	---	256	(17.2)	546	(36.6)	300	(20.1)	211	(14.2)	122	(8.2)	---	---	1,491	(99.9)
Virginia	131	(0.5)	3,763	(13.2)	9,341	(32.9)	7,311	(25.7)	4,236	(14.9)	2,663	(9.4)	956	(3.4)	28,401	(99.0)
Washington	105	(0.4)	4,307	(17.7)	8,009	(33.0)	5,652	(23.3)	3,211	(13.2)	2,173	(8.9)	831	(3.4)	24,288	(100.0)
West Virginia	7	(0.4)	338	(17.0)	645	(32.5)	495	(25.0)	274	(13.8)	182	(9.2)	42	(2.1)	1,983	(100.0)
Wisconsin††	39	(0.5)	1,334	(16.7)	2,729	(34.1)	1,894	(23.7)	1,029	(12.8)	712	(8.9)	271	(3.4)	8,008	(100.0)
Total	3,721	(0.5)	117,725	(16.2)	238,645	(32.8)	177,517	(24.4)	104,447	(14.3)	64,085	(8.8)	22,464	(3.1)	728,604	(99.3)
Abortion rate¶¶	1.2		14.3		29.6		21.6		13.7		7.8		2.7		14.0	
Abortion ratio***	800		338		283		187		140		174		271		218	

* Data from 47 reporting areas; excludes five areas (California, Florida, Maryland, New Hampshire, and Wyoming) that did not report, did not report by

⁴² http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6015a1.htm?s_cid=ss6015a1_w site last visited January 18, 2012.

age, or did not meet reporting standards.

† Percentages for the individual component categories might not add to 100 because of rounding.

§ Calculated as the number of abortions reported by known age divided by the sum of abortions reported by known and unknown age.

¶ Because reporting is not mandatory, information could not be obtained for all abortions performed in the District of Columbia.

** Cell details not displayed because of small numbers (N = 1--4).

†† Includes residents only.

§§ Data from hospitals and licensed ambulatory care facilities only; because reporting is not mandatory for private physicians and women's centers, information could not be obtained for all abortions performed in New Jersey.

¶¶ Number of abortions obtained by women in a given age group per 1,000 women in that same age group. Women aged 13--14 years were used as the denominator for the group of women aged <15 years, and women aged 40--44 years were used as the denominator for the group of women aged ≥40 years. Women aged 15--44 years were used as the denominator for the overall rate. For each state, abortions for women of unknown age were distributed according to the distribution of abortions among women of known age for that state.

*** Number of abortions obtained by women in a given age group per 1,000 live births to women in that same age group. For each state, abortions for women of unknown age were distributed according to the distribution of abortions among women of known age for that state.

Informed Consent

As with many medical procedures, a physician must obtain informed consent from a patient prior to termination. In Florida, the requirement for informed consent is provided for in statute, with an exception for medical emergencies. A medical emergency is a situation in which, to "a reasonable degree of medical certainty, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman."⁴³ In a medical emergency, the physician must obtain a corroborating opinion from a second physician that attests to the medical necessity of the procedure, and to the fact to a reasonable degree of medical certainty the mother's life would be harmed by continuation of the pregnancy.⁴⁴ Except in the case of such an emergency, consent is considered voluntary and informed, if:

- The physician who is performing the procedure, at a minimum orally informs the patient of the nature and risk of termination;
- The probable gestational age of the fetus is verified by ultrasound imaging. The patient must be offered the opportunity to view the images, with certain exceptions, and hear an explanation of them, and may refuse to view them. If the patient refuses, she must acknowledge the refusal in writing;
- Printed materials prepared by DOH are to be made available to the patient; and
- The patient must acknowledge, in writing, that she received information consistent with these requirements.⁴⁵

A violation of these requirements is grounds for a licensure action against the physician.⁴⁶

Ultrasound

Many states have enacted an ultrasound requirement as an element of informed consent for a woman to terminate her pregnancy.⁴⁷ These requirements have been the subject of judicial review in many jurisdictions, and many of these challenges are still in litigation.⁴⁸

⁴³ S. 390.0111(1)(a), F.S.

⁴⁴ S. 390.0111(3)(b), F.S.

⁴⁵ See s. 390.0111(3), F.S.

⁴⁶ S. 390.0111(3)(c), F.S.

⁴⁷ See Alabama, ALA. CODE s. 26-23A-6 (2011); Arizona, ARIZ. REV. STAT. ANN. s. 36.2156 (2011); Arkansas, ARK. CODE ANN. s. 20-16-602 (2011); Georgia, GA. CODE ANN. s. 31-9A-3 (West 2011); Idaho, IDAHO CODE ANN. s. 18.609 (2011); Indiana, IND. CODE s. 16-34-2-1.1 (2011); Kansas, KAN. STAT. ANN. s. 65-6709 (2011); Louisiana, LA. REV. STAT. ANN. s. 40:1299.35.1 (2011); Michigan, MICH. COMP. LAWS ANN. s. 333.17015 (West 2011); Mississippi, MISS. CODE ANN. s. 41-41-34 (2011); Missouri, MO. REV. STAT. s. 188.027 (2011); Nebraska, NEB. REV. STAT. s. 28-327 (2011); North Carolina, 2011 N.C. Sess. Laws 405; North Dakota, N.D. CENT. CODE s. 14.02-1-04 (2011); Ohio, OHIO REV. CODE ANN. s. 2317.561 (West 2011); Oklahoma, OKLA. STAT. tit. 63, s. 1-738.2 (2011); South Carolina, S.C. CODE ANN. s. 44-41-330 (2011); South Dakota, S.D. CODIFIED LAW s. 34-23A-52 (2011); Texas, TEX. HEALTH & SAFETY CODE ANN. s. 171.002 (Vernon 2011); Utah, UTAH CODE ANN. s. 76-7-305 (2011); West Virginia, W. VA. CODE s. 16-2I-2 (2011), Wisconsin, WIS. STAT. s. 253.10 (2011).

⁴⁸ In North Carolina, the state has been temporarily enjoined, in an on-going case, from implementing 2011 N.C. Sess. Laws 405, which required a woman to view an ultrasound, *Stuart v. Huff*, 1:11CV804, (D. N.C. 2011). In Oklahoma, an ultrasound requirement has been challenged as unconstitutional, *Nova Health System v. Edmondson*, 2011 WL 1821702, (D. Okla.). In Texas, the compulsory sonogram has been held unconstitutional by a federal district court, *Texas Medical Providers Performing Abortion Services v. Lakey*, 2011 WL 3818879. (W.D. Tex., Aug 30, 2011).

In the 2011 session, as a part of the informed consent provisions for a lawful termination of pregnancy, the Florida Legislature enacted a requirement that an ultrasound be conducted on the woman to determine fetal age prior to termination, and that the woman have the opportunity to view the ultrasound, if she so chose.⁴⁹

Partial-Birth Abortion

Partial-birth abortion entails a procedure during which all of the body of a fetus, but for the head, is extracted from the uterus into the vagina, following which the contents of the skull are extracted from the fetus; thereafter, the dead but otherwise intact fetus is taken from the mother's body.⁵⁰ Many jurisdictions, including the federal government,⁵¹ have enacted some form of restriction on partial-birth abortion. These statutes have been subject to judicial review, and have been upheld, subject to other considerations, if they provide a medical exception for the mother's life,⁵² or do not impose an undue burden on the woman's right to choose before viability.⁵³

In Florida, partial-birth abortion is prohibited by statute in both ch. 390, F.S.,⁵⁴ and in ch. 782, F.S.,⁵⁵ relating to homicide. Each of these prohibitions provide for different criminal penalties for a partial birth abortion.⁵⁶ However, the prohibition in ch. 782, F.S., which was called the "Partial-Birth Abortion Act," was the subject of a constitutional challenge in a federal district court in 2000. The case resulted in an injunction against the State, preventing the implementation of the act.⁵⁷ The court reasoned that the act was void for vagueness, did not contain a medical emergency exception for the health of the mother and rose to the standard of creating an undue burden on the woman's right to choose to terminate.⁵⁸ The state did not appeal this decision.

Continuing Education

Currently, physicians and osteopathic physicians are required to complete 40 hours of continuing education (CE) every 2 years.⁵⁹ The appropriate medical licensing boards approve the CE courses.⁶⁰

Certain medical professionals are required to complete continuing education requirements specifically related to ethics:

- Osteopathic physicians-1 hour⁶¹
- Psychologists-3 hours⁶²
- Clinical social workers-3 hours⁶³
- Marriage and family therapists-3 hours⁶⁴
- Mental health counselors-3 hours⁶⁵

Currently, physicians are not specifically required to take CE courses related to ethics.⁶⁶

⁴⁹ SS. 390.0111(3)(a)1.b.(I)-(IV), F.S.

⁵⁰ See *Stenberg v. Carhart*, 530 U.S. 914, 923-930 (2000).

⁵¹ See 18 U.S.C. s. 1531.

⁵² See *Planned Parenthood Federation of America v. Ashcroft*, 320 F.Supp.2d. 957 (N.D.Cal. 2004); *Carhart v. Ashcroft*, 331F.Supp.2d. 805 (D.Neb. 2004).

⁵³ See *Planned Parenthood Federation of America v. Ashcroft*, 330 F.Supp.2d. 436 (S.D.N.Y. 2004).

⁵⁴ S. 390.0111(5), F.S.

⁵⁵ Ss. 782.30-36, F.S.

⁵⁶ S. 390.0111(10), F.S., provides for a felony of the third degree and s. 782.34, F.S., provides for a felony of the second degree.

⁵⁷ *A Choice for Women v. Butterworth*, 2000 WL 34402611 (S.D.Fla., June 2, 2000).

⁵⁸ *Id.* at *3-*5.

⁵⁹ s. 456.013, F.S.

⁶⁰ Rule 64B15-13.001, F.A.C., and rule 64B8-13.005.

⁶¹ Rule 64B15-13.001, F.A.C.

⁶² Rule 64B4-6.001, F.A.C.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Rule 64B8-13.005, F.A.C.

Abortion-Related Crimes

Sections 797.02 and 797.03, F.S., delineate several crimes related to abortion. Section 797.02, F.S., makes it a first degree misdemeanor to advertise, in various ways, any means of “procuring the miscarriage” of a pregnant woman, or any entity or location where such might be obtained.⁶⁷

Section 797.03, F.S., provides that abortions must be performed only in a validly licensed hospital, abortion clinic or physician’s office, except in an emergency care situation. It also provides that a person cannot establish, conduct, manage or operate an abortion clinic without a valid, current license. That section prohibits performing or assisting in an abortion in the third trimester other than in a hospital. Violations of these requirements are second degree misdemeanors.⁶⁸

As noted above, committing a partial-birth abortion is a second degree felony⁶⁹ under s. 782.34, F.S., and is a third degree felony⁷⁰ under s. 390.0111(10), F.S.

Abortion Caselaw

Federal

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*, was decided by the U.S. Supreme Court.⁷¹ Using strict scrutiny, the court determined that a woman’s right to termination is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.⁷² Further to this, the court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.⁷³ The court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman’s life or health was not at risk.⁷⁴

In *Planned Parenthood v. Casey*,⁷⁵ the U.S. Supreme Court, whilst upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.⁷⁶

One of the significant questions before the court in *Casey* was whether the medical emergency exception to a 24-hour waiting period for a termination was too narrow in that there were some potentially significant health risks that would not be considered “immediate.”⁷⁷ The exception in question provided that a medical emergency is:

[t]hat condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function⁷⁸

⁶⁷ A first degree misdemeanor is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding one year. Ss. 775.082, 775.083, F.S.

⁶⁸ A second degree misdemeanor is punishable by a fine not exceeding \$500 or imprisonment not exceeding 60 days. *Id.*

⁶⁹ A second degree felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding 15 years. *Id.*

⁷⁰ A third degree felony is punishable by a fine not exceeding \$5,000 or imprisonment not exceeding 5 years. *Id.*

⁷¹ 410 U.S. 113 (1973).

⁷² *Id.* at 154.

⁷³ *Id.* at 152-156.

⁷⁴ *Id.* at 164-165.

⁷⁵ 505 U.S. 833 (1992).

⁷⁶ The standard outlined in *Casey* is known as the “undue burden.” Which provides that state regulation cannot place a substantial obstacle in the path of a woman’s right to choose. *Id.* at 876-879.

⁷⁷ *Id.* at 880.

⁷⁸ *Id.* at 879.

The court determined that the exception would not significantly threaten the life and health of a woman and imposed no undue burden on the woman's right to choose.⁷⁹

Florida

Article I, Section 23 of the Florida Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."⁸⁰

In *In re T.W.* the Florida Supreme Court, determined that:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.⁸¹

The court recognized that after viability, the state can regulate termination in the interest of the unborn child so long as the mother's health is not in jeopardy.⁸²

In *Womancare of Orlando v. Agwunobi*,⁸³ an almost identical medical emergency exception to that in the *Casey* case was upheld when Florida's parental notification statute was challenged in federal court.⁸⁴ Florida's parental notification statute, s. 390.01114, F.S., defines medical emergency as, "a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function."

Freedom of Speech

The First Amendment to the U.S. Constitution protects not only freedom of speech, but also the freedom not to speak.⁸⁵ Art. I, s. 4, of the Florida Constitution protects freedom of speech in the state. The U.S. Supreme Court has drawn a distinction between fully protected speech, and commercial speech.⁸⁶ A result of this distinction has been to provide a lower level of protection for speech that is categorized as commercial.

Freedom from compulsion to speak in the commercial context has been subject to judicial interpretation.⁸⁷ Notably, a federal district court recently enjoined the enforcement of New York City local law that would have required pregnancy services centers to make mandatory disclosures in relation to their services.⁸⁸

⁷⁹ *Id.* at 880.

⁸⁰ See *In re T.W.*, 551 So.2d 1186, 1192 (Fla. 1989)(holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

⁸¹ *Id.* at 1193-94.

⁸² *Id.* at 1194.

⁸³ 448 F.Supp. 2d 1293, 1301 N.D. Fla. (2005).

⁸⁴ One of the underlying issues in the case was whether the parenting notice statute was unconstitutionally vague in that it allegedly failed to give physicians adequate guidance about when the medical emergency provision applies. It was this question for which the court determined that the medical emergency definition was sufficient. The medical emergency provision applies as an exception to obtaining parental notice.

⁸⁵ See *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, (1943).

⁸⁶ The Court has defined "commercial speech" as speech that "propose[s] a commercial transaction." *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 473 (1989). Fully protected speech is not transformed into commercial speech simply because it is uttered by a corporation, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), or that the speaker is motivated by a desire for a profit.

⁸⁷ For example, see the line of cases that struck down a "checkoff," which was a compulsory marketing assessment for certain agricultural products, and was challenged on the basis of being compelled to speak, even if the producer did not

Effect of Proposed Changes

Informed Consent

The bill amends the consent provisions of s. 390.0111(3), F.S., to require that consent be completed at least 24 hours before the procedure. This could require the woman to make two visits for an abortion. The constitutional controversy with informed consent and a waiting period is whether the requirements rise that of an undue burden to a woman's access to an abortion.⁸⁹ Existing law would provide that the medical emergency exception applies to the waiting period, as it does currently for all consent requirements.⁹⁰

Regulation of Abortion

Third Trimester / Post-Viability

Currently, a physician may not perform an abortion after the third trimester, subject to a medical emergency exception.⁹¹ Section 390.0111(1), F.S., is amended by the bill, providing that an abortion may not be performed after the third trimester, or in the best medical judgment of the physician, the period in which the fetus has attained viability. The bill transfers the definition of viability from s. 390.0111(4), F.S., to the definitions section of ch. 390, F.S., which provides a definition for the entire chapter.

The bill provides an exception to the prohibition on abortion after the third trimester or viability for a medical emergency. The definition of medical emergency is transferred from s. 390.0114(2)(d), F.S., to the definition section of ch. 390, F.S. The bill also transfers the prohibition on abortions being performed outside of a hospital in the third trimester from s. 797.03(1), F.S., to ch. 390, F.S. This prohibition is expanded to include abortions after the fetus has attained viability.

agree with the speech. See *United States v. United Foods*, 533 U.S. 405 (2001); but see *Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005) (Holding that agricultural marketing subsidy was government speech, and thus not subject to the First Amendment).

⁸⁸ See, *The Evergreen Association, Inc. v. The City of New York*, 2011 WL 2748728 (S.D.N.Y. July 13, 2011).

⁸⁹ Case law indicates that courts have held that such an imposition may not rise to the standard of an undue burden, even though this would require two visits. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), The Supreme Court upheld a two visit requirement in PA, which included a medical emergency exception. In *Karlin v. Faust*, 188 F.3d 446, (7th Cir. 1999), the Seventh Circuit upheld a 24 hour waiting period, rejecting the argument that such a requirement would cause increased costs for travel, lodging, child care, loss of confidentiality for women in abusive relationships, or increased delays due to the unavailability of providers. In *Pro-choice Mississippi v. Fordice*, 716 So. 2d 645, (Miss. 1998), the Mississippi Supreme Court upheld a 24 hour waiting period because it served a legitimate state interest in taking measure to allow a woman to make a more informed choice. However, in *Planned Parenthood League of Massachusetts v. Bellotti*, 641 F.2d 1006 (1st Cir. 1981), the First Circuit rejected the argument that a woman benefited from additional time to reflect, and that this did not rise to the level of a compelling state interest. Courts have held that a waiting period in excess of 24 hours are unconstitutional. See *Leigh v. Olson*, 497 F. Supp. 1340, (D.N.D. 1980); *Planned Parenthood of Middle Tennessee v. Sundquist*, 38 S.W. 3d 1, (Tenn. 2000). Many states have enacted informed consent requirements that are specific to abortion, which, in many cases require a waiting period. However, not all of them require two visits. See Alabama, ALA. CODE s.26-23A-4 (2011), 24 hours; Arizona, ARIZ. REV. STAT. ANN. s.36.2153 (2011), 24 hours and two visits; Arkansas, ARK. CODE. ANN. s. 20-16-903 (2011), prior day; Connecticut, CONN. GEN. STAT. s19a-116 (2011); Georgia, GA. CODE ANN. s. 31-9A-3 (West 2011), 24 hours; Idaho, IDAHO CODE ANN. s. 18-609 (2011), 24 hours; Indiana, IND. CODE s. 16-34-2-1.1 (2011), 18 hours and two visits; Kansas, KAN. STAT. ANN. s. 65-6709 (2011), 24 hours; Kentucky, KY. REV. STAT. ANN. s. 311.725 (2011), 24 hours; Louisiana, LA. REV. STAT. ANN. s. 40.1299.35.6 (2011), 24 hours and two visits; Michigan, MICH. COMP. LAWS ANN. s. 333.17014 (2011), 24 hours; Minnesota, MINN. STAT. s. 145.2424 (2011), 24 hours; Mississippi, MISS. CODE ANN. s. 41-41-33 (2011), 24 hours and two visits; Missouri, MO. REV. STAT. s. 188.039 (2011), 24 hours and two visits; Nebraska, NEB. REV. STAT. s. 28-327 (2011), 24 hours; North Dakota, N.D. CENT. CODE s. 14.02-1-03 (2011), 24 hours; Ohio, OHIO REV. CODE ANN. s. 2317.56 (2011), 24 hours and two visits; Oklahoma, OKLA STAT. tit. 63 s. 1-738.2 (2011), 24 hours; Pennsylvania, 18 PA. CONS. STAT. s. 3205 (2011), 24 hours; South Dakota, S.D. CODIFIED LAW s. 34-23A-10.1 (2011), 24 hours and two visits; Texas, TEX. HEALTH & SAFETY CODE ANN. s. 171.012 (Vernon 2011), 24 hours and two visits; Utah, UTAH CODE ANN. s. 76-7-305 (2011), 24 hours and two visits; Virginia, VA. CODE ANN. s. 18-2-76 (2011), 24 hours; West Virginia, W. VA. CODE s. 16-2I-2 (2011), 24 hours; Wisconsin, WIS. STAT. s. 253.10 (2011), 24 hours and two visits.

⁹⁰ S. 390.0111(3)(b), F.S.

⁹¹ S. 390.0111(1), F.S.

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The bill requires that any abortion performed in the third trimester or post-viability, must be completed with two physicians present. The second physician is required to take control of, and provide immediate medical assistance to any infant born alive after an attempted abortion. The second physician would also assume the duty created by the bill to ensure that the fetus is born alive. If a healthcare practitioner, as defined by s. 456.001(4), F.S.,⁹² has knowledge of a violation of this subsection, there is a duty to disclose the violation to DOH.

Born Alive

The bill adds a definition for “born alive” to Florida law. The definition provides that born-alive will mean:

the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical cord, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, induced abortion, or other method. It is unclear as to the impact of this definition on the practice of termination.

The bill creates a new subsection in s. 390.0111, F.S., called “infants born alive.” This subsection grants an infant born alive as a result of an attempted abortion the same rights, privileges and powers as a child born alive that is not the result of an attempted abortion. The bill, in s. 390.0111(12)(b), F.S., creates a duty for any healthcare practitioner present when an infant is born alive as a result of an attempted abortion, to:

exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive in the course of birth that is not subsequent to an attempted abortion.

Partial Birth Abortion

The bill amends the definition of “partial-birth abortion.” The amended definition is more specific than current law. Currently, no physician may partially vaginally deliver a living fetus before killing the fetus and completing the delivery.⁹³ The bill provides a two-part definition:

- (a) Deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and
- (b) Performs the overt act, other than completion of delivery, which kills the partially delivered living fetus.

This definition is included in the definition section of ch. 390, F.S., which will control the entire chapter.

The bill amends the medical emergency exception to the partial-birth abortion prohibition, by clarifying the mother’s life must be endangered by a physical illness, physical injury, which would include a life-endangering

⁹² S. 456.001(4), F.S., defines a healthcare practitioner as a person regulated under the following chapters: ch. 457, F.S., Acupuncture; ch. 458, F.S., Medicine; ch. 459, F.S., Osteopathic Medicine; ch. 460, F.S., Chiropractic Medicine; ch. 461, F.S., Podiatric Medicine; ch. 462, F.S., Naturopathy; ch. 463, F.S., Optometry; ch. 464, F.S., Nursing; ch. 465, F.S., Pharmacy; ch. 466, F.S., Dentistry, Dental Hygienists and Dental Laboratories; ch. 467, F.S., Midwifery; ch. 468, F.S., part I, Speech-Language Pathology and Audiology; part II, Nursing Home Administration; part III, Occupational Therapy; part V, Respiratory Therapy; part X, Dietetics and Nutrition Practice; part XIII, Athletic Trainers; part XIV, Orthotics, Prosthetics and Pedorthics; ch. 478, F.S., Electrolysis; ch. 480, F.S., Massage Practice; ch. 483, F.S., part III, Clinical Laboratory Personnel; part IV, Medical Physicists; ch. 484, F.S., Dispensing of Optical Devices and Hearing Aids; ch. 486, F.S., Physical Therapy Practice; ch. 490, F.S., Psychological Services; and ch. 491, F.S., Clinical, Counseling and Psychotherapy Services.

⁹³ S. 390.011(6), F.S.

condition that arose from the pregnancy. This standard is different from the definition provided for in the definitions section of ch. 390, F.S.

The bill repeals ss. 782.30-36, F.S., which was known as the "Partial-Birth Abortion Act." This section of law provides a conflicting criminal penalty to that in ch. 390, F.S.

Clinic Regulation

Ownership

The bill provides that an abortion clinic licensed after July 1, 2012, must be wholly owned and operated by one or more physicians who received residency training in dilation-and-curettage and dilation-and-evacuation procedures,⁹⁴ or by a professional corporation or limited liability company composed solely of one or more such physicians. A violation of this will be a misdemeanor of the first degree.⁹⁵

Advertising

The bill repeals s. 797.02, F.S., and incorporates the restriction on advertising the provision of an abortion in violation of ch. 390, F.S., into a newly created s. 390.0111(13)(a), F.S. Further, a clinic is required to display on both the premises and in any advertisement, that it does not perform abortions in the third trimester or after viability. The bill amends the delegated authority to AHCA, adding this mandatory disclosure to the required list of rules that the agency must adopt for clinics licensed under ch. 390, F.S.

Abortion Related Crimes and Penalties

The bill repeals s. 797.03, F.S., which provides criminal penalties for violations of prohibited acts related to abortion. These provisions are incorporated into ch. 390, F.S., and conforms them to other changes in the bill.

The bill directs DOH to permanently revoke the license of any healthcare practitioner⁹⁶ who has been convicted of, is convicted of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, a felony under s. 390.0111, F.S. Licensees would have administrative rights under ch. 120 F.S.

The bill transfers s. 793.02(2), F.S., to the newly created s. 390.014(5), F.S., which provides that an abortion clinic must be licensed by AHCA. The bill provides that a violation of this is to be a misdemeanor of the first degree.

The bill increases the maximum allowable fine under ch. 390, F.S., and part II of ch. 408, F.S., from \$1,000 per violation, to \$5,000.

Data Collection and Reporting Requirements

The bill requires that the director of any abortion clinic, hospital or physician who undertakes such a procedure to report abortion data each month to the agency, on a form that is consistent with the U.S. Standard Report of Induced Termination of Pregnancy. AHCA is directed to report this information to the CDC. AHCA is further directed to produce an aggregated statistical report of the information reported to the CDC, and provide it to the Governor and constitutional officers of the Legislature before each legislative session. The agency is directed to post the report on its website. The bill delegates rule-making authority to AHCA to implement this section.

⁹⁴ Dilation-and-curettage is defined as the dilation of the cervix and curettement of the endometrium. Stedmans Medical Dictionary dilation and curettage (D & C) (27th ed. 2000). Essentially, this is the surgical removal of tissue or growth, in the uterus. Dilation-and-evacuation is defined as the dilation of the cervix and removal of the products of conception. Stedmans Medical Dictionary, dilation and evacuation(D & E) (27th ed. 2000).

⁹⁵ A first degree misdemeanor is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding 1 year. ss. 775.082, 775.083, F.S.

⁹⁶ *Supra* note 90.

Continuing Education

The bill amends s. 456.013(7), F.S., to include a requirement that each physician who performs abortions to complete a board-approved 3-hour ethics CE course, annually. This is to count toward the total CEs that a physician is required by their respective boards to complete each year. In the absence of the board, DOH is required to approve the course.

The bill substitutes the words "termination of pregnancy" for "abortion" throughout ch. 390, F.S.

The bill amends a cross reference in the restrictions on providing consent in the Probate Code, at s. 756.113, F.S.

The bill provides a severability clause.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 390.011, F.S., relating to Definitions.
- Section 2:** Amends s. 390.0111, F.S., relating to Termination of Pregnancies.
- Section 3:** Amends s. 390.01114, F.S., relating to Parental Notice of Abortion Act.
- Section 4:** Amends s. 390.0112, F.S., relating to Termination of Pregnancies; reporting.
- Section 5:** Amends s. 390.012, F.S., relating to Powers of Agency; rules; disposal of fetal remains.
- Section 6:** Amends s. 390.014, F.S., relating to Licenses; fees.
- Section 7:** Amends s. 390.018, F.S., relating to Administrative Fine.
- Section 8:** Amends s. 456.013, F.S., relating to Department; general licensing provisions.
- Section 9:** Amends s. 765.113, F.S., relating to Restrictions on providing consent.
- Section 10:** Repeals s. 782.30, F.S., relating to Short title.
- Section 11:** Repeals s. 782.32, F.S., relating to Definitions.
- Section 12:** Repeals s. 782.34, F.S., relating to Partial-birth abortion.
- Section 13:** Repeals s. 782.36, F.S., relating to Exceptions.
- Section 14:** Repeals s. 797.02, F.S., relating to Advertising, drugs, etc. for abortion.
- Section 15:** Repeals s. 797.03, F.S., relating to Prohibited acts; penalties.
- Section 16:** Provides a severability clause.
- Section 17:** Provides for an effective date of July 1, 2012.

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:

This bill has an impact on the ownership of new abortion clinics in the state. This bill may present obstacles to existing licensed clinics, in that they may be subject to the physician ownership requirement, despite being grandfathered in, if they attempt to move or consolidate facilities, for example.

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:

Certain provisions in this bill, including those relating to the modification of the medical emergency exception, may implicate Art. I, Section 23, of the Florida Constitution, which provides for an express right to privacy. While the Florida Supreme Court recognized the State's compelling interest in regulating abortion post-viability in *In re T.W.*, 551 So.2d 1186 (1989), the definition of medical emergency applied to third trimester and post-viability procedures in this bill does not appear to have been judicially reviewed in this context.

B. RULE-MAKING AUTHORITY:

The bill requires the relevant boards and DOH to adopt rules to implement the provisions of s. 390.0111, F.S. The bill delegates rulemaking authority to AHCA to implement the reporting requirements contained in the bill, and require clinics to disclose that they do not undertake procedures in the third trimester or post viability. The bill provides sufficient rule-making authority to DOH and AHCA to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 352 misspells "cause," which should be "caused".

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to abortions; amending s. 390.011,
 3 F.S.; providing definitions; amending s. 390.0111,
 4 F.S.; conforming terminology to changes made by the
 5 act; restricting the circumstances in which an
 6 abortion may be performed in the third trimester or
 7 after viability; providing certain physician and
 8 location requirements with regard to performing
 9 abortions; requiring a physician who offers to perform
 10 or who performs abortions to complete continuing
 11 education related to ethics; prohibiting an abortion
 12 from being performed in the third trimester in a
 13 location other than a hospital; prohibiting any
 14 abortion from being performed in a location other than
 15 a hospital, abortion clinic, or physician's office;
 16 requiring that certain requirements be completed 24
 17 hours before an abortion is performed in order for
 18 consent to an abortion to be considered voluntary and
 19 informed; conforming terminology; providing that
 20 substantial compliance or reasonable belief that
 21 noncompliance with the requirements regarding consent
 22 is necessary to prevent the death of the pregnant
 23 woman or a substantial and irreversible impairment of
 24 a major bodily function of the pregnant woman is a
 25 defense to a disciplinary action under s. 458.331 or
 26 s. 459.015, F.S.; deleting the definition of the term
 27 "viability"; providing that the prevention of the
 28 death or a substantial and irreversible impairment of

29 a major bodily function of the pregnant woman
 30 constitutes an overriding and superior consideration
 31 to the concern for the life and health of the fetus
 32 under certain circumstances; prohibiting a physician
 33 from knowingly performing a partial-birth abortion and
 34 thereby killing a human fetus; providing exceptions
 35 for when a partial-birth abortion is necessary;
 36 increasing the penalty imposed for failing to properly
 37 dispose of fetal remains; requiring the Department of
 38 Health to permanently revoke the license of any health
 39 care practitioner who is convicted or found guilty of,
 40 or enters a plea of guilty or nolo contendere to,
 41 regardless of adjudication, certain felony criminal
 42 acts; providing that an infant born alive subsequent
 43 to an attempted abortion is entitled to the same
 44 rights, powers, and privileges as are granted by the
 45 laws of this state; requiring a health care
 46 practitioner to exercise the same degree of
 47 professional skill, care, and diligence to preserve
 48 the life and health of an infant as a reasonably
 49 diligent and conscientious health care practitioner
 50 would render to any infant born alive if the infant is
 51 born alive subsequent to an attempted abortion;
 52 requiring that another physician be present in order
 53 to take control of any infant born alive; requiring
 54 the physician who performs the abortion to take all
 55 reasonable steps consistent with the abortion
 56 procedure to preserve the life and health of the

57 | unborn child; requiring a health care practitioner who
 58 | has knowledge of any violations to report the
 59 | violations to the department; providing that it is a
 60 | first-degree misdemeanor to unlawfully advertise how
 61 | to obtain an abortion; requiring an abortion clinic to
 62 | place a conspicuous notice on its premises and on any
 63 | form or medium of advertisement of the abortion clinic
 64 | which states that the abortion clinic is prohibited
 65 | from performing abortions in the third trimester or
 66 | after viability; providing a penalty; requiring the
 67 | Agency for Health Care Administration to submit to the
 68 | Governor and Legislature an annual report of aggregate
 69 | statistical data relating to abortions and provide
 70 | such data on its website; amending s. 390.01114, F.S.;
 71 | conforming terminology to changes made by the act;
 72 | deleting the definition of the term "medical
 73 | emergency"; amending s. 390.0112, F.S.; requiring the
 74 | director of a hospital, abortion clinic, or
 75 | physician's office to submit a monthly report to the
 76 | agency on a form developed by the agency which is
 77 | consistent with the U.S. Standard Report of Induced
 78 | Termination of Pregnancy from the Centers for Disease
 79 | Control and Prevention; requiring that the submitted
 80 | report not contain any personal identifying
 81 | information; requiring the agency to submit reported
 82 | data to the Division of Reproductive Health within the
 83 | Centers for Disease Control and Prevention; requiring
 84 | the physician performing the abortion procedure to

85 | report such data if the abortion was performed in a
 86 | hospital, abortion clinic, or physician's office;
 87 | requiring the agency to adopt rules; amending s.
 88 | 390.012, F.S.; conforming a cross-reference; requiring
 89 | the agency to adopt rules that prescribe standards for
 90 | placing conspicuous notice to be provided on the
 91 | premises and on any advertisement of an abortion
 92 | clinic which states that the abortion clinic is
 93 | prohibited from performing abortions in the third
 94 | trimester or after viability; conforming terminology
 95 | to changes made by the act; amending s. 390.014, F.S.;
 96 | prohibiting a person from establishing, conducting,
 97 | managing, or operating a clinic in this state without
 98 | a valid and current license issued by the agency;
 99 | requiring an abortion clinic to be owned and operated
 100 | by a physician who has received training during
 101 | residency in performing a dilation-and-curettage
 102 | procedure or a dilation-and-evacuation procedure or by
 103 | a corporation or limited liability company composed of
 104 | one or more such physicians; providing an exception;
 105 | providing a penalty; amending s. 390.018, F.S.;
 106 | revising the amount of the fine that the agency may
 107 | impose for a violation of ch. 390, F.S., relating to
 108 | abortion, or part II of ch. 408, F.S., relating to
 109 | licensure; amending s. 456.013, F.S.; requiring that
 110 | each applicable board require a physician who offers
 111 | to perform or performs abortions to annually complete
 112 | a course relating to ethics as part of the licensure

113 and renewal process; providing that the course counts
 114 toward the total number of continuing education hours
 115 required for the profession; requiring the applicable
 116 board to approve the course; amending s. 765.113,
 117 F.S.; conforming a cross-reference; repealing ss.
 118 782.30, 782.32, 782.34, and 782.36, F.S., relating to
 119 the Partial-Birth Abortion Act; repealing s. 797.02,
 120 F.S., relating to the advertising of drugs for
 121 abortions; repealing s. 797.03, F.S., relating to
 122 prohibited acts related to abortions and their
 123 penalties; providing for severability; providing an
 124 effective date.

125
 126 Be It Enacted by the Legislature of the State of Florida:

127
 128 Section 1. Section 390.011, Florida Statutes, is amended
 129 to read:

130 390.011 Definitions.—As used in this chapter, the term:

131 (1) "Abortion" means the termination of human pregnancy
 132 with an intention other than to produce a live birth or to
 133 remove a dead fetus.

134 (2) "Abortion clinic" or "clinic" means any facility in
 135 which abortions are performed. The term does not include:

136 (a) A hospital; or

137 (b) A physician's office, provided that the office is not
 138 used primarily for the performance of abortions.

139 (3) "Agency" means the Agency for Health Care
 140 Administration.

141 (4) "Born alive" means the complete expulsion or
 142 extraction from the mother of a human infant, at any stage of
 143 development, who, after such expulsion or extraction, breathes
 144 or has a beating heart, pulsation of the umbilical cord, or
 145 definite and voluntary movement of muscles, regardless of
 146 whether the umbilical cord has been cut and regardless of
 147 whether the expulsion or extraction occurs as a result of
 148 natural or induced labor, cesarean section, induced abortion, or
 149 other method.

150 ~~(5)-(4)~~ "Department" means the Department of Health.

151 (6) "Health care practitioner" means any person licensed
 152 under chapter 457; chapter 458; chapter 459; chapter 460;
 153 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
 154 chapter 466; chapter 467; part I, part II, part III, part V,
 155 part X, part XIII, or part XIV of chapter 468; chapter 478;
 156 chapter 480; part III or part IV of chapter 483; chapter 484;
 157 chapter 486; chapter 490; or chapter 491.

158 ~~(7)-(5)~~ "Hospital" means a facility as defined in s.
 159 395.002(12) and licensed under chapter 395 and part II of
 160 chapter 408.

161 (8) "Medical emergency" means a condition that, on the
 162 basis of a physician's good faith clinical judgment, so
 163 complicates the medical condition of a pregnant woman as to
 164 necessitate the immediate termination of her pregnancy to avert
 165 her death, or for which a delay in the termination of her
 166 pregnancy will create serious risk of substantial and
 167 irreversible impairment of a major bodily function.

168 ~~(9)-(6)~~ "Partial-birth abortion" means an abortion a

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169 ~~termination of pregnancy~~ in which the physician performing the
 170 abortion: termination of pregnancy partially vaginally delivers
 171 ~~a living fetus before killing the fetus and completing the~~
 172 ~~delivery.~~

173 (a) Deliberately and intentionally vaginally delivers a
 174 living fetus until, in the case of a head-first presentation,
 175 the entire fetal head is outside the body of the mother, or, in
 176 the case of breech presentation, any part of the fetal trunk
 177 past the navel is outside the body of the mother, for the
 178 purpose of performing an overt act that the person knows will
 179 kill the partially delivered living fetus; and

180 (b) Performs the overt act, other than completion of
 181 delivery, which kills the partially delivered living fetus.

182 (10)(7) "Physician" means a physician licensed under
 183 chapter 458 or chapter 459 or a physician practicing medicine or
 184 osteopathic medicine in the employment of the United States.

185 (11)(8) "Third trimester" means the weeks of pregnancy
 186 after the 24th week of pregnancy.

187 (12) "Viability" means that stage of fetal development
 188 when the life of the unborn child may, with a reasonable degree
 189 of medical probability, be continued indefinitely outside the
 190 womb.

191 Section 2. Section 390.0111, Florida Statutes, is amended
 192 to read:

193 390.0111 Abortions ~~Termination of pregnancies.~~-

194 (1) ABORTION TERMINATION IN THIRD TRIMESTER OR AFTER
 195 VIABILITY; WHEN ALLOWED.-An abortion may not ~~No termination of~~
 196 ~~pregnancy shall~~ be performed ~~on any human being~~ in the third

197 trimester or after the period at which, in the best medical
 198 judgment of the physician, the fetus has attained viability of
 199 pregnancy unless:

200 (a) Two physicians certify in writing to the fact that, to
 201 a reasonable degree of medical probability, the abortion
 202 ~~termination of pregnancy~~ is necessary to prevent the death of
 203 the pregnant woman or the substantial and irreversible
 204 impairment of a major bodily function ~~save the life or preserve~~
 205 ~~the health~~ of the pregnant woman; or

206 (b) The physician certifies in writing to the existence of
 207 a medical emergency ~~medical necessity for legitimate emergency~~
 208 ~~medical procedures for termination of pregnancy in the third~~
 209 ~~trimester~~, and another physician is not available for
 210 consultation.

211 (2) PHYSICIAN AND LOCATION REQUIREMENTS ~~PERFORMANCE BY~~
 212 ~~PHYSICIAN REQUIRED.~~

213 (a) An abortion may not ~~No termination of pregnancy shall~~
 214 be performed at any time except by a physician as ~~defined in s.~~
 215 ~~390.011.~~

216 (b) A physician who offers to perform or who performs
 217 abortions in an abortion clinic must annually complete a minimum
 218 of 3 hours of continuing education related to ethics.

219 (c) Except in the case of a medical emergency, an abortion
 220 may not be performed:

221 1. In the third trimester, or after the fetus has attained
 222 viability, in a location other than in a hospital.

223 2. In cases in which subparagraph 1. does not apply, in a
 224 location other than a hospital, a validly licensed abortion

225 clinic, or a physician's office.

226 (3) CONSENTS REQUIRED.—An abortion ~~A termination of~~
 227 ~~pregnancy~~ may not be performed or induced except with the
 228 voluntary and informed written consent of the pregnant woman or,
 229 in the case of a mental incompetent, the voluntary and informed
 230 written consent of her court-appointed guardian.

231 (a) Except in the case of a medical emergency, consent to
 232 an abortion ~~a termination of pregnancy~~ is voluntary and informed
 233 only if the following requirements are completed at least 24
 234 hours before the abortion is performed:

235 1. The physician who is to perform the procedure, or the
 236 referring physician, has, at a minimum, orally, in person,
 237 informed the woman of:

238 a. The nature and risks of undergoing or not undergoing
 239 the proposed procedure which ~~that~~ a reasonable patient would
 240 consider material to making a knowing and willful decision of
 241 whether to obtain an abortion ~~terminate a pregnancy~~.

242 b. The probable gestational age of the fetus, verified by
 243 an ultrasound, at the time the abortion ~~termination of pregnancy~~
 244 is to be performed.

245 (I) The ultrasound must be performed by the physician who
 246 is to perform the abortion or by a person having documented
 247 evidence that he or she has completed a course in the operation
 248 of ultrasound equipment as prescribed by rule and who is working
 249 in conjunction with the physician.

250 (II) The person performing the ultrasound must offer the
 251 woman the opportunity to view the live ultrasound images and
 252 hear an explanation of them. If the woman accepts the

253 opportunity to view the images and hear the explanation, a
 254 physician or a registered nurse, licensed practical nurse,
 255 advanced registered nurse practitioner, or physician assistant
 256 working in conjunction with the physician must contemporaneously
 257 review and explain the images to the woman before the woman
 258 gives informed consent to having an abortion procedure
 259 performed.

260 (III) The woman has a right to decline to view and hear
 261 the explanation of the live ultrasound images after she is
 262 informed of her right and offered an opportunity to view the
 263 images and hear the explanation. If the woman declines, the
 264 woman shall complete a form acknowledging that she was offered
 265 an opportunity to view and hear the explanation of the images
 266 but that she declined that opportunity. The form must also
 267 indicate that the woman's decision was not based on any undue
 268 influence from any person to discourage her from viewing the
 269 images or hearing the explanation and that she declined of her
 270 own free will.

271 (IV) Unless requested by the woman, the person performing
 272 the ultrasound may not offer the opportunity to view the images
 273 and hear the explanation and the explanation may not be given
 274 if, at the time the woman schedules or arrives for her
 275 appointment to obtain an abortion, a copy of a restraining
 276 order, police report, medical record, or other court order or
 277 documentation is presented which provides evidence that the
 278 woman is obtaining the abortion because the woman is a victim of
 279 rape, incest, domestic violence, or human trafficking or that
 280 the woman has been diagnosed as having a condition that, on the

281 basis of a physician's good faith clinical judgment, would
 282 create a serious risk of substantial and irreversible impairment
 283 of a major bodily function if the woman delayed terminating her
 284 pregnancy.

285 c. The medical risks to the woman and fetus of carrying
 286 the pregnancy to term.

287 2. Printed materials prepared and provided by the
 288 department have been provided to the pregnant woman, if she
 289 chooses to view these materials, including:

290 a. A description of the fetus, including a description of
 291 the various stages of development.

292 b. A list of entities that offer alternatives to abortion
 293 ~~terminating the pregnancy~~.

294 c. Detailed information on the availability of medical
 295 assistance benefits for prenatal care, childbirth, and neonatal
 296 care.

297 3. The woman acknowledges in writing, ~~before the~~
 298 ~~termination of pregnancy~~, that the information required to be
 299 provided under this subsection has been provided.

300

301 ~~Nothing in~~ This paragraph does not ~~is intended to~~ prohibit a
 302 physician from providing any additional information that ~~which~~
 303 the physician deems material to the woman's informed decision to
 304 obtain an abortion ~~terminate her pregnancy~~.

305 (b) If a medical emergency exists and a physician cannot
 306 comply with the requirements for informed consent, a physician
 307 may perform an abortion ~~terminate a pregnancy~~ if he or she has
 308 obtained at least one corroborative medical opinion attesting to

309 the medical necessity for emergency medical procedures and to
 310 the fact that to a reasonable degree of medical certainty the
 311 continuation of the pregnancy would threaten the life of the
 312 pregnant woman. If a second physician is not available for a
 313 corroborating opinion, the physician may proceed but shall
 314 document reasons for the medical necessity in the patient's
 315 medical records.

316 (c) Violation of this subsection by a physician
 317 constitutes grounds for disciplinary action under s. 458.331 or
 318 s. 459.015. Substantial compliance or reasonable belief that
 319 noncompliance complying with the requirements of this subsection
 320 is necessary to prevent the death of the pregnant woman or a
 321 substantial and irreversible impairment of a major bodily
 322 function of the pregnant woman ~~informed consent would threaten~~
 323 ~~the life or health of the patient~~ is a defense to any action
 324 brought under this paragraph.

325 (4) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—
 326 If an abortion ~~a termination of pregnancy~~ is performed during
 327 viability, a ~~ne~~ person who performs or induces the abortion
 328 ~~termination of pregnancy~~ shall ~~fail to~~ use that degree of
 329 professional skill, care, and diligence to preserve the life and
 330 health of the fetus which such person would be required to
 331 exercise in order to preserve the life and health of any fetus
 332 intended to be born and not aborted. ~~"Viability" means that~~
 333 ~~stage of fetal development when the life of the unborn child may~~
 334 ~~with a reasonable degree of medical probability be continued~~
 335 ~~indefinitely outside the womb.~~ Notwithstanding the provisions of
 336 this subsection, the prevention of the death of the pregnant

337 woman or a substantial and irreversible impairment of a major
 338 bodily function of the pregnant woman constitutes ~~the woman's~~
 339 ~~life and health shall constitute~~ an overriding and superior
 340 consideration to the concern for the life and health of the
 341 fetus when such concerns are in conflict.

342 (5) PARTIAL-BIRTH ABORTION PROHIBITED; EXCEPTION.—

343 (a) A ~~No~~ physician may not shall knowingly perform a
 344 partial-birth abortion and thereby kill a human fetus.

345 (b) A woman upon whom a partial-birth abortion is
 346 performed may not be prosecuted under this section for a
 347 conspiracy to violate the provisions of this section.

348 (c) This subsection does shall not apply to a partial-
 349 birth abortion that is necessary to save the life of a mother
 350 whose life is endangered by a physical disorder, physical
 351 illness, or physical injury, including a life-endangering
 352 physical condition cause by or arising from the pregnancy
 353 itself, if provided that no other medical procedure would
 354 suffice for that purpose.

355 (6) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—A ~~No~~
 356 person may not shall use any live fetus or live, premature
 357 infant for any type of scientific, research, laboratory, or
 358 other kind of experimentation before ~~either prior to~~ or
 359 subsequent to any abortion ~~termination of pregnancy~~ procedure
 360 except as necessary to protect or preserve the life and health
 361 of such fetus or premature infant.

362 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a
 363 sanitary and appropriate manner and in accordance with standard
 364 health practices, as provided by rule of the department ~~of~~

365 ~~Health.~~ Failure to dispose of fetal remains in accordance with
 366 department rules is a misdemeanor of the first ~~second~~ degree,
 367 punishable as provided in s. 775.082 or s. 775.083.

368 (8) REFUSAL TO PARTICIPATE IN ABORTION ~~TERMINATION~~
 369 PROCEDURE. ~~Nothing in~~ This section does not ~~shall~~ require any
 370 hospital or any person to participate in an abortion ~~the~~
 371 ~~termination of a pregnancy, and a~~ ~~nor shall~~ any hospital or any
 372 person is not ~~be~~ liable for such refusal. A ~~No~~ person who is a
 373 member of, or associated with, the staff of a hospital, or ~~nor~~
 374 any employee of a hospital or physician in which or by whom the
 375 abortion ~~termination of a pregnancy~~ has been authorized or
 376 performed, who states ~~shall state~~ an objection to such procedure
 377 on moral or religious grounds is not ~~shall be~~ required to
 378 participate in the procedure that ~~which~~ will result in the
 379 abortion ~~termination of pregnancy~~. The refusal of any such
 380 person or employee to participate does ~~shall~~ not form the basis
 381 for any disciplinary or other recriminatory action against such
 382 person.

383 (9) EXCEPTION.—The provisions of this section do ~~shall~~ not
 384 apply to the performance of a procedure that ~~which~~ terminates a
 385 pregnancy in order to deliver a live child.

386 (10) PENALTIES FOR VIOLATION.—Except as provided in
 387 subsections (3) and (7):

388 (a) Any person who willfully performs, or actively
 389 participates in, an abortion ~~a termination of pregnancy~~
 390 procedure in violation of the requirements of this section
 391 commits a felony of the third degree, punishable as provided in
 392 s. 775.082, s. 775.083, or s. 775.084.

393 (b) Any person who performs, or actively participates in,
 394 an abortion ~~a termination of pregnancy~~ procedure in violation of
 395 ~~the provisions of~~ this section which results in the death of the
 396 woman commits a felony of the second degree, punishable as
 397 provided in s. 775.082, s. 775.083, or s. 775.084.

398 (c) The department shall permanently revoke the license of
 399 any licensed health care practitioner who has been convicted or
 400 found guilty of, or entered a plea of guilty or nolo contendere
 401 to, regardless of adjudication, a felony as provided in this
 402 subsection.

403 (11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
 404 RELIEF.—

405 (a) The father, if married to the mother at the time she
 406 receives a partial-birth abortion, and, if the mother has not
 407 attained the age of 18 years at the time she receives a partial-
 408 birth abortion, the maternal grandparents of the fetus may, in a
 409 civil action, obtain appropriate relief, unless the pregnancy
 410 resulted from the plaintiff's criminal conduct or the plaintiff
 411 consented to the abortion.

412 (b) In a civil action under this section, appropriate
 413 relief includes:

- 414 1. Monetary damages for all injuries, psychological and
- 415 physical, occasioned by the violation of subsection (5).
- 416 2. Damages equal to three times the cost of the partial-
- 417 birth abortion.

418 (12) INFANTS BORN ALIVE.—

419 (a) An infant born alive subsequent to an attempted
 420 abortion is entitled to the same rights, powers, and privileges

421 as are granted by the laws of this state to any other child born
 422 alive in the course of birth that is not subsequent to an
 423 attempted abortion.

424 (b) If an infant is born alive subsequent to an attempted
 425 abortion, any health care practitioner present at the time shall
 426 humanely exercise the same degree of professional skill, care,
 427 and diligence to preserve the life and health of the infant as a
 428 reasonably diligent and conscientious health care practitioner
 429 would render to an infant born alive in the course of birth that
 430 is not subsequent to an attempted abortion.

431 (c) An abortion may not be attempted pursuant to paragraph
 432 (1)(a) unless a physician other than the physician performing
 433 the abortion is in attendance to take control of any infant born
 434 alive, to provide immediate medical care to the infant, and to
 435 discharge the obligations imposed by paragraph (b). The
 436 physician who performs the abortion shall take all reasonable
 437 steps consistent with the abortion procedure to preserve the
 438 life and health of the unborn child.

439 (d) A health care practitioner who has knowledge of a
 440 violation of this subsection shall report the violation to the
 441 department.

442 (13) PUBLIC NOTICES AND ADVERTISEMENTS.-

443 (a) A person may not knowingly advertise, print, publish,
 444 distribute, or circulate, or knowingly cause to be advertised,
 445 printed, published, distributed, or circulated, any pamphlet,
 446 printed paper, book, newspaper notice, advertisement, or
 447 reference containing words or language giving or conveying any
 448 notice, hint, or reference to any person, or the name of any

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449 person, real or fictitious, from whom, or to any place, house,
 450 shop, or office where any poison, drug, mixture, preparation,
 451 medicine, or noxious thing, or any instrument or means whatever,
 452 or any advice, direction, information, or knowledge that may be
 453 obtained for the purpose of performing an abortion in violation
 454 of this chapter.

455 (b) An abortion clinic must provide conspicuous written
 456 notice on its premises and on any advertisement that the
 457 abortion clinic is prohibited, except in a medical emergency,
 458 from performing abortions in the third trimester or after the
 459 fetus has attained viability.

460 (c) Any person who violates this subsection commits a
 461 misdemeanor of the first degree, punishable as provided in s.
 462 775.082 or s. 775.083.

463 (14) RESPONSIBILITIES OF THE AGENCY.—Before each regular
 464 legislative session, the agency shall report aggregate
 465 statistical data relating to abortions, which has been reported
 466 to the Division of Reproductive Health within the Centers for
 467 Disease Control and Prevention, on its website and provide an
 468 annual report to the Governor, the President of the Senate, and
 469 the Speaker of the House of Representatives regarding such data.
 470 Any information required to be reported under this subsection
 471 must not include any personal identifying information.

472 (15)~~(12)~~ FAILURE TO COMPLY.—Failure to comply with the
 473 requirements of this section constitutes grounds for
 474 disciplinary action under each respective practice act and under
 475 s. 456.072.

476 (16)~~(13)~~ RULES.—The applicable boards, or the department

477 | if there is no board, shall adopt rules necessary to implement
 478 | the provisions of this section.

479 | Section 3. Section 390.01114, Florida Statutes, is amended
 480 | to read:

481 | 390.01114 Parental Notice of Abortion Act.—

482 | (1) SHORT TITLE.—This section may be cited as the
 483 | "Parental Notice of Abortion Act."

484 | (2) DEFINITIONS.—As used in this section, the term:

485 | (a) "Actual notice" means notice that is given directly,
 486 | in person or by telephone, to a parent or legal guardian of a
 487 | minor, by a physician, at least 48 hours before the inducement
 488 | or performance of an abortion ~~a termination of pregnancy~~, and
 489 | documented in the minor's files.

490 | (b) "Child abuse" means abandonment, abuse, harm, mental
 491 | injury, neglect, physical injury, or sexual abuse of a child as
 492 | those terms are defined in ss. 39.01, 827.04, and 984.03.

493 | (c) "Constructive notice" means notice that is given in
 494 | writing, signed by the physician, and mailed at least 72 hours
 495 | before the inducement or performance of the abortion ~~termination~~
 496 | ~~of pregnancy~~, to the last known address of the parent or legal
 497 | guardian of the minor, by first-class mail and by certified
 498 | mail, return receipt requested, and delivery restricted to the
 499 | parent or legal guardian. After the 72 hours have passed,
 500 | delivery is deemed to have occurred.

501 | ~~(d) "Medical emergency" means a condition that, on the~~
 502 | ~~basis of a physician's good faith clinical judgment, so~~
 503 | ~~complicates the medical condition of a pregnant woman as to~~
 504 | ~~necessitate the immediate termination of her pregnancy to avert~~

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505 ~~her death, or for which a delay in the termination of her~~
 506 ~~pregnancy will create serious risk of substantial and~~
 507 ~~irreversible impairment of a major bodily function.~~

508 (d) ~~(e)~~ "Sexual abuse" has the meaning ascribed in s.
 509 39.01.

510 (e) ~~(f)~~ "Minor" means a person under the age of 18 years.

511 (3) NOTIFICATION REQUIRED.—

512 (a) Actual notice shall be provided by the physician
 513 performing or inducing an abortion with respect to the
 514 ~~termination of pregnancy before the performance or inducement of~~
 515 ~~the termination of~~ the pregnancy of a minor. The notice may be
 516 given by a referring physician. The physician who performs or
 517 induces the abortion ~~termination of pregnancy~~ must receive the
 518 written statement of the referring physician certifying that the
 519 referring physician has given notice. If actual notice is not
 520 possible after a reasonable effort has been made, the physician
 521 performing or inducing the abortion ~~termination of pregnancy~~ or
 522 the referring physician must give constructive notice. Notice
 523 given under this subsection by the physician performing or
 524 inducing the abortion ~~termination of pregnancy~~ must include the
 525 name and address of the facility providing the abortion
 526 ~~termination of pregnancy~~ and the name of the physician providing
 527 notice. Notice given under this subsection by a referring
 528 physician must include the name and address of the facility
 529 where he or she is referring the minor and the name of the
 530 physician providing notice. If actual notice is provided by
 531 telephone, the physician must actually speak with the parent or
 532 guardian, and must record in the minor's medical file the name

533 of the parent or guardian provided notice, the phone number
 534 dialed, and the date and time of the call. If constructive
 535 notice is given, the physician must document that notice by
 536 placing copies of any document related to the constructive
 537 notice, including, but not limited to, a copy of the letter and
 538 the return receipt, in the minor's medical file. Actual notice
 539 given by telephone shall be confirmed in writing, signed by the
 540 physician, and mailed to the last known address of the parent or
 541 legal guardian of the minor, by first-class mail and by
 542 certified mail, return receipt requested, with delivery
 543 restricted to the parent or legal guardian.

544 (b) Notice is not required if:

545 1. In the physician's good faith clinical judgment, a
 546 medical emergency exists and there is insufficient time for the
 547 attending physician to comply with the notification
 548 requirements. If a medical emergency exists, the physician shall
 549 make reasonable attempts, whenever possible, without endangering
 550 the minor, to contact the parent or legal guardian, and may
 551 proceed, but must document reasons for the medical necessity in
 552 the patient's medical records. The physician shall provide
 553 notice directly, in person or by telephone, to the parent or
 554 legal guardian, including details of the medical emergency and
 555 any additional risks to the minor. If the parent or legal
 556 guardian has not been notified within 24 hours after the
 557 abortion ~~termination of the pregnancy~~, the physician shall
 558 provide notice in writing, including details of the medical
 559 emergency and any additional risks to the minor, signed by the
 560 physician, to the last known address of the parent or legal

561 guardian of the minor, by first-class mail and by certified
 562 mail, return receipt requested, with delivery restricted to the
 563 parent or legal guardian;

564 2. Notice is waived in writing by the person who is
 565 entitled to notice and such waiver is notarized, dated not more
 566 than 30 days before the abortion ~~termination of pregnancy~~, and
 567 contains a specific waiver of the right of the parent or legal
 568 guardian to notice of the minor's abortion ~~termination of~~
 569 ~~pregnancy~~;

570 3. Notice is waived by the minor who is or has been
 571 married or has had the disability of nonage removed under s.
 572 743.015 or a similar statute of another state;

573 4. Notice is waived by the patient because the patient has
 574 a minor child dependent on her; or

575 5. Notice is waived under subsection (4).

576 (c) Violation of this subsection by a physician
 577 constitutes grounds for disciplinary action under s. 458.331 or
 578 s. 459.015.

579 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.—

580 (a) A minor may petition any circuit court in which the
 581 minor resides for a waiver of the notice requirements of
 582 subsection (3) and may participate in proceedings on her own
 583 behalf. The petition may be filed under a pseudonym or through
 584 the use of initials, as provided by court rule. The petition
 585 must include a statement that the petitioner is pregnant and
 586 notice has not been waived. The court shall advise the minor
 587 that she has a right to court-appointed counsel and shall
 588 provide her with counsel upon her request at no cost to the

589 minor.

590 (b)1. Court proceedings under this subsection must be
 591 given precedence over other pending matters to the extent
 592 necessary to ensure that the court reaches a decision promptly.
 593 The court shall rule, and issue written findings of fact and
 594 conclusions of law, within 3 business days after the petition is
 595 filed, except that the 3-business-day limitation may be extended
 596 at the request of the minor. If the court fails to rule within
 597 the 3-business-day period and an extension has not been
 598 requested, the minor may immediately petition for a hearing upon
 599 the expiration of the 3-business-day period to the chief judge
 600 of the circuit, who must ensure a hearing is held within 48
 601 hours after receipt of the minor's petition and an order is
 602 entered within 24 hours after the hearing.

603 2. If the circuit court does not grant judicial waiver of
 604 notice, the minor has the right to appeal. An appellate court
 605 must rule within 7 days after receipt of appeal, but a ruling
 606 may be remanded with further instruction for a ruling within 3
 607 business days after the remand. The reason for overturning a
 608 ruling on appeal must be based on abuse of discretion by the
 609 court and may not be based on the weight of the evidence
 610 presented to the circuit court since the proceeding is a
 611 nonadversarial proceeding.

612 (c) If the court finds, by clear and convincing evidence,
 613 that the minor is sufficiently mature to decide whether to
 614 obtain an abortion ~~terminate her pregnancy~~, the court shall
 615 issue an order authorizing the minor to consent to the
 616 performance or inducement of an abortion ~~a termination of~~

617 ~~pregnancy~~ without the notification of a parent or guardian. If
 618 the court does not make the finding specified in this paragraph
 619 or paragraph (d), it must dismiss the petition. Factors the
 620 court shall consider include:

- 621 1. The minor's:
 - 622 a. Age.
 - 623 b. Overall intelligence.
 - 624 c. Emotional development and stability.
 - 625 d. Credibility and demeanor as a witness.
 - 626 e. Ability to accept responsibility.
 - 627 f. Ability to assess both the immediate and long-range
 628 consequences of the minor's choices.
 - 629 g. Ability to understand and explain the medical risks of
 630 an abortion ~~terminating her pregnancy~~ and to apply that
 631 understanding to her decision.

632 2. Whether there may be any undue influence by another on
 633 the minor's decision to have an abortion.

634 (d) If the court finds, by a preponderance of the
 635 evidence, that the petitioner is the victim of child abuse or
 636 sexual abuse inflicted by one or both of her parents or her
 637 guardian, or by clear and convincing evidence that the
 638 notification of a parent or guardian is not in the best interest
 639 of the petitioner, the court shall issue an order authorizing
 640 the minor to consent to the performance or inducement of an
 641 abortion ~~a termination of pregnancy~~ without the notification of
 642 a parent or guardian. The best-interest standard does not
 643 include financial best interest or financial considerations or
 644 the potential financial impact on the minor or the minor's

645 family if the minor does not obtain the abortion ~~terminate the~~
 646 ~~pregnancy~~. If the court finds evidence of child abuse or sexual
 647 abuse of the minor petitioner by any person, the court shall
 648 report the evidence of child abuse or sexual abuse of the
 649 petitioner, as provided in s. 39.201. If the court does not make
 650 the finding specified in this paragraph or paragraph (c), it
 651 must dismiss the petition.

652 (e) A court that conducts proceedings under this section
 653 shall:

654 1. Provide for a written transcript of all testimony and
 655 proceedings;

656 2. Issue a final written order containing factual findings
 657 and legal conclusions supporting its decision, including factual
 658 findings and legal conclusions relating to the maturity of the
 659 minor as provided under paragraph (c); and

660 3. Order that a confidential record be maintained, as
 661 required under s. 390.01116.

662 (f) All hearings under this section, including appeals,
 663 shall remain confidential and closed to the public, as provided
 664 by court rule.

665 (g) An expedited appeal shall be made available, as the
 666 Supreme Court provides by rule, to any minor to whom the circuit
 667 court denies a waiver of notice. An order authorizing an
 668 abortion ~~a termination of pregnancy~~ without notice is not
 669 subject to appeal.

670 (h) Filing fees or court costs may not be required of any
 671 pregnant minor who petitions a court for a waiver of parental
 672 notification under this subsection at either the trial or the

673 | appellate level.

674 | (i) A county is not obligated to pay the salaries, costs,
675 | or expenses of any counsel appointed by the court under this
676 | subsection.

677 | (5) PROCEEDINGS.—The Supreme Court is requested to adopt
678 | rules and forms for petitions to ensure that proceedings under
679 | subsection (4) are handled expeditiously and in a manner
680 | consistent with this act. The Supreme Court is also requested to
681 | adopt rules to ensure that the hearings protect the minor's
682 | confidentiality and the confidentiality of the proceedings.

683 | (6) REPORT.—The Supreme Court, through the Office of the
684 | State Courts Administrator, shall report by February 1 of each
685 | year to the Governor, the President of the Senate, and the
686 | Speaker of the House of Representatives on the number of
687 | petitions filed under subsection (4) for the preceding year, and
688 | the timing and manner of disposal of such petitions by each
689 | circuit court. For each petition resulting in a waiver of
690 | notice, the reason for the waiver shall be included in the
691 | report.

692 | Section 4. Section 390.0112, Florida Statutes, is amended
693 | to read:

694 | 390.0112 Abortions ~~Termination of pregnancies~~; reporting.—

695 | (1) The director of any hospital, validly licensed
696 | abortion clinic, or physician's office ~~medical facility~~ in which
697 | an abortion is performed ~~any pregnancy is terminated~~ shall
698 | submit a ~~monthly~~ report each month to the agency on a form
699 | developed by the agency which is consistent with the U.S.
700 | Standard Report of Induced Termination of Pregnancy from the

701 Centers for Disease Control and Prevention. The report must not
 702 contain any personal identifying information ~~which contains the~~
 703 ~~number of procedures performed, the reason for same, and the~~
 704 ~~period of gestation at the time such procedures were performed~~
 705 ~~to the agency.~~ The agency shall be responsible for keeping such
 706 reports in a central place from which statistical data and
 707 analysis can be made. The agency shall submit reported data to
 708 the Division of Reproductive Health within the Centers for
 709 Disease Control and Prevention.

710 (2) If the abortion ~~termination of pregnancy~~ is not
 711 performed in a hospital, validly licensed abortion clinic, or
 712 physician's office medical facility, the physician performing
 713 the procedure shall report ~~be responsible for reporting~~ such
 714 information as required in subsection (1).

715 (3) Reports submitted pursuant to this section shall be
 716 confidential and exempt from the provisions of s. 119.07(1) and
 717 shall not be revealed except upon the order of a court of
 718 competent jurisdiction in a civil or criminal proceeding or as
 719 required in subsection (1).

720 (4) Any person required under this section to file a
 721 report or keep any records who willfully fails to file such
 722 report or keep such records may be subject to a \$200 fine for
 723 each violation. The agency shall ~~be required to~~ impose such
 724 fines when reports or records required under this section have
 725 not been timely received. For purposes of this section, timely
 726 received is defined as 30 days following the preceding month.

727 (5) The agency may adopt rules necessary to administer
 728 this section.

729 Section 5. Paragraphs (b) and (c) of subsection (1),
 730 paragraph (a) of subsection (3), and subsection (6) of section
 731 390.012, Florida Statutes, are amended to read:

732 390.012 Powers of agency; rules; disposal of fetal
 733 remains.—

734 (1) The agency may develop and enforce rules pursuant to
 735 ss. 390.011-390.018 and part II of chapter 408 for the health,
 736 care, and treatment of persons in abortion clinics and for the
 737 safe operation of such clinics.

738 (b) The rules shall be in accordance with s. 390.0111(2)
 739 ~~s. 797.03~~ and may not impose an unconstitutional burden on a
 740 woman's freedom to decide whether to obtain an abortion
 741 ~~terminate her pregnancy~~.

742 (c) The rules shall provide for:

743 1. The performance of abortion pregnancy termination
 744 ~~procedures~~ only by a licensed physician.

745 2. The making, protection, and preservation of patient
 746 records, which shall be treated as medical records under chapter
 747 458.

748 (3) For clinics that perform or claim to perform abortions
 749 after the first trimester of pregnancy, the agency shall adopt
 750 rules pursuant to ss. 120.536(1) and 120.54 to implement the
 751 provisions of this chapter, including the following:

752 (a) Rules for an abortion clinic's physical facilities. At
 753 a minimum, these rules shall prescribe standards for:

754 1. Adequate private space that is specifically designated
 755 for interviewing, counseling, and medical evaluations.

756 2. Dressing rooms for staff and patients.

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- 757 3. Appropriate lavatory areas.
- 758 4. Areas for preprocedure hand washing.
- 759 5. Private procedure rooms.
- 760 6. Adequate lighting and ventilation for abortion
761 procedures.
- 762 7. Surgical or gynecological examination tables and other
763 fixed equipment.
- 764 8. Postprocedure recovery rooms that are equipped to meet
765 the patients' needs.
- 766 9. Emergency exits to accommodate a stretcher or gurney.
- 767 10. Areas for cleaning and sterilizing instruments.
- 768 11. Adequate areas for the secure storage of medical
769 records and necessary equipment and supplies.
- 770 12. The display in the abortion clinic, in a place that is
771 conspicuous to all patients, of the clinic's current license
772 issued by the agency.
- 773 13. Conspicuous written notice to be provided on the
774 premises and on any advertisement of the abortion clinic, which
775 must state that the abortion clinic is prohibited, except in a
776 medical emergency, from performing abortions in the third
777 trimester or after the fetus has attained viability.
- 778 (6) The agency may adopt and enforce rules, in the
779 interest of protecting the public health, to ensure the prompt
780 and proper disposal of fetal remains and tissue resulting from
781 an abortion pregnancy termination.
- 782 Section 6. Subsection (1) of section 390.014, Florida
783 Statutes, is amended, and subsections (5), (6), and (7) are
784 added to that section to read:

785 390.014 Licenses; fees.—

786 (1) The requirements of part II of chapter 408 ~~shall~~ apply
 787 to the provision of services that require licensure pursuant to
 788 ss. 390.011-390.018 and part II of chapter 408 and to entities
 789 licensed by or applying for such licensure from the agency ~~for~~
 790 ~~Health Care Administration~~ pursuant to ss. 390.011-390.018. A
 791 ~~license issued by the agency is required in order to operate a~~
 792 ~~clinic in this state.~~

793 (5) A person may not establish, conduct, manage, or
 794 operate a clinic in this state without a valid and current
 795 license issued by the agency.

796 (6) A clinic must be wholly owned and operated by one or
 797 more physicians who received residency training in performing
 798 dilation-and-curettage and dilation-and-evacuation procedures or
 799 by a professional corporation or limited liability company
 800 composed solely of one or more such physicians. This subsection
 801 does not apply to clinics licensed before July 1, 2012, or to
 802 the renewal of licenses held by such clinics.

803 (7) A person who willfully violates subsection (5) or
 804 subsection (6) commits a misdemeanor of the first degree,
 805 punishable as provided in s. 775.082 or s. 775.083.

806 Section 7. Section 390.018, Florida Statutes, is amended
 807 to read:

808 390.018 Administrative fine.—In addition to the
 809 requirements of part II of chapter 408, the agency may impose a
 810 fine upon the clinic in an amount not to exceed \$5,000 ~~\$1,000~~
 811 for each violation of any provision of this chapter, part II of
 812 chapter 408, or applicable rules.

813 Section 8. Subsection (7) of section 456.013, Florida
 814 Statutes, is amended to read:

815 456.013 Department; general licensing provisions.—

816 (7) (a) The boards, or the department when there is no
 817 board, shall require the completion of a 2-hour course relating
 818 to prevention of medical errors as part of the licensure and
 819 renewal process. The 2-hour course shall count towards the total
 820 number of continuing education hours required for the
 821 profession. The course shall be approved by the board or
 822 department, as appropriate, and shall include a study of root-
 823 cause analysis, error reduction and prevention, and patient
 824 safety. In addition, the course approved by the Board of
 825 Medicine and the Board of Osteopathic Medicine shall include
 826 information relating to the five most misdiagnosed conditions
 827 during the previous biennium, as determined by the board. If the
 828 course is being offered by a facility licensed pursuant to
 829 chapter 395 for its employees, the board may approve up to 1
 830 hour of the 2-hour course to be specifically related to error
 831 reduction and prevention methods used in that facility.

832 (b) In accordance with s. 390.0111, the board, or the
 833 department if there is no board, shall require a physician who
 834 offers to perform or performs abortions in an abortion clinic to
 835 annually complete a 3-hour course related to ethics as part of
 836 the licensure and renewal process. The 3-hour course shall count
 837 toward the total number of continuing education hours required
 838 for the profession. The applicable board, or the department if
 839 there is no board, shall approve the course, as appropriate.

840 Section 9. Section 765.113, Florida Statutes, is amended

841 to read:

842 765.113 Restrictions on providing consent.—Unless the
 843 principal expressly delegates such authority to the surrogate in
 844 writing, or a surrogate or proxy has sought and received court
 845 approval pursuant to rule 5.900 of the Florida Probate Rules, a
 846 surrogate or proxy may not provide consent for:

847 (1) Abortion, sterilization, electroshock therapy,
 848 psychosurgery, experimental treatments that have not been
 849 approved by a federally approved institutional review board in
 850 accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56, or
 851 voluntary admission to a mental health facility.

852 (2) Withholding or withdrawing life-prolonging procedures
 853 from a pregnant patient prior to viability as defined in s.
 854 390.011 s. 390.0111(4).

855 Section 10. Section 782.30, Florida Statutes, is repealed.

856 Section 11. Section 782.32, Florida Statutes, is repealed.

857 Section 12. Section 782.34, Florida Statutes, is repealed.

858 Section 13. Section 782.36, Florida Statutes, is repealed.

859 Section 14. Section 797.02, Florida Statutes, is repealed.

860 Section 15. Section 797.03, Florida Statutes, is repealed.

861 Section 16. If any provision of this act or its
 862 application to any person or circumstance is held invalid, the
 863 invalidity does not affect other provisions or applications of
 864 the act which can be given effect without the invalid provision
 865 or application, and to this end the provisions of this act are
 866 severable.

867 Section 17. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Access Subcommittee
3 Representative Berman offered the following:
4

Amendment (with title amendment)

Between lines 860 and 861, insert:

7 Section 16. Sections 16 and 17 of this act may be cited as
8 the "Pregnancy Confidentiality Act."

9 Section 17. Pregnancy resource centers; release of client
10 information.-

11 (1) As used in this section, the term:

12 (a) "Client" means an individual who is inquiring about or
13 seeking services at a pregnancy resource center.

14 (b) "Client records" means any individually identifiable
15 health information collected by a pregnancy resource center from
16 an individual, including, but not limited to, demographic
17 information; his or her name, address, phone number, e-mail
18 address, date of birth, social security number, driver license
19 number, or Florida identification card number; employer's name,

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20 address, or phone number; the names, addresses, and phone
21 numbers of any relatives or partners; and any personal or
22 health-related information collected by a pregnancy resource
23 center related to an individual client's past, present, or
24 future physical or mental health or condition; the provision of
25 health care to an individual; the past, present, or future
26 payment for the provision of health care to an individual; or
27 any other information related to the client's health care,
28 including, but not limited to, the results of any tests or
29 services provided by the pregnancy resource center.

30 (c) "Pregnancy resource center" means an organization or
31 facility that:

32 1. Provides pregnancy counseling or information as its
33 primary purpose, either for a fee or as a free service;

34 2. Does not provide abortions or refer a client who wishes
35 to obtain an abortion;

36 3. Does not furnish any contraceptive drug or device or
37 refer a client who wishes to obtain a contraceptive drug or
38 device approved by the federal Food and Drug Administration; and

39 4. Is not licensed or certified by the state or the
40 Federal Government to provide medical or health care services.

41 (2) The records of a client of a pregnancy resource center
42 may be disclosed only if the client or his or her legal
43 representative requests or consents, in writing, to the release
44 of such information.

45 (3) A person who violates subsection (2) commits a
46 misdeemeanor of the first degree, punishable as provided in s.
47 775.082 or s. 775.083, Florida Statutes.

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Amendment No.



48 (4) Any person injured as a result of a willful violation
49 of subsection (2) shall have a civil cause of action for
50 compensatory and punitive damages, reasonable attorney fees, and
51 costs.

52
53 -----
54 **T I T L E A M E N D M E N T**

55 Remove line 123 and insert:
56 penalties; creating the "Pregnancy Confidentiality
57 Act"; defining the terms "client," "client records,"
58 and "pregnancy resource center"; providing that
59 records of clients of pregnancy resource centers may
60 be disclosed only if the client or his or her legal
61 representative requests or consents, in writing, to
62 the release of such information; providing penalties;
63 providing for civil relief; providing for
64 severability; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1163 Adoption
SPONSOR(S): Adkins
TIED BILLS: IDEN./SIM. **BILLS:** SB 1874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Poche 	Schoolfield 
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1163 significantly revises chapter 63, F.S., relating to adoption. The bill, in part:

- Clarifies the duties and obligations of adoption entities prior to and after taking custody of a surrendered newborn;
- Renders a newborn who tests positive for illicit or prescription drugs or alcohol, or is born to a mother who tests positive for the same substances at the time of delivery, properly surrendered for the purposes of s. 383.50, F.S., Florida’s “Safe Haven” law for surrendered newborns;
- Prohibits the Department of Children and Families from being involved with a properly surrendered newborn who tests positive for drugs or alcohol, or is born to a mother who tests positive for drugs or alcohol at the time of delivery, except when reasonable efforts to contact an adoption entity to take custody of the child fail;
- Allows for judicial enforcement of a contact agreement between the adoptive parent and the adoptive child’s birth parent, siblings or other relatives in certain circumstances;
- Revises the obligations and responsibilities of an unmarried biological father seeking to assert his parental rights with regard to his child;
- Amends the process for terminating parental rights;
- Outlines the duties of the court when considering a petition for termination of parental rights and, when the petition has been denied, providing for placement of the child;
- Places restrictions on advertisements offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of advertising restrictions;
- Establishes elements of adoption deception by a birth mother, or woman holding herself out to be a birth mother, and strengthens criminal penalties for committing adoption deception; and
- Clarifies the rights and obligations of a volunteer mother involved in a preplanned adoption agreement.

The bill does not appear to have a significant, fiscal impact on state government.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Adoption in Florida

Chapter 39, F.S., establishes legislative intent to provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to recognize that most families desire to be competent caregivers and providers for their children; to ensure permanency for children within one year, and to ensure that the health and safety of children served shall be of paramount concern.¹ Chapter 39, F.S., provides the process and procedures for the following:

- Reporting child abuse and neglect;
- Protective investigations;
- Taking children into custody and shelter hearings;
- Petition, arraignment, adjudication, and disposition;
- Disposition;
- Post disposition change of custody;
- Case plans;
- Permanency;
- Judicial reviews; and
- Termination of parental rights.

Many of the provisions and time-frames in chapter 39, F.S., are required by federal law in order to be eligible for federal funding.²

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-placing agencies licensed by DCF under s. 63.202;
- child-caring agencies registered under s. 409.176;
- an attorney licensed to practice in Florida; or
- a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

The Legislature's intent is 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.³ 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.⁴ The Legislature also intends to protect and promote the well-being of the persons being adopted.⁵ Safeguards are established to ensure that that the minor is legally free for

¹ S. 39.001, F.S.

² Including, but not limited to, the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351); the Keeping Children and Families Safe Act (P.L. 108-36); the Adoption and Safe Families Act (P.L. 105-89); the Child Abuse Prevention and Treatment Act (P.L. 93-247); and the Adoption Assistance and Child Welfare Act (P.L. 96-242).

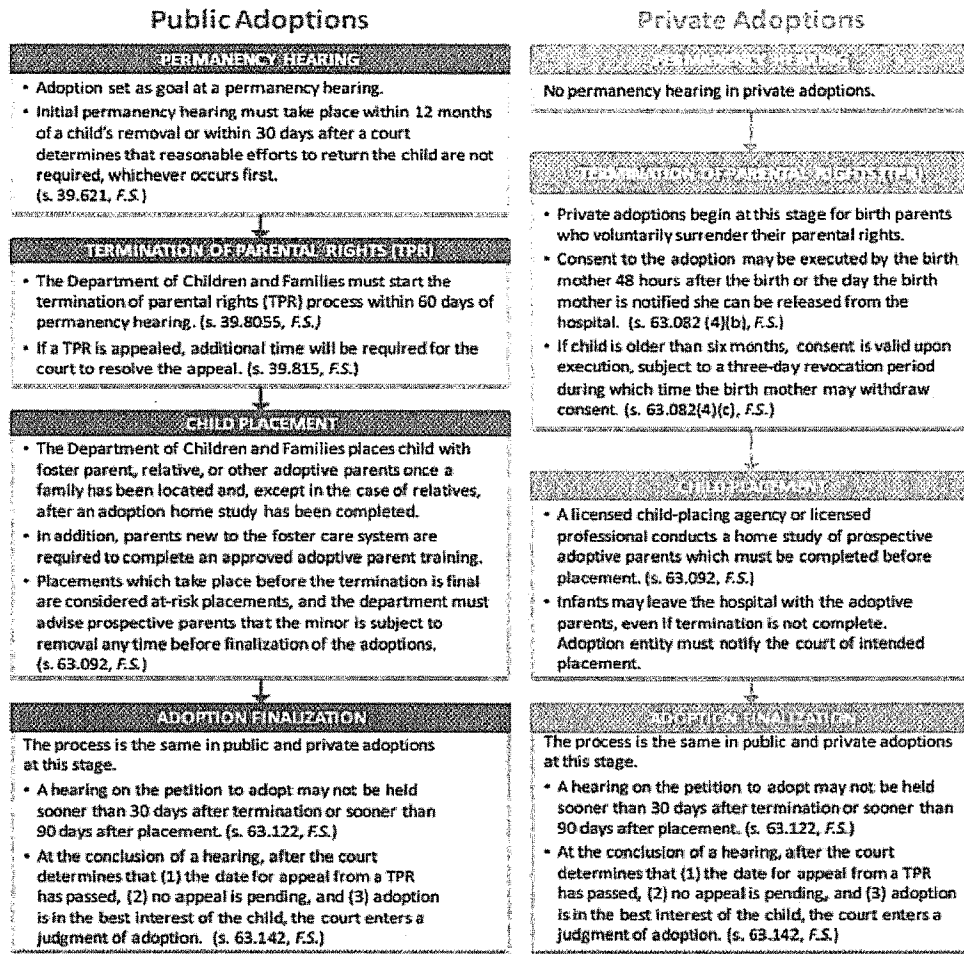
³ S. 63.022(1)(a), F.S.

⁴ S. 63.022(2), F.S.

⁵ S. 63.022(3), F.S.

adoption, that the required persons consent to the adoption, or that the parent-child relationship is terminated by judgment of the court.⁶

The process for public adoptions and private adoptions in Florida is summarized in the chart below:⁷



Source: The Florida Statutes and Florida Administrative Code.

Florida Adoption Statistics

For state fiscal year 2010-2011, 3,009 children were adopted in Florida.⁸ Over the last five years, nearly 17,000 children have been adopted out of Florida's child welfare system, while setting a record for the number of children adopted in two of the last five years.⁹ As a result of the improvement of adoption performance in the state, Florida has collected more than \$18 million in federal adoption incentive awards since 2009.¹⁰ Only Texas and Arizona have received more in adoption incentive awards during the same time period.¹¹

⁶ S. 63.022(4), F.S.

⁷ Office of Program Policy Analysis and Government Accountability, *Research Memorandum-Adoption Processes in Florida*, Dec. 8, 2011, page 3 (on file with the Health and Human Service Access Subcommittee).

⁸ Executive Office of the Governor, Office of Adoption and Child Protection, *Annual Report 2011*, December 30, 2011, page 59, available at www.flgov.com/wp-content/uploads/childadvocacy/oacp2011_annual_report.pdf (also on file with Health and Human Services Access Subcommittee).

⁹ *Id.* at page 6.

¹⁰ *Id.*

¹¹ *Id.* at page 57.

During the period of July 2010 through June 2011, of the children discharged from foster care to a finalized adoption, over 51 percent were discharged in less than 24 months from the date of the child's latest removal from home.¹² Of those children, the median length of stay in foster care was 20 months from the date of the latest removal from home to the date of discharge to adoption.¹³

Permanency

Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system.¹⁴ A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.¹⁵ The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child.¹⁶ A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption.¹⁷ Available permanency goals for children, listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child under s. 39.6221;
- Permanent placement with a fit and willing relative under s. 39.6231; or
- Placement in another planned permanent living arrangement under s. 39.6241.¹⁸

Adoption via Dependency — Pre-Termination of Parental Rights

A birth parent may decide, as the dependency process unfolds but prior to the termination of their parental rights, to work with a private adoption entity¹⁹ to find a permanent home for their child. The Legislature supports cooperation between private adoption entities and DCF to find permanent placement options for children in the care of DCF when the birth parents wish to participate in a private adoption plan with a qualified family.²⁰ A private adoption entity may intervene in dependency proceedings when it obtains consents to adopt from the parents of a minor child in the custody of the department, prior to the termination of their parental rights.²¹ The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents with whom the child will be placed.²² The court must then determine whether the prospective adoptive parents are properly qualified to adopt the child, and whether the adoption is in the child's best interest.²³ The law requires that the dependency court, in determining the best interest of the child prior to termination of parental rights, consider the birth parents' rights to determine an appropriate placement for their child, the permanency offered, the child's bonding with any potential adoptive home in which the child has been residing, and the importance of maintaining sibling relationships.²⁴

¹² *Id.* at page 55.

¹³ *Id.* at page 56.

¹⁴ S. 39.621(1), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ S. 39.621(2), F.S.

¹⁹ S. 63.032(3), (6), (9), and (11), F.S.; "adoption entity" is defined as DCF, a licensed child-placing (adoption) agency, a registered or approved child-caring agency, or an attorney licensed in Florida who intends to place a child for adoption.

²⁰ S. 63.022(5), F.S.

²¹ S. 63.082(6)(b), F.S.

²² *Id.*

²³ S. 63.082(6)(c), F.S.

²⁴ S. 63.082(6)(d), F.S.

If the court decides that it is in the child's best interest, the dependency court will order the transfer of custody of the minor child to the prospective adoptive parent under the supervision of the adoption entity, who shall provide monthly reports to the department until the adoption is finalized.²⁵

Adoption via Dependency — Post-Termination of Parental Rights

The laws relating to protection of children who are abused, abandoned, or neglected are found primarily in Chapter 39, F.S. When a child is adjudicated dependent, DCF must ensure that the child has a plan which will lead to a permanent living arrangement.²⁶ If a child in foster care will not be reunited with a parent, the department will initiate a proceeding to terminate parental rights (TPR). Section 39.810, F.S., requires that the court must consider the "manifest best interests of the child" when determining whether to terminate a parent's right to their child, which includes an evaluation, among other factors, of:

- Suitable permanent relative custody arrangements;
- The ability of the birth parent(s) to provide for the material needs of the child;
- The ability of the birth parent(s) to care for the child's health, safety, and well-being upon the child's return home;
- The present and future needs of the child; and
- The love, affection and emotional ties between the child and his or her parent(s), siblings, or other relatives.

In making this determination, the statute prohibits the court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child. If the court determines that it is in the manifest best interests of the child for their parent's rights to be terminated, then the TPR order is entered and the child is placed in the custody of DCF for permanent placement. The Legislature has determined that adoption is the primary permanency option.²⁷

Data for state fiscal year 2010-2011 show that more children who are becoming newly available for adoption are being found permanent adoptive homes within 12 months.²⁸ In fact, the majority of children adopted during the previous state fiscal year had been waiting 12 months or less.²⁹

A parent has the right to appeal a judicial order terminating his or her parental rights. The chart below describes the stages involved in the process of appeal of termination of parental rights.³⁰ Each stage includes a timeline goal for completion of each stage in the process as established by the Florida Supreme Court. The median length of time for the process of appealing a termination of parental rights in Florida is 151 days.³¹

²⁵ S. 63.082(6)(c), F.S.

²⁶ See Part IX, Chapter 39, F.S.

²⁷ S. 39.621(6), F.S.

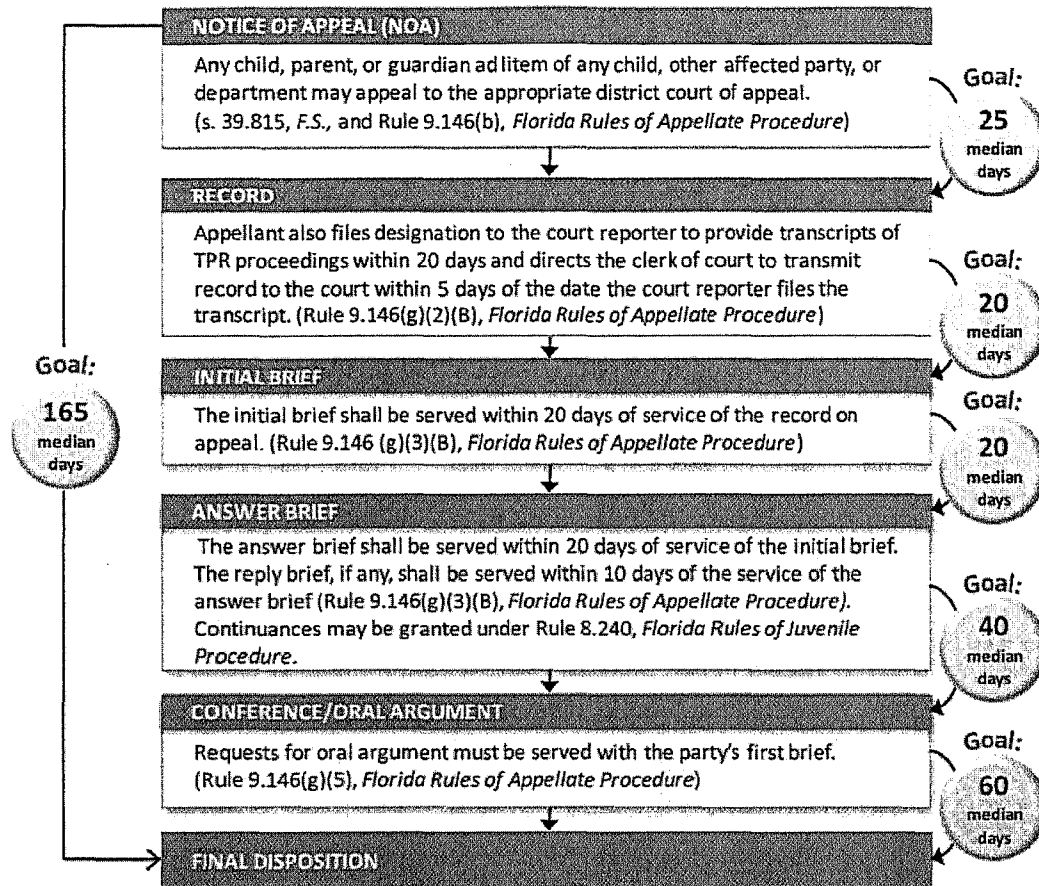
²⁸ See *supra* at FN 8, page 63.

²⁹ *Id.*; 66.63% of children adopted during this time period were waiting 12 months or less for finalization of adoption

³⁰ See *supra* at FN 8, page 5.

³¹ See *supra* at FN 8, page 1.

Stages in Appeals from Termination of Parental Rights (TPR)



Source: Florida Rules of Appellate Procedure and Florida State Court Commission on District Court of Appeal Performance and Accountability: *Report of the District Court of Appeal Performance and Accountability Commission on Delay in Child Dependency/Termination of Parental Rights Appeals*, June 2006.

Diligent search

When a child is removed from the physical custody of his or her parent or guardian, a diligent search must be initiated to identify and locate any absent parent.³² The diligent search must include, at a minimum:

- Inquiries of all relatives of the parent or prospective parent made known to DCF;
- Inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent;
- Inquiries of other state and federal agencies likely to have information about the parent or prospective parent;
- Inquiries of appropriate utility and postal providers;
- A thorough search of at least one electronic database specifically designed for locating persons; and
- Inquiries of appropriate law enforcement agencies.³³

An affidavit of diligent search shall be included in the predisposition report.³⁴ Diligent search efforts shall continue until the department is released from any further search by the court.³⁵

Prospective Adoptive Parents

³² S. 39.503(5), F.S.

³³ S. 39.503(6), F.S.

³⁴ S. 39.502(8), F.S.

³⁵ S. 39.502(9), F.S.

DCF promulgated several administrative rules related to the recruitment, screening, application, and evaluation process of adoptive parents.³⁶ The rules outline a detailed evaluation of applicants, including a family preparation and study process.³⁷ Prospective adoptive parents are required to execute an adoption application – either DCF form CF-FSP 5071, which is incorporated by reference in DCF rules, or an adoption application in a format created by a community based care provider that contains “all of the elements of CF-FSP 5071.”³⁸ Form CF-FSP 5071 requests necessary identifying information from prospective adoptive parents, such as current and past residences, date of marriage, names and ages of other children in the home, religious affiliation, interests, employment, financial status, life history (including medical history), and references. A check of the Florida Abuse Hotline Information System must be conducted on all adoptive applicants.³⁹ Lastly, criminal background checks through local, state, and federal law enforcement agencies will be conducted on all individuals 12 years old and older who reside in the prospective adoptive home.⁴⁰

Preliminary Home Study and Final Home Investigation

A preliminary home study to determine the suitability of the intended adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.⁴¹ The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s.61.20(2), F.S.⁴² The preliminary home study must include, at a minimum, the following:

- Interview with the intended adoptive parents;
- Records checks of DCF’s central abuse hotline;
- Criminal history check through FDLE and FBI;
- Assessment of the physical environment of the home;
- Determination of the financial security of the intended adoptive parents;
- 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; and
- Copy of each signed acknowledgement of receipt of adoption entity disclosure forms.⁴³

A favorable home study is valid for one year after the date of its completion.⁴⁴ 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.⁴⁵

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interest of the child, a final home investigation must be conducted before the adoption is concluded. The investigation is conducted in the same manner as the preliminary home study.⁴⁶ Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court

³⁶ Rules 65C-16.001 through 65C-16.007, F.A.C.

³⁷ Rule 65C-16.005(4), F.A.C.

³⁸ Rule 65C-16.004(5), F.A.C.; the DCF adoption form is CF-FSP 5071 and can be found on the department’s website at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx> (type in “CF-FSP 5071” in the Form Number field) (last visited on January 19, 2012).

³⁹ Rule 65C-16.007(1), F.A.C.

⁴⁰ Rule 65C-16.007(2), F.S.

⁴¹ S. 63.092(3), F.S.; unless good cause is shown, a home study is not required for adult adoptions of when the petitioner for adoption is a stepparent or a relative.

⁴² *Id.*; DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ S. 63.125(1), F.S.

and provided to the petitioner.⁴⁷ The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.⁴⁸ The final home investigation must include:

- 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; and
- Other information relevant to suitability of placement Information required by rules promulgated by DCF.⁴⁹

"Safe Haven" Law- Abandonment of Newborns

Florida passed legislation providing for the safe abandonment of a newborn in 2000.⁵⁰ The law provides that a parent may safely abandon an infant at a fire station, EMS station, or hospital emergency room within 3 days of birth.⁵¹ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment.⁵² Infants admitted to a hospital under the safe abandonment law are presumed eligible for Medicaid coverage.⁵³ The hospital then transfers the child to a licensed child-placing agency.⁵⁴

The child-placing agency is required to request assistance from law enforcement within 24 hours of receiving the infant, to determine whether the child is a missing child.⁵⁵ The licensed child-placing agency seeks emergency custody via court order, and may place the child with court-approved prospective adoptive parents who become the infant's guardians pending termination of parental rights and final adoption.⁵⁶ The infant's parent may make a claim of parental rights to the court or to the entity having custody of the child at any time before the termination of parental rights.⁵⁷ Parenthood may be determined by scientific testing, if ordered by the court.⁵⁸

Safe haven abandonment under s. 383.50, F.S., does not constitute abuse or neglect, and a child safely abandoned under this statute is not deemed abandoned for purposes of reporting and investigation requirements of chapter 39 governing abuse, neglect and abandonment. Similarly, criminal investigation of a safe abandonment under this statute is prohibited, unless there is actual or suspected child abuse or neglect. A parent who abandons a child has the "absolute right to remain anonymous", and prohibits pursuit of the parent.⁵⁹ In addition, the statute establishes a presumption that the abandoning parent consented to termination of parental rights.⁶⁰ A parent may rebut that presumption by making a claim for parental rights prior to termination.

Effect of Proposed Changes

HB 1163 amends many provisions of chapter 63, F.S., relating to adoption.

⁴⁷ S. 63.125(2), F.S.

⁴⁸ S. 63.125(3), F.S.

⁴⁹ S. 63.125(5), F.S.

⁵⁰ Chapter 2000-188, Laws of Fla.

⁵¹ S. 383.50(1), F.S.

⁵² S. 383.50(3), F.S.

⁵³ S. 383.50(8), F.S.

⁵⁴ S. 383.50(7), F.S.

⁵⁵ S. 63.0423(3), F.S.

⁵⁶ S. 63.0423(2), F.S.

⁵⁷ S. 63.0423(6) and (7), F.S.

⁵⁸ S. 63.0423(7), F.S.

⁵⁹ S. 383.50(5), F.S.

⁶⁰ S. 383.50(2), F.S.

The bill amends the definition of “abandoned”, found in s. 63.032(1), F.S. Currently, a child is considered abandoned if the parent or person having legal custody makes no provision for support of the child and makes little or no effort to communicate with the child. The bill changes to the definition of abandoned to mean a parent or person having legal custody makes little or no provision for support of the child or makes little or no effort to communicate with the child. The bill eases the criteria for considering a child to be abandoned and trigger the permanent placement process.

The bill exempts from the definition of “parent”, found in s. 63.032(12), F.S., a gestational surrogate as defined in s. 742.13, F.S.⁶¹

The bill clarifies the definition of “unmarried biological father”, found in s. 63.032(19), F.S., to mean, in part, the child’s biological father who is not married to the child’s mother at the time of conception or on the date of the birth of the child. Current law is vague regarding the definition of an unmarried biological father as related to the timing of the birth of the child.

Section 3

The bill exempts adoption proceedings initiated under chapter 39, F.S., from the requirement that a search of the Florida Putative Father Registry be conducted, as provided in s. 63.054(7), F.S. The exemption may create inconsistency in the application of the statute. It may also provide for a legal challenge to an order terminating parental rights by a father in the case where a father has registered but was not provided notice of the hearing on termination of parental rights because a search of the registry was not completed.

Section 4

The bill requires all adoptions of minor children to use an adoption entity⁶² which will assume the responsibilities provided in s. 63.039, F.S., which outlines the duties owed to prospective adoptive parents and provides for sanctions. Adoption by a relative or stepparent does not require the use of an adoption entity under this provision.

Section 5

The bill deletes reference to “the other” spouse, found in s. 63.042(2)(c), F.S., and replaces it with “his or her”.

Section 6

The bill provides that, upon entry of a final judgment terminating parental rights, an adoption entity that takes physical custody of an infant assumes responsibility for medical and other costs associated with emergency care and treatment of the infant from the time the entity takes custody of the infant. The bill clarifies that the adoption entity does not inherit financial responsibility for care and treatment that was provided to the infant prior to the entity taking physical custody of the infant.

The bill proposes that an infant who tests positive for illegal or narcotic prescription drugs, alcohol, or other substances that would cause concern for the infant’s safety and welfare if left with the mother, or if an infant is born to a mother who tests positive for the same substances at the time of delivery, but shows no other signs of abuse or neglect, shall be treated as a properly surrendered newborn under s. 383.50, F.S.,⁶³ and considered a surrendered infant for purposes of s. 63.0423, F.S., which outlines procedures for handling surrendered newborns. The bill further provides if DCF is contacted regarding a surrendered newborn under this section of law, the department may only provide instruction on

⁶¹ S. 742.13(5), F.S., defines “gestational surrogate” as a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

⁶² S. 63.032(3), F.S., defines “adoption entity” as DCF; a child-caring agency licensed under s. 409.176; an intermediary, such as a Florida licensed attorney; or an out-of-state child-placing agency licensed by DCF to place children within the state.

⁶³ S. 383.50, F.S., is Florida’s “safe haven” law for newborns.

contacting an adoption entity to take custody of the child. DCF may not get involved with the surrendered newborn unless reasonable efforts to contact an adoption entity to take custody of the child fail. This provision of the bill attempts to place a specific category of newborns, those testing positive for drugs or born to a mother testing positive for drugs at the time of delivery, in the private adoption process to allow for a speedier placement in a qualified permanent arrangement. The change would require persons receiving surrendered infants to make a determination that there are no signs of child abuse and neglect without a referral to the abuse hotline or DCF investigation. This provision precludes the involvement of DCF and investigations of abuse and neglect related to infants who may have been harmed due to exposure to alcohol, controlled substances, etc. as provided for in s. 39.01(32)(g) F.S.

The bill renders a judgment terminating parental rights, and any subsequent judgment approving adoption, voidable if, on the motion of a parent, the court finds that an adoption entity knowingly gave false information which prevented a parent from making known his or her desire to assume parental responsibilities for or exercise parental rights regarding a minor. Current law allows only a birth parent to file such a motion. Current law also allows the court to consider whether any person knowingly gave false information that impeded the birth parent from weighing in on his or her intent to accept responsibility for the minor or exercise his or her parental rights.

The bill narrows the category of organizations or persons that the court can look to in evaluating the truth and veracity of information provided during the process to terminate parental rights. Limiting the group of persons who may provide false information to adoption entities does not include all individuals who may give false information to the birth parent, including family members of the other birth parent and friends of the other birth parent. The bill would leave a birth parent who relied on false information from a person who is not an adoption entity, to his or her detriment, without recourse to correct the situation and validly assert his or her parental rights.

The bill prohibits the court from ordering scientific testing to determine paternity or maternity of a minor child until the court determines that a prior order terminating parental rights is voidable pursuant to s. 63.0423(9)(a), F.S. All parties can agree that such testing to determine paternity or maternity is in the best interests of the child, at which point the court may order such testing. As discussed above, the bill provides that a prior order terminating parental rights is voidable if the birth parent relied upon false information provided by an adoption entity, which prevented that parent from making known his or her desire to accept parental responsibility for the minor child and assert his or her parental rights.

Because the bill limits the source of false information to an adoption entity, voidable orders terminating parental rights that were founded on acts or omissions of the birth parent, based on false information provided by a person other than an adoption entity, paternity or maternity may never be established for a minor child that would otherwise be obtainable.

Section 7

Current law entitles a grandparent to receive notice from an adoption entity of a hearing on a petition for termination of parental rights pending adoption if a child has lived with the grandparent for at least six months within the 24 months immediately preceding the date of filing the petition.

The bill requires the period of residence with the grandparent to be continuous in nature. This may create an issue of interpretation for the court regarding the meaning of continuity and whether de minimus absences from the home by the child or grandparent break the continuous requirement. If so, extremely short, temporary absences of one night or weekend may operate to waive the right of a grandparent to receive notice of hearing on a petition for termination of parental rights.

Section 8

The bill changes the title of s. 64.0427, F.S., from "Adopted minor's right to continued communication or contact with siblings and other relatives" to "Agreements for continued communication or contact between adopted child and siblings, parents, and other relatives". The bill prohibits the court from

increasing contact between an adopted child and siblings, birth parents, or other relatives without the consent of the adoptive parent or parents. The court may reduce such contact between the parties without the consent of the adoptive parent or parents.

The bill permits prospective adoptive parents to enter into an agreement allowing contact between the child to be adopted and the birth parent, other relative, or previous foster parent. Contact may take the form of visits, telephone calls, written correspondence, exchange of photographs, and other similar kinds of contact. An agreement establishing contact is enforceable by a court only if:

- The agreement is in writing and was submitted to the court;
- The adoptive parents have agreed to the terms of the contact agreement;
- The court determines that contact is in the best interests of the child; and
- The child, if 12 years of age or older, has agreed to the contact agreement

Any dispute regarding the contact agreement or any breach of the agreement does not affect the validity or finality of the adoption. The adoptive parent can terminate the contact agreement if he or she reasonable believes further contact to be detrimental to the best interests of the child. To terminate a contact agreement, an adoptive parent must file a notice of intent to terminate the agreement, which includes the reasons for termination, with the court that approved the agreement and with any party to the agreement. If appropriate, the bill allows the court to order the parties to mediation to resolve the issues associated with the contact agreement. The bill does not specify how the mediation is to be conducted, who shall serve as mediator, or who will pay for the mediation. Lastly, the bill provides for an enforceable contact agreement even if the agreement does not disclose the identity of the parties or if identifying information is redacted from the agreement.

Section 9

In circumstances where an intermediary (attorney) has taken custody of a minor who has been voluntarily surrendered through execution of a consent to adoption, the intermediary is responsible for the minor until the court orders preliminary approval of placement in a prospective adoptive home. The intermediary retains the right to remove the minor from the prospective adoptive home if the intermediary deems removal to be in the best interests of the child. The bill prohibits the intermediary from removing a child without a court order unless the child is in danger of imminent harm. The bill also clarifies that the intermediary does not become responsible for payment of the minor's medical bills that were incurred prior to taking physical custody after the execution of adoption consents.

The bill requires that prospective adoptive parents receive a completed and approved favorable preliminary home study within one year before placement of a minor child in the prospective. Current law does not specify that the favorable preliminary home study be completed and approved within the applicable time period. The bill requires that, in the case where a suitable prospective adoptive home is not available, the minor must be placed in a licensed foster care home, with a home-study approved person or family, or with a relative until a suitable prospective adoptive home becomes available. Current law does not specify that the foster home be licensed and does not provide the option for placement with a person or family that has been home-study-approved.

Sections 10 and 11

The bill requires strict compliance with the provisions of chapter 63, F.S., by an unmarried biological father in order to retain the rights afforded to him under applicable law. The bill provides that a registrant who files a claim of paternity form with the Office of Vital Statistics expressly consents to submit to and pay for DNA testing upon the request of any party. Current law did not require the registrant to pay for DNA testing.

Section 12

Current law requires notice of proceedings to terminate parental rights to be served on the father of the minor if one of several elements is met.

The bill adds, as an element to require notice to be served, the fact that the father is listed on the child's birth certificate before the date a petition for termination of parental rights is filed. The bill requires the status of the father to be determined at the time the petition for termination of parental rights is filed. This status may not be modified with regard to the father's rights or obligations by any acts that occur after the petition has been filed. Case law has permitted the father's status, and thereby his rights and responsibilities, to be reassessed following marriage to the birth mother subsequent to the entry of judgment of termination of parental rights.⁶⁴ The change proposed by the bill may prevent the father of a minor child from exercising his parental rights if, at the time the petition was filed, his status was impacted by his reliance on false information provided by an adoption entity in such a manner that if he was provided with truthful information, his actions would have resulted in a different determination of status.

The bill clarifies that, in order to demonstrate a full commitment to the responsibilities of parenthood, an unmarried biological father must provide reasonable and regular financial support. The bill does not define "reasonable and regular". The bill states that an unmarried biological father retains the responsibility to provide financial assistance to the birth mother during pregnancy and to the child following birth regardless of whether the birth mother and child are receiving financial support from an adoption entity, prospective adoptive parent, or third party. In addition, the fact that the birth mother and child are receiving support from other sources does not excuse the father's duty to provide support. Merely expressing a desire to fulfill responsibilities towards his child does not satisfy the obligations of the father outlined in s. 63.062, F.S.

The bill requires an adoption entity to serve notice of intended adoption plan on any known and locatable unmarried biological father who is identified to the entity by the birth mother at the time she signs her consent to adoption only if the child is 6 months old or less at the time the consent is executed. Current law does not specify an age limitation for the child in relation to service of notice of intended adoption plan. Service of notice is not required if, among other circumstances, the child is more than 6 months old at the time the birth mother executes the consent to adoption. It is unclear why 6 months was determined to be the age that triggered the notice requirement for intended adoption plans.

The bill specifies that an affidavit of nonpaternity is sufficient to waive notice of all court proceedings after execution if it contains a denial of parental obligations. It is not necessary that the affidavit include a denial of biological relationship to the child. The affidavit has the effect of indicating that, while the affiant may be the biological father of the child, the affiant has no intention of participating in the parenting of the child and is willfully surrendering his parental rights related to the child.

Section 14

Current law states that the notice and consent provisions of chapter 63, F.S., as they relate to the father of a child do not apply in cases where the child is conceived as a result of a violation of a criminal law of Florida, another state or another country. The bill adds that a criminal conviction is not necessary for a court to find that a child was conceived as a result of a violation of a criminal law of Florida, another state or another country.

Following execution of a consent to adoption by a parent or parents, as required by law, the bill directs the court to permit an adoption entity to intervene in a dependency hearing held pursuant to chapter 39, F.S. Current law provides the court discretion ("may") on allowing an adoption entity to intervene. Upon intervention, the bill directs the court to immediately hold a hearing to determine if the adoption entity submitted the proper documents to be allowed to intervene and, if so, if a change of placement of the child is appropriate. Among the documents to be submitted is a preliminary home study. The bill provides that, unless the court is concerned about the completeness of the home study submitted by the adoption entity or is concerned about the qualifications of the individual who conducted the home study, another study to be completed by DCF is not necessary.

⁶⁴ See *D. and L.P. v. C.L.G. and A.R.L.*, 37 So.3d 897 (Fla. 1st DCA 2010).

The bill does not allow a parent whose consent to adoption has been revoked or set aside to use any other consents executed by the other parent or an applicable third party to affect the rights and obligations of the other parent or applicable third party.

Section 15

The bill clarifies that a consent to adoption of a child 6 months of age or older may be revoked up to three business days after it was signed. Current law provides merely a three day revocation period.

Section 16

Under s. 63.087(6), F.S., an answer or pleading in response to a petition to terminate parental rights pending adoption must be filed. Current law provides that failure to appear at the hearing on the petition is grounds upon which the court may terminate parental rights. The bill specifies that failure to “personally” appear at the hearing constitutes grounds for terminating parental rights.

Section 18

If the court does not find clear and convincing evidence sufficient to enter a judgment terminating parental rights, the court must dismiss the petition and the parent or parents whose rights were sought to be terminated retain all rights in full force and effect. The court is required to enter an order based on written findings providing for the placement of the minor when the petition is dismissed. The bill prohibits the court from making custody decisions between competing parties. Instead, the court shall return the child to the parent or guardian who had physical custody of the child at the time of placement for adoption unless the court determines it is not in the best interests of the child or it is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. The court may order the parties to work with a qualified professional in a reunification or unification plan to assist the child in this transition.

Current law permits the court to order scientific testing to determine the paternity of a minor at any time when the court has jurisdiction over the minor.

The bill permits the court to order scientific testing to determine paternity only if the court determines that the consent of the father is necessary, unless all parties agree that knowledge of paternity of the child is in the best interest of the child. The bill also prohibits the court from ordering scientific testing of paternity of an unmarried biological father where the minor has a father whose rights have not been terminated.

A parent whose rights have been terminated may file a motion for relief from judgment terminating parental rights. Within 30 days of filing of the motion, the court must conduct a preliminary hearing to determine what contact, if any, is permitted between the child and the parent seeking relief. Contact can only be considered if it was requested by the parent who attended the preliminary hearing.

The bill provides that contact may not be awarded unless the parent had a previous bonded relationship with the child and the parent has pled a legitimate legal basis and established a prima facie case for setting aside the judgment terminating rights. The bill would require the court to determine if the pleading seeking relief asserts sufficient facts on its face as to lead the court to grant the relief requested. Again, the bill does not define or further clarify the term “bonded relationship”.

Section 22

The bill requires the state adoption information center, established under s. 63.167, F.S., to provide contact information for all adoption entities in a caller’s county or, if there are no adoption entities in the caller’s area, the contact information for the nearest adoption entity to the caller, when asked for a

referral to make an adoption plan. The bill also requires the information center to rotate the order in which names of adoption entities are provided to callers.

Section 23

The bill makes it unlawful for a person to assist an unlicensed person or entity in publishing or broadcasting an advertisement making a minor available for adoption or seeking a minor for adoption without including a Florida license number of the agency or attorney placing the advertisement. The bill allows only a Florida licensed attorney or a Florida licensed adoption entity to place a paid advertisement in a telephone book, including the attorney or entity phone number, that a child is available for adoption or a child is sought for adoption. This provision will prevent an attorney or adoption entity licensed in another state or country from advertising or broadcasting an offer of a child for adoption or soliciting a child from within the state for adoption.

The bill requires a person who publishes a telephone directory for distribution in Florida to include, in all adoption advertisements, a statement that only licensed Florida attorneys or adoption entities may place advertisements offering or seeking minors for adoption. The bill requires the telephone directory publisher to include the appropriate Florida Bar number or Florida license number of the attorney or entity placing the advertisement in the advertisement itself. A person who knowingly publishes or assists in the publishing of an advertisement in violation of these provisions commits a second degree misdemeanor and is subject to a fine of up to \$150 per day for each day the violation continues. This provision requires the telephone directory publisher to ensure that only a Florida licensed attorney or adoption entity places an advertisement relating to adoption and to exclude all other attorneys or entities from advertising in the directory.

A birth mother, or a woman holding herself out to be a birth mother, who solicits and receives payment of adoption-related expenses in connection with an adoption plan commits adoption deception if:

- The birth mother, or woman holding herself out to be a birth mother, knew or should have known she was not pregnant at the time she sought or accepted funds for adoption-related expenses;
- The birth mother, or woman holding herself out to be a birth mother, accepts living expenses from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses from another prospective adoptive parent or adoption entity at the same time in an effort to secure the child for adoption; or
- The birth mother, or woman holding herself out to be a birth mother, makes false representations to induce payment of living expenses and does not intend to offer the child for the adoption.

It is not clear how the intent of the birth mother in this situation would be determined. The intent element of the crime of adoption deception established by the bill may present a difficult proof problem for prosecutors.

A person who commits adoption deception commits a second degree misdemeanor if the amount of money received was \$300 or less.⁶⁵ The bill makes adoption deception with receipt of money totaling more than \$300 a third degree felony. A person who commits adoption deception is also liable for damages as a result of acts or omissions, including reasonable attorney fees and costs incurred by the adoption entity or the prospective adoptive parent.

Section 24

Under s. 63.213, F.S., relating to preplanned adoption agreements, the bill clarifies that the agreement in no way constitutes consent of the mother to place her biological child for adoption until 48 hours after the birth of the child. The bill states that the right to rescind consent within this time period only applies when the child is genetically related to the mother. The bill further specifies that certain provisions of

⁶⁵ The thresholds for differing degrees of theft can be found in s. 812.014, F.S.

the section apply only if the child is genetically related to the mother. Lastly, for purposes of this section, the definition of “child” is revised to mean a child or children conceived through a fertility technique. Current law refers only to a child or children conceived through an insemination, which does not account for improvements in medical technology that may allow for conception of a child in a manner other than insemination.

Section 25

The bill confirms that any adoption made before July 1, 2012, the effective date of the bill, are valid. Any proceedings that are pending as of that date, or any amendments to proceedings pending on that date that are subsequently entered, are not affected by the change in law, unless the amendment is designated a remedial provision.

The bill deletes several references to a “licensed child-placing agency” throughout chapter 63, F.S., and replaces it with “adoption entity”. The term adoption entity includes several other persons or organizations, but does not include the term “licensed child-placing agency”. Also, the term is defined in chapter 39, F.S. The failure to include a “license child-placing agency” in chapter 63, F.S., creates a situation in which such an agency is treated differently in adoptions from the foster care system than the agency is treated in the private adoption process.

The bill also changes many references to the child’s best interest throughout chapter 63, F.S., to the child’s best “interests” to reflect consistency in statute with applicable case law.

B. SECTION DIRECTORY:

Section 1: Amends s. 63.022, F.S., relating to legislative intent.

Section 2: Amends s. 63.032, F.S., relating to definitions.

Section 3: Amends s. 63.037, F.S., relating to proceedings applicable to cases resulting from a termination of parental rights under chapter 39.

Section 4: Amends s. 63.039, F.S., relating to duty of adoption entity to prospective adoptive parents; sanctions.

Section 5: Amends s. 63.042, F.S., relating to who may be adopted; who may adopt.

Section 6: Amends s. 63.0423, F.S., relating to procedures with respect to surrendered infants.

Section 7: Amends s. 63.0425, F.S., relating to grandparent’s right to notice.

Section 8: Amends s. 63.0427, F.S., relating to adopted minor’s right to continued communication or contact with siblings and other relatives.

Section 9: Amends s. 63.052, F.S., relating to guardians designated; proof of commitment.

Section 10: Amends s. 63.053, F.S., relating to rights and responsibilities of an unmarried biological father; legislative findings.

Section 11: Amends s. 63.054, F.S., relating to actions required by an unmarried biological father to establish parental rights; Florida Putative Father Registry.

Section 12: Amends s. 63.062, F.S., relating to persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.

Section 13: Amends s. 63.063, F.S., relating to responsibility of parents for actions; fraud or misrepresentation; contesting termination of parental rights and adoption.

Section 14: Amends s. 63.082, F.S., relating to execution of consent to adoption or affidavit of nonpaternity; family social and medical history; withdrawal of consent.

Section 15: Amends s. 63.085, F.S., relating to disclosure by adoption entity.

Section 16: Amends s. 63.087, F.S., relating to proceeding to terminate parental rights pending adoption; general provisions.

Section 17: Amends s. 63.088, F.S., relating to proceeding to terminate parental rights pending adoption; notice and service; diligent search.

Section 18: Amends s. 63.089, F.S., relating to proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.

Section 19: Amends s. 63.092, F.S., relating to report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.

Section 20: Amends s. 63.152, F.S., relating to application for new birth record.

- Section 21:** Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings; confidential nature.
- Section 22:** Amends s. 63.167, F.S., relating to state adoption information center.
- Section 23:** Amends s. 63.212, F.S., relating to prohibited acts; penalties for violation.
- Section 24:** Amends s. 63.213, F.S., relating to preplanned adoption agreement.
- Section 25:** Amends s. 63.222, F.S., relating to effect on prior adoption proceedings.
- Section 26:** Amends s. 63.2325, F.S., relating to conditions for revocation of a consent to adoption or affidavit of nonpaternity.
- Section 27:** Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The provisions of the bill are designed to steer more surrendered newborns to the private adoption process and avoid the dependency process outlined in chapter 39, F.S. To the extent that the provisions accomplish that goal, the resources maintained by DCF for the purpose of the dependency process will be retained by the department. The provisions of the bill could positively impact the number of hours worked by DCF staff and investigators in opening and investigating cases. Also, the foster care system will have fewer children to care for, lessening the amount of money used to care for minors in the system.

The court system may see an increase in the number of petitions for termination of parental rights and the number of cases presented for finalization of adoption as more children are placed within the private adoption process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private adoption entities will realize an increase in the number of children placed in the private adoption process.

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:

The Department of Children and Family Services has appropriate rulemaking authority sufficient to implement the provisions of the bill, as necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In section 24, the bill includes the intent of the birth mother not to offer up a child for adoption as a proof element of the crime of adoption deception outlined in s. 63.212(2), F.S. The provision may present an unintended consequence of criminalizing a "change of heart" of the birth mother, who intended to offer the child up for adoption but, at the moment of birth or immediately thereafter, decides not to give the child up for adoption. The bill makes no provision for the birth mother to avoid criminal prosecution for adoption deception by offering to reimbursement the adoption entity or prospective birth parents for expenses paid to the birth mother. In addition, the intent element presents a difficult proof problem for criminal prosecution. As a result, it is recommended that the intent element for adoption deception included on line 1575 through 1576 be deleted.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to adoption; amending s. 63.022, F.S.;
3 revising legislative intent to delete reference to
4 reporting requirements for placements of minors and
5 exceptions; amending s. 63.032, F.S.; revising
6 definitions; amending s. 63.037, F.S.; exempting
7 adoption proceedings initiated under chapter 39, F.S.,
8 from a requirement for a search of the Florida
9 Putative Father Registry; amending s. 63.039, F.S.;
10 providing that all adoptions of minor children require
11 the use of an adoption entity that will assume the
12 responsibilities provided in specified provisions;
13 providing an exception; amending s. 63.042, F.S.;
14 revising terminology relating to who may adopt;
15 amending s. 63.0423, F.S.; revising terminology
16 relating to surrendered infants; providing that an
17 infant who tests positive for illegal drugs, narcotic
18 prescription drugs, alcohol, or other substances that
19 would cause concern for the infant's welfare and
20 safety if left in the care of the mother or is born to
21 a mother who tests positive for such substances at the
22 time of delivery, but shows no other signs of child
23 abuse or neglect, is treated as having been properly
24 surrendered; providing that if the Department of
25 Children and Family Services is contacted regarding a
26 surrendered infant who does not appear to have been
27 the victim of actual or suspected child abuse or
28 neglect, it shall provide instruction to contact an

29 adoption entity and may not become involved; providing
 30 an exception; revising provisions relating to
 31 scientific testing to determine the paternity or
 32 maternity of a minor; amending s. 63.0425, F.S.;
 33 requiring that a child's residence be continuous for a
 34 specified period in order to entitle the grandparent
 35 to notice of certain proceedings; amending s. 63.0427,
 36 F.S.; prohibiting a court from increasing contact
 37 between an adopted child and siblings, birth parents,
 38 or other relatives without the consent of the adoptive
 39 parent or parents; providing for agreements for
 40 contact between a child to be adopted and the birth
 41 parent, other relative, or previous foster parent of
 42 the child; amending s. 63.052, F.S.; deleting a
 43 requirement that a minor be permanently committed to
 44 an adoption entity in order for the entity to be
 45 guardian of the person of the minor; limiting the
 46 circumstances in which an intermediary may remove a
 47 child; providing that an intermediary does not become
 48 responsible for a minor child's medical bills that
 49 were incurred before taking physical custody of the
 50 child; providing additional placement options for a
 51 minor surrendered to an adoption entity for subsequent
 52 adoption when a suitable prospective adoptive home is
 53 not available; amending s. 63.053, F.S.; requiring
 54 that an unmarried biological father strictly comply
 55 with specified provisions in order to protect his
 56 interests; amending s. 63.054, F.S.; authorizing

57 submission of an alternative document to the Office of
 58 Vital Statistics by the petitioner in each proceeding
 59 for termination of parental rights; providing that by
 60 filing a claim of paternity form the registrant
 61 expressly consents to paying for DNA testing;
 62 requiring that an alternative address designated by a
 63 registrant be a physical address; providing that the
 64 filing of a claim of paternity with the Florida
 65 Putative Father Registry does not relieve a person
 66 from compliance with specified requirements; amending
 67 s. 63.062, F.S.; revising requirements for when a
 68 minor's father must be served prior to termination of
 69 parental rights; requiring that an unmarried
 70 biological father comply with specified requirements
 71 in order for his consent to be required for adoption;
 72 revising such requirements; providing that the mere
 73 fact that a father expresses a desire to fulfill his
 74 responsibilities towards his child which is
 75 unsupported by acts evidencing this intent does not
 76 meet the requirements; providing for the sufficiency
 77 of an affidavit of nonpaternity; providing an
 78 exception to a condition to a petition to adopt an
 79 adult; amending s. 63.063, F.S.; conforming
 80 terminology; amending s. 63.082, F.S.; revising
 81 language concerning applicability of notice and
 82 consent provisions in cases in which the child is
 83 conceived as a result of a violation of criminal law;
 84 providing that a criminal conviction is not required

85 | for the court to find that the child was conceived as
 86 | a result of a violation of criminal law; requiring an
 87 | affidavit of diligent search to be filed whenever a
 88 | person who is required to consent is unavailable
 89 | because the person cannot be located; providing that
 90 | in an adoption of a stepchild or a relative, a
 91 | certified copy of the death certificate of the person
 92 | whose consent is required may be attached to the
 93 | petition for adoption if a separate petition for
 94 | termination of parental rights is not being filed;
 95 | authorizing the execution of an affidavit of
 96 | nonpaternity before the birth of a minor in preplanned
 97 | adoptions; revising language of a consent to adoption;
 98 | providing that a home study provided by the adoption
 99 | entity shall be deemed to be sufficient except in
 100 | certain circumstances; providing for a hearing if an
 101 | adoption entity moves to intervene in a dependency
 102 | case; revising language concerning seeking to revoke
 103 | consent to an adoption of a child older than 6 months
 104 | of age; providing that if the consent of one parent is
 105 | set aside or revoked, any other consents executed by
 106 | the other parent or a third party whose consent is
 107 | required for the adoption of the child may not be used
 108 | by the parent who consent was revoked or set aside to
 109 | terminate or diminish the rights of the other parent
 110 | or third party; amending s. 63.085, F.S.; revising
 111 | language of an adoption disclosure statement;
 112 | requiring that a copy of a waiver by prospective

113 adoptive parents of receipt of certain records must be
 114 filed with the court; amending s. 63.087, F.S.;
 115 specifying that a failure to personally appear at a
 116 proceeding to terminate parental rights constitutes
 117 grounds for termination; amending s. 63.088, F.S.;
 118 providing that in a termination of parental rights
 119 proceeding if a required inquiry that identifies a
 120 father who has been adjudicated by a court as the
 121 father of the minor child before the date a petition
 122 for termination of parental rights is filed the
 123 inquiry must terminate at that point; amending s.
 124 63.089, F.S.; specifying that it is a failure to
 125 personally appear that provides grounds for
 126 termination of parental rights in certain
 127 circumstances; revising provisions relating to
 128 dismissal of petitions to terminate parental rights;
 129 providing that contact between a parent seeking relief
 130 from a judgment terminating parental rights and a
 131 child may be awarded only in certain circumstances;
 132 providing for placement of a child in the event that a
 133 court grants relief from a judgment terminating
 134 parental rights and no new pleading is filed to
 135 terminate parental rights; amending s. 63.092, F.S.;
 136 requiring that a signed copy of the home study must be
 137 provided to the intended adoptive parents who were the
 138 subject of the study; amending s. 63.152, F.S.;
 139 authorizing an adoption entity to transmit a certified
 140 statement of the entry of a judgment of adoption to

141 the state registrar of vital statistics; amending s.
 142 63.162, F.S.; authorizing a birth parent to petition
 143 that court to appoint an intermediary or a licensed
 144 child-placing agency to contact an adult adoptee and
 145 advise both of the availability of the adoption
 146 registry and that the birth parent wishes to establish
 147 contact; amending s. 63.167, F.S.; requiring that the
 148 state adoption center provide contact information for
 149 all adoption entities in a caller's county or, if no
 150 adoption entities are located in the caller's county,
 151 the number of the nearest adoption entity when
 152 contacted for a referral to make an adoption plan;
 153 amending s. 63.212, F.S.; restricting who may place a
 154 paid advertisement or paid listing of the person's
 155 telephone number offering certain adoption services;
 156 requiring of publishers of telephone directories to
 157 include certain statements at the beginning of any
 158 classified heading for adoption and adoption services;
 159 providing requirements for such advertisements;
 160 providing criminal penalties for violations;
 161 prohibiting the offense of adoption deception by a
 162 person who is a birth mother or a woman who holds
 163 herself out to be a birth mother; providing criminal
 164 penalties; providing liability by violators for
 165 certain damages; amending s. 63.213, F.S.; providing
 166 that a preplanned adoption arrangement does not
 167 constitute consent of a mother to place her biological
 168 child for adoption until 48 hours following birth;

169 providing that a volunteer mother's right to rescind
 170 her consent in a preplanned adoption applies only when
 171 the child is genetically related to her; revising the
 172 definitions of the terms "child," "preplanned adoption
 173 arrangement," and "volunteer mother"; amending s.
 174 63.222, F.S.; providing that provisions designated as
 175 remedial may apply to any proceedings pending on the
 176 effective date of the provisions; amending s. 63.2325,
 177 F.S.; revising terminology relating to revocation of
 178 consent to adoption; providing an effective date.

179

180 Be It Enacted by the Legislature of the State of Florida:

181

182 Section 1. Paragraphs (e) through (m) of subsection (4) of
 183 section 63.022, Florida Statutes, are redesignated as paragraphs
 184 (d) through (l), respectively, and subsection (2) and present
 185 paragraph (d) of subsection (4) of that section are amended to
 186 read:

187 63.022 Legislative intent.—

188 (2) It is the intent of the Legislature that in every
 189 adoption, the best interest of the child should govern and be of
 190 foremost concern in the court's determination. The court shall
 191 make a specific finding as to the best interests ~~interest~~ of the
 192 child in accordance with the provisions of this chapter.

193 (4) The basic safeguards intended to be provided by this
 194 chapter are that:

195 ~~(d) All placements of minors for adoption are reported to~~
 196 ~~the Department of Children and Family Services, except relative,~~

197 ~~adult, and stepparent adoptions.~~

198 Section 2. Subsections (1), (12), (17), and (19) of
 199 section 63.032, Florida Statutes, are amended to read:

200 63.032 Definitions.—As used in this chapter, the term:

201 (1) "Abandoned" means a situation in which the parent or
 202 person having legal custody of a child, while being able, makes
 203 little or no provision for the child's support ~~or~~ and makes
 204 little or no effort to communicate with the child, which
 205 situation is sufficient to evince an intent to reject parental
 206 responsibilities. If, in the opinion of the court, the efforts
 207 of such parent or person having legal custody of the child to
 208 support and communicate with the child are only marginal efforts
 209 that do not evince a settled purpose to assume all parental
 210 duties, the court may declare the child to be abandoned. In
 211 making this decision, the court may consider the conduct of a
 212 father towards the child's mother during her pregnancy.

213 (12) "Parent" means a woman who gives birth to a child and
 214 who is not a gestational surrogate as defined in s. 742.13 or a
 215 man whose consent to the adoption of the child would be required
 216 under s. 63.062(1). If a child has been legally adopted, the
 217 term "parent" means the adoptive mother or father of the child.
 218 The term does not include an individual whose parental
 219 relationship to the child has been legally terminated or an
 220 alleged or prospective parent.

221 (17) "Suitability of the intended placement" means the
 222 fitness of the intended placement, with primary consideration
 223 being given to the best interests ~~interest~~ of the child.

224 (19) "Unmarried biological father" means the child's

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225 biological father who is not married to the child's mother at
 226 the time of conception or on the date of the birth of the child
 227 and who, before the filing of a petition to terminate parental
 228 rights, has not been adjudicated by a court of competent
 229 jurisdiction to be the legal father of the child or has not
 230 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

231 Section 3. Section 63.037, Florida Statutes, is amended to
 232 read:

233 63.037 Proceedings applicable to cases resulting from a
 234 termination of parental rights under chapter 39.—A case in which
 235 a minor becomes available for adoption after the parental rights
 236 of each parent have been terminated by a judgment entered
 237 pursuant to chapter 39 shall be governed by s. 39.812 and this
 238 chapter. Adoption proceedings initiated under chapter 39 are
 239 exempt from the following provisions of this chapter:

240 requirement for search of the Florida Putative Father Registry
 241 provided in s. 63.054(7); disclosure requirements for the
 242 adoption entity provided in s. 63.085(1); general provisions
 243 governing termination of parental rights pending adoption
 244 provided in s. 63.087; notice and service provisions governing
 245 termination of parental rights pending adoption provided in s.
 246 63.088; and procedures for terminating parental rights pending
 247 adoption provided in s. 63.089.

248 Section 4. Subsections (2) through (4) of section 63.039,
 249 Florida Statutes, are renumbered as subsections (3) through (5),
 250 respectively, and a new subsection (2) is added to that section
 251 to read:

252 63.039 Duty of adoption entity to prospective adoptive

253 parents; sanctions.-

254 (2) With the exception of an adoption by a relative or
 255 stepparent, all adoptions of minor children require the use of
 256 an adoption entity that will assume the responsibilities
 257 provided in this section.

258 Section 5. Paragraph (c) of subsection (2) of section
 259 63.042, Florida Statutes, is amended to read:

260 63.042 Who may be adopted; who may adopt.-

261 (2) The following persons may adopt:

262 (c) A married person without his or her ~~the other~~ spouse
 263 joining as a petitioner, if the person to be adopted is not his
 264 or her spouse, and if:

265 1. His or her ~~The other~~ spouse is a parent of the person
 266 to be adopted and consents to the adoption; or

267 2. The failure of his or her ~~the other~~ spouse to join in
 268 the petition or to consent to the adoption is excused by the
 269 court for good cause shown or in the best interests ~~interest~~ of
 270 the child.

271 Section 6. Subsections (1), (2), (3), (4), (7), (8), and
 272 (9) of section 63.0423, Florida Statutes, are amended to read:

273 63.0423 Procedures with respect to surrendered infants.-

274 (1) Upon entry of final judgment terminating parental
 275 rights, an adoption entity ~~A licensed child-placing agency~~ that
 276 takes physical custody of an infant surrendered at a hospital,
 277 emergency medical services station, or fire station pursuant to
 278 s. 383.50 assumes ~~shall assume~~ responsibility for the all
 279 medical ~~costs~~ and ~~all~~ other costs associated with the emergency
 280 services and care of the surrendered infant from the time the

281 adoption entity ~~licensed child-placing agency~~ takes physical
 282 custody of the surrendered infant.

283 (2) The adoption entity ~~licensed child-placing agency~~
 284 shall immediately seek an order from the circuit court for
 285 emergency custody of the surrendered infant. The emergency
 286 custody order shall remain in effect until the court orders
 287 preliminary approval of placement of the surrendered infant in
 288 the prospective home, at which time the prospective adoptive
 289 parents become guardians pending termination of parental rights
 290 and finalization of adoption or until the court orders
 291 otherwise. The guardianship of the prospective adoptive parents
 292 shall remain subject to the right of the adoption entity
 293 ~~licensed child-placing agency~~ to remove the surrendered infant
 294 from the placement during the pendency of the proceedings if
 295 such removal is deemed by the adoption entity ~~licensed child-~~
 296 ~~placing agency~~ to be in the best interests ~~interest~~ of the
 297 child. The adoption entity ~~licensed child-placing agency~~ may
 298 immediately seek to place the surrendered infant in a
 299 prospective adoptive home:

300 (3) The adoption entity ~~licensed child-placing agency~~ that
 301 takes physical custody of the surrendered infant shall, within
 302 24 hours thereafter, request assistance from law enforcement
 303 officials to investigate and determine, through the Missing
 304 Children Information Clearinghouse, the National Center for
 305 Missing and Exploited Children, and any other national and state
 306 resources, whether the surrendered infant is a missing child.

307 (4) The parent who surrenders the infant in accordance
 308 with s. 383.50 is presumed to have consented to termination of

309 parental rights, and express consent is not required. Except
 310 when there is actual or suspected child abuse or neglect, the
 311 adoption entity may ~~licensed child-placing agency shall~~ not
 312 attempt to pursue, search for, or notify that parent as provided
 313 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
 314 section, an infant who tests positive for illegal drugs,
 315 narcotic prescription drugs, alcohol, or other substances that
 316 would cause concern for the infant's welfare and safety if left
 317 in the care of the mother, or who is born to a mother who tests
 318 positive for such substances at the time of delivery, but shows
 319 no other signs of child abuse or neglect, shall be treated as
 320 having been properly surrendered under this section. If the
 321 department is contacted regarding an infant properly surrendered
 322 under this section, the department shall provide instruction to
 323 contact an adoption entity and may not become involved unless
 324 reasonable efforts to contact an adoption entity to accept the
 325 infant have not been successful.

326 (7) If a claim of parental rights of a surrendered infant
 327 is made before the judgment to terminate parental rights is
 328 entered, the circuit court may hold the action for termination
 329 of parental rights ~~pending subsequent adoption~~ in abeyance for a
 330 period of time not to exceed 60 days.

331 (a) The court may order scientific testing to determine
 332 maternity or paternity at the expense of the parent claiming
 333 parental rights.

334 (b) The court shall appoint a guardian ad litem for the
 335 surrendered infant and order whatever investigation, home
 336 evaluation, and psychological evaluation are necessary to

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337 determine what is in the best interests ~~interest~~ of the
 338 surrendered infant.

339 (c) The court may not terminate parental rights solely on
 340 the basis that the parent left the infant at a hospital,
 341 emergency medical services station, or fire station in
 342 accordance with s. 383.50.

343 (d) The court shall enter a judgment with written findings
 344 of fact and conclusions of law.

345 (8) Within 7 business days after recording the judgment,
 346 the clerk of the court shall mail a copy of the judgment to the
 347 department, the petitioner, and any person ~~the persons~~ whose
 348 consent was ~~were~~ required, if known. The clerk shall execute a
 349 certificate of each mailing.

350 (9)(a) A judgment terminating parental rights pending
 351 adoption is voidable, and any later judgment of adoption of that
 352 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
 353 court finds that an adoption entity ~~a person~~ knowingly gave
 354 false information that prevented the ~~birth~~ parent from timely
 355 making known his or her desire to assume parental
 356 responsibilities toward the minor or from exercising his or her
 357 parental rights. A motion under this subsection must be filed
 358 with the court originally entering the judgment. The motion must
 359 be filed within a reasonable time but not later than 1 year
 360 after the entry of the judgment terminating parental rights.

361 (b) No later than 30 days after the filing of a motion
 362 under this subsection, the court shall conduct a preliminary
 363 hearing to determine what contact, if any, will be permitted
 364 between a ~~birth~~ parent and the child pending resolution of the

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365 motion. Such contact may be allowed only if it is requested by a
 366 parent who has appeared at the hearing and the court determines
 367 that it is in the best interests ~~interest~~ of the child. If the
 368 court orders contact between a ~~birth~~ parent and the child, the
 369 order must be issued in writing as expeditiously as possible and
 370 must state with specificity any provisions regarding contact
 371 with persons other than those with whom the child resides.

372 (c) ~~At the preliminary hearing, The court, upon the motion~~
 373 ~~of any party or upon its own motion,~~ may not order scientific
 374 testing to determine the paternity or maternity of the minor
 375 until such time as the court determines that a previously
 376 entered judgment terminating the parental rights of that parent
 377 is voidable pursuant to paragraph (a), unless all parties agree
 378 that such testing is in the best interests of the child ~~if the~~
 379 ~~person seeking to set aside the judgment is alleging to be the~~
 380 ~~child's birth parent but has not previously been determined by~~
 381 ~~legal proceedings or scientific testing to be the birth parent.~~
 382 Upon the filing of test results establishing that person's
 383 maternity or paternity of the surrendered infant, the court may
 384 order visitation only if it appears to be as it deems
 385 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

386 (d) Within 45 days after the preliminary hearing, the
 387 court shall conduct a final hearing on the motion to set aside
 388 the judgment and shall enter its written order as expeditiously
 389 as possible thereafter.

390 Section 7. Subsection (1) of section 63.0425, Florida
 391 Statutes, is amended to read:

392 63.0425 Grandparent's right to notice.—

393 (1) If a child has lived with a grandparent for at least 6
 394 continuous months within the 24-month period immediately
 395 preceding the filing of a petition for termination of parental
 396 rights pending adoption, the adoption entity shall provide
 397 notice to that grandparent of the hearing on the petition.

398 Section 8. Section 63.0427, Florida Statutes, is amended
 399 to read:

400 63.0427 Agreements for ~~Adopted minor's right to~~ continued
 401 communication or contact between adopted child and ~~with~~
 402 siblings, parents, and other relatives.—

403 (1) A child whose parents have had their parental rights
 404 terminated and whose custody has been awarded to the department
 405 pursuant to s. 39.811, and who is the subject of a petition for
 406 adoption under this chapter, shall have the right to have the
 407 court consider the appropriateness of postadoption communication
 408 or contact, including, but not limited to, visits, written
 409 correspondence, or telephone calls, with his or her siblings or,
 410 upon agreement of the adoptive parents, with the parents who
 411 have had their parental rights terminated or other specified
 412 biological relatives. The court shall consider the following in
 413 making such determination:

- 414 (a) Any orders of the court pursuant to s. 39.811(7).
- 415 (b) Recommendations of the department, the foster parents
 416 if other than the adoptive parents, and the guardian ad litem.
- 417 (c) Statements of the prospective adoptive parents.
- 418 (d) Any other information deemed relevant and material by
 419 the court.

420

421 If the court determines that the child's best interests will be
 422 served by postadoption communication or contact, the court shall
 423 so order, stating the nature and frequency of ~~for~~ the
 424 communication or contact. This order shall be made a part of the
 425 final adoption order, but ~~in no event shall~~ the continuing
 426 validity of the adoption may not be contingent upon such
 427 postadoption communication or contact and, ~~nor shall~~ the ability
 428 of the adoptive parents and child to change residence within or
 429 outside the State of Florida may not be impaired by such
 430 communication or contact.

431 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
 432 adoptive parent may, at any time, petition for review of a
 433 communication or contact order entered pursuant to subsection
 434 (1), if the adoptive parent believes that the best interests of
 435 the adopted child are being compromised, and the court may ~~shall~~
 436 ~~have authority to~~ order the communication or contact to be
 437 terminated or modified, as the court deems to be in the best
 438 interests of the adopted child; however, the court may not
 439 increase contact between the adopted child and siblings, birth
 440 parents, or other relatives without the consent of the adoptive
 441 parent or parents. As part of the review process, the court may
 442 order the parties to engage in mediation. The department shall
 443 not be required to be a party to such review.

444 (3) Prospective adoptive parents may enter into an
 445 agreement for contact between the child to be adopted and the
 446 birth parent, other relative, or previous foster parent of the
 447 child to be adopted. Such contact may include visits, written
 448 correspondence, telephone contact, exchange of photographs, or

449 other similar types of contact. The agreement is enforceable by
 450 the court only if:

451 (a) The agreement was in writing and was submitted to the
 452 court.

453 (b) The adoptive parents have agreed to the terms of the
 454 contact agreement.

455 (c) The court finds the contact to be in the best
 456 interests of the child.

457 (d) The child, if 12 years of age or older, has agreed to
 458 the contact outlined in the agreement.

459 (e) All parties acknowledge that a dispute regarding the
 460 contact agreement does not affect the validity or finality of
 461 the adoption and that a breach of the agreement may not be
 462 grounds to set aside the adoption or otherwise impact the
 463 validity or finality of the adoption in any way.

464 (f) An adoptive parent may terminate the contact between
 465 the child and the birth parent, other relative, or foster parent
 466 if the adoptive parent reasonably believes that the contact is
 467 detrimental to the best interests of the child.

468 (g) In order to terminate the agreement for contact, the
 469 adoptive parent must file a notice of intent to terminate the
 470 contact agreement with the court that initially approved the
 471 contact agreement, and provide a copy of the notice to the
 472 adoption entity that placed the child, if any, and to the birth
 473 parent, other relative, or foster parent of the child who is a
 474 party to the agreement, outlining the reasons for termination of
 475 the agreement.

476 (h) If appropriate under the circumstances of the case,

477 the court may order the parties to participate in mediation to
 478 attempt to resolve the issues with the contact agreement.

479 (i) The court may modify the terms of the agreement in
 480 order to serve the best interests of the child, but may not
 481 increase the amount or type of contact unless the adoptive
 482 parents agree to the increase in contact or change in the type
 483 of contact.

484 (j) An agreement for contact entered into under this
 485 subsection is enforceable even if it does not fully disclose the
 486 identity of the parties to the agreement or if identifying
 487 information has been redacted from the agreement.

488 Section 9. Subsections (1), (2), (3), and (6) of section
 489 63.052, Florida Statutes, are amended to read:

490 63.052 Guardians designated; proof of commitment.-

491 (1) For minors who have been placed for adoption with ~~and~~
 492 ~~permanently committed to~~ an adoption entity, other than an
 493 intermediary, such adoption entity shall be the guardian of the
 494 person of the minor and has the responsibility and authority to
 495 provide for the needs and welfare of the minor.

496 (2) For minors who have been voluntarily surrendered to an
 497 intermediary through an execution of a consent to adoption, the
 498 intermediary shall be responsible for the minor until the time a
 499 court orders preliminary approval of placement of the minor in
 500 the prospective adoptive home, after which time the prospective
 501 adoptive parents shall become guardians pending finalization of
 502 adoption, subject to the intermediary's right and responsibility
 503 to remove the child from the prospective adoptive home if the
 504 removal is deemed by the intermediary to be in the best

505 interests ~~interest~~ of the child. The intermediary may not remove
 506 the child without a court order unless the child is in danger of
 507 imminent harm. The intermediary does not become responsible for
 508 the minor child's medical bills that were incurred before taking
 509 physical custody of the child after the execution of adoption
 510 consents. Prior to the court's entry of an order granting
 511 preliminary approval of the placement, the intermediary shall
 512 have the responsibility and authority to provide for the needs
 513 and welfare of the minor. A ~~No~~ minor may not ~~shall~~ be placed in
 514 a prospective adoptive home until that home has received a
 515 favorable preliminary home study, as provided in s. 63.092,
 516 completed and approved within 1 year before such placement in
 517 the prospective home. The provisions of s. 627.6578 shall remain
 518 in effect notwithstanding the guardianship provisions in this
 519 section.

520 (3) If a minor is surrendered to an adoption entity for
 521 subsequent adoption and a suitable prospective adoptive home is
 522 not available pursuant to s. 63.092 at the time the minor is
 523 surrendered to the adoption entity, the minor must be placed in
 524 a licensed foster care home, ~~or~~ with a home-study-approved
 525 person or family, or with a relative until ~~such~~ a suitable
 526 prospective adoptive home is available.

527 (6) Unless otherwise authorized by law or ordered by the
 528 court, the department is not responsible for expenses incurred
 529 by other adoption entities participating in a placement of a
 530 minor.

531 Section 10. Subsections (2) and (3) of section 63.053,
 532 Florida Statutes, are amended to read:

533 63.053 Rights and responsibilities of an unmarried
 534 biological father; legislative findings.—

535 (2) The Legislature finds that the interests of the state,
 536 the mother, the child, and the adoptive parents described in
 537 this chapter outweigh the interest of an unmarried biological
 538 father who does not take action in a timely manner to establish
 539 and demonstrate a relationship with his child in accordance with
 540 the requirements of this chapter. An unmarried biological father
 541 has the primary responsibility to protect his rights and is
 542 presumed to know that his child may be adopted without his
 543 consent unless he strictly complies with ~~the provisions of~~ this
 544 chapter and demonstrates a prompt and full commitment to his
 545 parental responsibilities.

546 (3) The Legislature finds that a birth mother and a birth
 547 father have a right of ~~to~~ privacy.

548 Section 11. Subsections (1), (2), (4), and (13) of section
 549 63.054, Florida Statutes, are amended to read:

550 63.054 Actions required by an unmarried biological father
 551 to establish parental rights; Florida Putative Father Registry.—

552 (1) In order to preserve the right to notice and consent
 553 to an adoption under this chapter, an unmarried biological
 554 father must, as the "registrant," file a notarized claim of
 555 paternity form with the Florida Putative Father Registry
 556 maintained by the Office of Vital Statistics of the Department
 557 of Health which includes confirmation of his willingness and
 558 intent to support the child for whom paternity is claimed in
 559 accordance with state law. The claim of paternity may be filed
 560 at any time before the child's birth, but may not be filed after

561 | the date a petition is filed for termination of parental rights.
 562 | In each proceeding for termination of parental rights, the
 563 | petitioner must submit to the Office of Vital Statistics a copy
 564 | of the petition for termination of parental rights or a document
 565 | executed by the clerk of the court showing the style of the
 566 | case, the names of the persons whose rights are sought to be
 567 | terminated, and the date and time of the filing of the petition.

568 | The Office of Vital Statistics may not record a claim of
 569 | paternity after the date a petition for termination of parental
 570 | rights is filed. The failure of an unmarried biological father
 571 | to file a claim of paternity with the registry before the date a
 572 | petition for termination of parental rights is filed also bars
 573 | him from filing a paternity claim under chapter 742.

574 | (a) An unmarried biological father is excepted from the
 575 | time limitations for filing a claim of paternity with the
 576 | registry or for filing a paternity claim under chapter 742, if:

577 | 1. The mother identifies him to the adoption entity as a
 578 | potential biological father by the date she executes a consent
 579 | for adoption; and

580 | 2. He is served with a notice of intended adoption plan
 581 | pursuant to s. 63.062(3) and the 30-day mandatory response date
 582 | is later than the date the petition for termination of parental
 583 | rights is filed with the court.

584 | (b) If an unmarried biological father falls within the
 585 | exception provided by paragraph (a), the petitioner shall also
 586 | submit to the Office of Vital Statistics a copy of the notice of
 587 | intended adoption plan and proof of service of the notice on the
 588 | potential biological father.

589 (c) An unmarried biological father who falls within the
 590 exception provided by paragraph (a) may not file a claim of
 591 paternity with the registry or a paternity claim under chapter
 592 742 after the 30-day mandatory response date to the notice of
 593 intended adoption plan has expired. The Office of Vital
 594 Statistics may not record a claim of paternity 30 days after
 595 service of the notice of intended adoption plan.

596 (2) By filing a claim of paternity form with the Office of
 597 Vital Statistics, the registrant expressly consents to submit to
 598 and pay for DNA testing upon the request of any party, the
 599 registrant, or the adoption entity with respect to the child
 600 referenced in the claim of paternity.

601 (4) Upon initial registration, or at any time thereafter,
 602 the registrant may designate a physical ~~an~~ address other than
 603 his residential address for sending any communication regarding
 604 his registration. Similarly, upon initial registration, or at
 605 any time thereafter, the registrant may designate, in writing,
 606 an agent or representative to receive any communication on his
 607 behalf and receive service of process. The agent or
 608 representative must file an acceptance of the designation, in
 609 writing, in order to receive notice or service of process. The
 610 failure of the designated representative or agent of the
 611 registrant to deliver or otherwise notify the registrant of
 612 receipt of correspondence from the Florida Putative Father
 613 Registry is at the registrant's own risk and may ~~shall~~ not serve
 614 as a valid defense based upon lack of notice.

615 (13) The filing of a claim of paternity with the Florida
 616 Putative Father Registry does not excuse or waive the obligation

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617 of a petitioner to comply with the requirements of s. 63.088(4)
 618 for conducting a diligent search and required inquiry with
 619 respect to the identity of an unmarried biological father or
 620 legal father which are set forth in this chapter.

621 Section 12. Paragraph (b) of subsection (1), subsections
 622 (2), (3), and (4), and paragraph (a) of subsection (8) of
 623 section 63.062, Florida Statutes, are amended to read:

624 63.062 Persons required to consent to adoption; affidavit
 625 of nonpaternity; waiver of venue.—

626 (1) Unless supported by one or more of the grounds
 627 enumerated under s. 63.089(3), a petition to terminate parental
 628 rights pending adoption may be granted only if written consent
 629 has been executed as provided in s. 63.082 after the birth of
 630 the minor or notice has been served under s. 63.088 to:

631 (b) The father of the minor, if:

632 1. The minor was conceived or born while the father was
 633 married to the mother;

634 2. The minor is his child by adoption;

635 3. The minor has been adjudicated by the court to be his
 636 child before ~~by~~ the date a petition ~~is filed~~ for termination of
 637 parental rights is filed;

638 4. He has filed an affidavit of paternity pursuant to s.
 639 382.013(2)(c) or he is listed on the child's birth certificate
 640 before ~~by~~ the date a petition ~~is filed~~ for termination of
 641 parental rights is filed; or

642 5. In the case of an unmarried biological father, he has
 643 acknowledged in writing, signed in the presence of a competent
 644 witness, that he is the father of the minor, has filed such

645 acknowledgment with the Office of Vital Statistics of the
 646 Department of Health within the required timeframes, and has
 647 complied with the requirements of subsection (2).
 648

649 The status of the father shall be determined at the time of the
 650 filing of the petition to terminate parental rights and may not
 651 be modified for purposes of his obligations and rights under
 652 this chapter by acts occurring after the filing of the petition
 653 to terminate parental rights.

654 (2) In accordance with subsection (1), the consent of an
 655 unmarried biological father shall be necessary only if the
 656 unmarried biological father has complied with the requirements
 657 of this subsection.

658 (a)1. With regard to a child who is placed with adoptive
 659 parents more than 6 months after the child's birth, an unmarried
 660 biological father must have developed a substantial relationship
 661 with the child, taken some measure of responsibility for the
 662 child and the child's future, and demonstrated a full commitment
 663 to the responsibilities of parenthood by providing reasonable
 664 and regular financial support to the child in accordance with
 665 the unmarried biological father's ability, if not prevented from
 666 doing so by the person or authorized agency having lawful
 667 custody of the child, and either:

668 a. Regularly visited the child at least monthly, when
 669 physically and financially able to do so and when not prevented
 670 from doing so by the birth mother or the person or authorized
 671 agency having lawful custody of the child; or

672 b. Maintained regular communication with the child or with

673 the person or agency having the care or custody of the child,
 674 when physically or financially unable to visit the child or when
 675 not prevented from doing so by the birth mother or person or
 676 authorized agency having lawful custody of the child.

677 ~~2. The mere fact that an unmarried biological father~~
 678 ~~expresses a desire to fulfill his responsibilities towards his~~
 679 ~~child which is unsupported by acts evidencing this intent does~~
 680 ~~not preclude a finding by the court that the unmarried~~
 681 ~~biological father failed to comply with the requirements of this~~
 682 ~~subsection.~~

683 2.3. An unmarried biological father who openly lived with
 684 the child for at least 6 months within the 1-year period
 685 following the birth of the child and immediately preceding
 686 placement of the child with adoptive parents and who openly held
 687 himself out to be the father of the child during that period
 688 shall be deemed to have developed a substantial relationship
 689 with the child and to have otherwise met the requirements of
 690 this paragraph.

691 (b) With regard to a child who is ~~younger than~~ 6 months of
 692 age or younger at the time the child is placed with the adoptive
 693 parents, an unmarried biological father must have demonstrated a
 694 full commitment to his parental responsibility by having
 695 performed all of the following acts prior to the time the mother
 696 executes her consent for adoption:

697 1. Filed a notarized claim of paternity form with the
 698 Florida Putative Father Registry within the Office of Vital
 699 Statistics of the Department of Health, which form shall be
 700 maintained in the confidential registry established for that

701 | purpose and shall be considered filed when the notice is entered
 702 | in the registry of notices from unmarried biological fathers.

703 | 2. Upon service of a notice of an intended adoption plan
 704 | or a petition for termination of parental rights pending
 705 | adoption, executed and filed an affidavit in that proceeding
 706 | stating that he is personally fully able and willing to take
 707 | responsibility for the child, setting forth his plans for care
 708 | of the child, and agreeing to a court order of child support and
 709 | a contribution to the payment of living and medical expenses
 710 | incurred for the mother's pregnancy and the child's birth in
 711 | accordance with his ability to pay.

712 | 3. If he had knowledge of the pregnancy, paid a fair and
 713 | reasonable amount of the living and medical expenses incurred in
 714 | connection with the mother's pregnancy and the child's birth, in
 715 | accordance with his financial ability and when not prevented
 716 | from doing so by the birth mother or person or authorized agency
 717 | having lawful custody of the child. The responsibility of the
 718 | unmarried biological father to provide financial assistance to
 719 | the birth mother during her pregnancy and to the child after
 720 | birth is not abated because support is being provided to the
 721 | birth mother or child by the adoption entity, a prospective
 722 | adoptive parent, or a third party, nor does it serve as a basis
 723 | to excuse the birth father's failure to provide support.

724 | (c) The mere fact that a father expresses a desire to
 725 | fulfill his responsibilities towards his child which is
 726 | unsupported by acts evidencing this intent does not meet the
 727 | requirements of this section.

728 | (d)(e) The petitioner shall file with the court a

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729 certificate from the Office of Vital Statistics stating that a
730 diligent search has been made of the Florida Putative Father
731 Registry of notices from unmarried biological fathers described
732 in subparagraph (b)1. and that no filing has been found
733 pertaining to the father of the child in question or, if a
734 filing is found, stating the name of the putative father and the
735 time and date of filing. That certificate shall be filed with
736 the court prior to the entry of a final judgment of termination
737 of parental rights.

738 (e)~~(d)~~ An unmarried biological father who does not comply
739 with each of the conditions provided in this subsection is
740 deemed to have waived and surrendered any rights in relation to
741 the child, including the right to notice of any judicial
742 proceeding in connection with the adoption of the child, and his
743 consent to the adoption of the child is not required.

744 (3) Pursuant to chapter 48, an adoption entity shall serve
745 a notice of intended adoption plan upon any known and locatable
746 unmarried biological father who is identified to the adoption
747 entity by the mother by the date she signs her consent for
748 adoption if the child is 6 months of age or less at the time the
749 consent is executed ~~or who is identified by a diligent search of~~
750 ~~the Florida Putative Father Registry, or upon an entity whose~~
751 ~~consent is required~~. Service of the notice of intended adoption
752 plan is not required ~~mandatory~~ when the unmarried biological
753 father signs a consent for adoption or an affidavit of
754 nonpaternity or when the child is more than 6 months of age at
755 the time of the execution of the consent by the mother. The
756 notice may be served at any time before the child's birth or

757 before placing the child in the adoptive home. The recipient of
 758 the notice may waive service of process by executing a waiver
 759 and acknowledging receipt of the plan. The notice of intended
 760 adoption plan must specifically state that if the unmarried
 761 biological father desires to contest the adoption plan he must,
 762 within 30 days after service, file with the court a verified
 763 response that contains a pledge of commitment to the child in
 764 substantial compliance with subparagraph (2)(b)2. and a claim of
 765 paternity form with the Office of Vital Statistics, and must
 766 provide the adoption entity with a copy of the verified response
 767 filed with the court and the claim of paternity form filed with
 768 the Office of Vital Statistics. The notice must also include
 769 instructions for submitting a claim of paternity form to the
 770 Office of Vital Statistics and the address to which the claim
 771 must be sent. If the party served with the notice of intended
 772 adoption plan is an entity whose consent is required, the notice
 773 must specifically state that the entity must file, within 30
 774 days after service, a verified response setting forth a legal
 775 basis for contesting the intended adoption plan, specifically
 776 addressing the best interests ~~interest~~ of the child.

777 (a) If the unmarried biological father or entity whose
 778 consent is required fails to timely and properly file a verified
 779 response with the court and, in the case of an unmarried
 780 biological father, a claim of paternity form with the Office of
 781 Vital Statistics, the court shall enter a default judgment
 782 against the ~~any~~ unmarried biological father or entity and the
 783 consent of that unmarried biological father or entity shall no
 784 longer be required under this chapter and shall be deemed to

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785 have waived any claim of rights to the child. To avoid an entry
 786 of a default judgment, within 30 days after receipt of service
 787 of the notice of intended adoption plan:

788 1. The unmarried biological father must:

789 a. File a claim of paternity with the Florida Putative
 790 Father Registry maintained by the Office of Vital Statistics;

791 b. File a verified response with the court which contains
 792 a pledge of commitment to the child in substantial compliance
 793 with subparagraph (2)(b)2.; and

794 c. Provide support for the birth mother and the child.

795 2. The entity whose consent is required must file a
 796 verified response setting forth a legal basis for contesting the
 797 intended adoption plan, specifically addressing the best
 798 interests ~~interest~~ of the child.

799 (b) If the mother identifies a potential unmarried
 800 biological father within the timeframes required by the statute,
 801 whose location is unknown, the adoption entity shall conduct a
 802 diligent search pursuant to s. 63.088. If, upon completion of a
 803 diligent search, the potential unmarried biological father's
 804 location remains unknown and a search of the Florida Putative
 805 Father Registry fails to reveal a match, the adoption entity
 806 shall request in the petition for termination of parental rights
 807 pending adoption that the court declare the diligent search to
 808 be in compliance with s. 63.088, that the adoption entity has no
 809 further obligation to provide notice to the potential unmarried
 810 biological father, and that the potential unmarried biological
 811 father's consent to the adoption is not required.

812 (4) Any person whose consent is required under paragraph

813 (1)(b), or any other man, may execute an irrevocable affidavit
 814 of nonpaternity in lieu of a consent under this section and by
 815 doing so waives notice to all court proceedings after the date
 816 of execution. An affidavit of nonpaternity must be executed as
 817 provided in s. 63.082. The affidavit of nonpaternity may be
 818 executed prior to the birth of the child. The person executing
 819 the affidavit must receive disclosure under s. 63.085 prior to
 820 signing the affidavit. For purposes of this chapter, an
 821 affidavit of nonpaternity is sufficient if it contains a
 822 specific denial of parental obligations and does not need to
 823 deny the existence of a biological relationship.

824 (8) A petition to adopt an adult may be granted if:
 825 (a) Written consent to adoption has been executed by the
 826 adult and the adult's spouse, if any, unless the spouse's
 827 consent is waived by the court for good cause.

828 Section 13. Subsection (2) of section 63.063, Florida
 829 Statutes, is amended to read:

830 63.063 Responsibility of parents for actions; fraud or
 831 misrepresentation; contesting termination of parental rights and
 832 adoption.—

833 (2) Any person injured by a fraudulent representation or
 834 action in connection with an adoption may pursue civil or
 835 criminal penalties as provided by law. A fraudulent
 836 representation is not a defense to compliance with the
 837 requirements of this chapter and is not a basis for dismissing a
 838 petition for termination of parental rights or a petition for
 839 adoption, for vacating an adoption decree, or for granting
 840 custody to the offended party. Custody and adoption

841 | determinations must be based on the best interests ~~interest~~ of
 842 | the child in accordance with s. 61.13.

843 | Section 14. Paragraph (d) of subsection (1), paragraphs
 844 | (c) and (d) of subsection (3), paragraphs (a), (d), and (e) of
 845 | subsection (4), and subsections (6) and (7) of section 63.082,
 846 | Florida Statutes, are amended to read:

847 | 63.082 Execution of consent to adoption or affidavit of
 848 | nonpaternity; family social and medical history; revocation
 849 | ~~withdrawal~~ of consent.-

850 | (1)

851 | (d) The notice and consent provisions of this chapter as
 852 | they relate to the father ~~birth~~ of a child ~~or to legal fathers~~
 853 | do not apply in cases in which the child is conceived as a
 854 | result of a violation of the criminal laws of this or another
 855 | state or country, including, but not limited to, sexual battery,
 856 | unlawful sexual activity with certain minors under s. 794.05,
 857 | lewd acts perpetrated upon a minor, or incest. A criminal
 858 | conviction is not required for the court to find that the child
 859 | was conceived as a result of a violation of the criminal laws of
 860 | this state or another state or country.

861 | (3)

862 | (c) If any person who is required to consent is
 863 | unavailable because the person cannot be located, an ~~the~~
 864 | ~~petition to terminate parental rights pending adoption must be~~
 865 | ~~accompanied by the~~ affidavit of diligent search required under
 866 | s. 63.088 shall be filed.

867 | (d) If any person who is required to consent is
 868 | unavailable because the person is deceased, the petition to

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869 terminate parental rights pending adoption must be accompanied
 870 by a certified copy of the death certificate. In an adoption of
 871 a stepchild or a relative, the certified copy of the death
 872 certificate of the person whose consent is required may ~~must~~ be
 873 attached to the petition for adoption if a separate petition for
 874 termination of parental rights is not being filed.

875 (4) (a) An affidavit of nonpaternity may be executed before
 876 the birth of the minor; however, the consent to an adoption may
 877 ~~shall~~ not be executed before the birth of the minor except in a
 878 preplanned adoption pursuant to s. 63.213.

879 (d) The consent to adoption or the affidavit of
 880 nonpaternity must be signed in the presence of two witnesses and
 881 be acknowledged before a notary public who is not signing as one
 882 of the witnesses. The notary public must legibly note on the
 883 consent or the affidavit the date and time of execution. The
 884 witnesses' names must be typed or printed underneath their
 885 signatures. The witnesses' home or business addresses must be
 886 included. The person who signs the consent or the affidavit has
 887 the right to have at least one of the witnesses be an individual
 888 who does not have an employment, professional, or personal
 889 relationship with the adoption entity or the prospective
 890 adoptive parents. The adoption entity must give reasonable
 891 advance notice to the person signing the consent or affidavit of
 892 the right to select a witness of his or her own choosing. The
 893 person who signs the consent or affidavit must acknowledge in
 894 writing on the consent or affidavit that such notice was given
 895 and indicate the witness, if any, who was selected by the person
 896 signing the consent or affidavit. The adoption entity must

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897 include its name, address, and telephone number on the consent
 898 to adoption or affidavit of nonpaternity.

899 (e) A consent to adoption being executed by the birth
 900 parent must be in at least 12-point boldfaced type and shall
 901 contain the following recitation of rights ~~in substantially the~~
 902 ~~following form:~~

903 CONSENT TO ADOPTION

904
 905 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT
 906 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
 907 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
 908 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
 909 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
 910 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
 911 WITNESSES YOU SELECTED, IF ANY.

912
 913 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
 914 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
 915 CONSENT:

- 916
 917 1. CONSULT WITH AN ATTORNEY;
 918 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
 919 LEGALLY PROHIBITED;
 920 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
 921 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE
 922 CHILD;
 923 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY
 924 PROHIBITED; AND

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925 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
 926 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE
 927 ADOPTION.

928
 929 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO
 930 YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
 931 EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
 932 YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED
 933 FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
 934 OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE
 935 IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
 936 FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF
 937 BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
 938 WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
 939 SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
 940 CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
 941 BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
 942 BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
 943 VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
 944 ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
 945 DURESS.

946
 947 IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS
 948 AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

- 949
- 950 1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
 - 951 YOU WISH TO WITHDRAW YOUR CONSENT; AND
 - 952 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD

953 OR DURESS.

954

955 This statement of rights is not required for the adoption of a
 956 relative, an adult, a stepchild, or a child older than 6 months
 957 of age. A consent form for the adoption of a child older than 6
 958 months of age at the time of the execution of consent must
 959 contain a statement outlining the revocation rights provided in
 960 paragraph (c).

961 (6) (a) If a parent executes a consent for placement of a
 962 minor with an adoption entity or qualified prospective adoptive
 963 parents and the minor child is in the custody of the department,
 964 but parental rights have not yet been terminated, the adoption
 965 consent is valid, binding, and enforceable by the court.

966 (b) Upon execution of the consent of the parent, the
 967 adoption entity shall be permitted to ~~may~~ intervene in the
 968 dependency case as a party in interest and must provide the
 969 court that acquired ~~having~~ jurisdiction over the minor, pursuant
 970 to the shelter or dependency petition filed by the department, a
 971 copy of the preliminary home study of the prospective adoptive
 972 parents and any other evidence of the suitability of the
 973 placement. The preliminary home study must be maintained with
 974 strictest confidentiality within the dependency court file and
 975 the department's file. A preliminary home study must be provided
 976 to the court in all cases in which an adoption entity has
 977 intervened pursuant to this section. Unless the court has
 978 concerns regarding the qualifications of the home study
 979 provider, or concerns that the home study may not be adequate to
 980 determine the best interests of the child, the home study

981 provided by the adoption entity shall be deemed to be sufficient
 982 and no additional home study needs to be performed by the
 983 department.

984 (c) If an adoption entity files a motion to intervene in
 985 the dependency case in accordance with this chapter, the
 986 dependency court shall promptly grant a hearing to determine
 987 whether the adoption entity has filed the required documents to
 988 be permitted to intervene and whether a change of placement of
 989 the child is appropriate.

990 (d)-(e) Upon a determination by the court that the
 991 prospective adoptive parents are properly qualified to adopt the
 992 minor child and that the adoption appears to be in the best
 993 interests ~~interest~~ of the minor child, the court shall
 994 immediately order the transfer of custody of the minor child to
 995 the prospective adoptive parents, under the supervision of the
 996 adoption entity. The adoption entity shall thereafter provide
 997 monthly supervision reports to the department until finalization
 998 of the adoption.

999 (e)-(d) In determining whether the best interests ~~interest~~
 1000 of the child are ~~is~~ served by transferring the custody of the
 1001 minor child to the prospective adoptive parent selected by the
 1002 parent, the court shall consider the rights of the parent to
 1003 determine an appropriate placement for the child, the permanency
 1004 offered, the child's bonding with any potential adoptive home
 1005 that the child has been residing in, and the importance of
 1006 maintaining sibling relationships, if possible.

1007 (7) If a person is seeking to revoke ~~withdraw~~ consent for
 1008 a child older than 6 months of age ~~who has been placed with~~

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1009 ~~prospective adoptive parents:~~

1010 (a) The person seeking to revoke ~~withdraw~~ consent must, in
 1011 accordance with paragraph (4)(c), notify the adoption entity in
 1012 writing by certified mail, return receipt requested, within 3
 1013 business days after execution of the consent. As used in this
 1014 subsection, the term "business day" means any day on which the
 1015 United States Postal Service accepts certified mail for
 1016 delivery.

1017 (b) Upon receiving timely written notice from a person
 1018 whose consent to adoption is required of that person's desire to
 1019 revoke ~~withdraw~~ consent, the adoption entity must contact the
 1020 prospective adoptive parent to arrange a time certain for the
 1021 adoption entity to regain physical custody of the minor, unless,
 1022 upon a motion for emergency hearing by the adoption entity, the
 1023 court determines in written findings that placement of the minor
 1024 with the person who had legal or physical custody of the child
 1025 immediately before the child was placed for adoption may
 1026 endanger the minor or that the person who desires to revoke
 1027 ~~withdraw~~ consent is not required to consent to the adoption, has
 1028 been determined to have abandoned the child, or is otherwise
 1029 subject to a determination that the person's consent is waived
 1030 under this chapter.

1031 (c) If the court finds that the placement may endanger the
 1032 minor, the court shall enter an order continuing the placement
 1033 of the minor with the prospective adoptive parents pending
 1034 further proceedings if they desire continued placement. If the
 1035 prospective adoptive parents do not desire continued placement,
 1036 the order must include, but need not be limited to, a

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1037 determination of whether temporary placement in foster care,
 1038 with the person who had legal or physical custody of the child
 1039 immediately before placing the child for adoption, or with a
 1040 relative is in the best interests ~~interest~~ of the child and
 1041 whether an investigation by the department is recommended.

1042 (d) If the person revoking ~~withdrawing~~ consent claims to
 1043 be the father of the minor but has not been established to be
 1044 the father by marriage, court order, or scientific testing, the
 1045 court may order scientific paternity testing and reserve ruling
 1046 on removal of the minor until the results of such testing have
 1047 been filed with the court.

1048 (e) The adoption entity must return the minor within 3
 1049 business days after timely and proper notification of the
 1050 revocation ~~withdrawal~~ of consent or after the court determines
 1051 that revocation ~~withdrawal~~ is timely and in accordance with the
 1052 requirements of this chapter ~~valid and binding~~ upon
 1053 consideration of an emergency motion, as filed pursuant to
 1054 paragraph (b), to the physical custody of the person revoking
 1055 ~~withdrawing~~ consent or the person directed by the court. If the
 1056 person seeking to revoke ~~withdraw~~ consent claims to be the
 1057 father of the minor but has not been established to be the
 1058 father by marriage, court order, or scientific testing, the
 1059 adoption entity may return the minor to the care and custody of
 1060 the mother, if she desires such placement and she is not
 1061 otherwise prohibited by law from having custody of the child.

1062 (f) Following the revocation period ~~for withdrawal of~~
 1063 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
 1064 ~~child with the prospective adoptive parents, whichever occurs~~

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1065 ~~later~~, consent may be set aside ~~withdrawn~~ only when the court
 1066 finds that the consent was obtained by fraud or duress.

1067 (g) An affidavit of nonpaternity may be set aside
 1068 ~~withdrawn~~ only if the court finds that the affidavit was
 1069 obtained by fraud or duress.

1070 (h) If the consent of one parent is set aside or revoked
 1071 in accordance with this chapter, any other consents executed by
 1072 the other parent or a third party whose consent is required for
 1073 the adoption of the child may not be used by the parent who
 1074 consent was revoked or set aside to terminate or diminish the
 1075 rights of the other parent or third party whose consent was
 1076 required for the adoption of the child.

1077 Section 15. Subsection (1) and paragraph (a) of subsection
 1078 (2) of section 63.085, Florida Statutes, are amended, and
 1079 paragraph (c) is added to subsection (2) of that section, to
 1080 read:

1081 63.085 Disclosure by adoption entity.—

1082 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE
 1083 ADOPTIVE PARENTS.—Within 14 days after a person seeking to adopt
 1084 a minor or a person seeking to place a minor for adoption
 1085 contacts an adoption entity in person or provides the adoption
 1086 entity with a mailing address, the entity must provide a written
 1087 disclosure statement to that person if the entity agrees or
 1088 continues to work with the person. The adoption entity shall
 1089 also provide the written disclosure to the parent who did not
 1090 initiate contact with the adoption entity within 14 days after
 1091 that parent is identified and located. For purposes of providing
 1092 the written disclosure, a person is considered to be seeking to

1093 place a minor for adoption if that person has sought information
 1094 or advice from the adoption entity regarding the option of
 1095 adoptive placement. The written disclosure statement must be in
 1096 substantially the following form:

ADOPTION DISCLOSURE

1099 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL
 1100 PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR
 1101 FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING
 1102 ADOPTION UNDER FLORIDA LAW:

1104 1. The name, address, and telephone number of the adoption
 1105 entity providing this disclosure is:

1106 Name:

1107 Address:

1108 Telephone Number:

1109 2. The adoption entity does not provide legal
 1110 representation or advice to parents or anyone signing a consent
 1111 for adoption or affidavit of nonpaternity, and parents have the
 1112 right to consult with an attorney of their own choosing to
 1113 advise them.

1114 3. With the exception of an adoption by a stepparent or
 1115 relative, a child cannot be placed into a prospective adoptive
 1116 home unless the prospective adoptive parents have received a
 1117 favorable preliminary home study, including criminal and child
 1118 abuse clearances.

1119 4. A valid consent for adoption may not be signed by the
 1120 birth mother until 48 hours after the birth of the child, or the

1121 day the birth mother is notified, in writing, that she is fit
 1122 for discharge from the licensed hospital or birth center. Any
 1123 man may sign a valid consent for adoption at any time after the
 1124 birth of the child.

1125 5. A consent for adoption signed before the child attains
 1126 the age of 6 months is binding and irrevocable from the moment
 1127 it is signed unless it can be proven in court that the consent
 1128 was obtained by fraud or duress. A consent for adoption signed
 1129 after the child attains the age of 6 months is valid from the
 1130 moment it is signed; however, it may be revoked up to 3 business
 1131 days after it was signed.

1132 6. A consent for adoption is not valid if the signature of
 1133 the person who signed the consent was obtained by fraud or
 1134 duress.

1135 7. An unmarried biological father must act immediately in
 1136 order to protect his parental rights. Section 63.062, Florida
 1137 Statutes, prescribes that any father seeking to establish his
 1138 right to consent to the adoption of his child must file a claim
 1139 of paternity with the Florida Putative Father Registry
 1140 maintained by the Office of Vital Statistics of the Department
 1141 of Health by the date a petition to terminate parental rights is
 1142 filed with the court, or within 30 days after receiving service
 1143 of a Notice of Intended Adoption Plan. If he receives a Notice
 1144 of Intended Adoption Plan, he must file a claim of paternity
 1145 with the Florida Putative Father Registry, file a parenting plan
 1146 with the court, and provide financial support to the mother or
 1147 child within 30 days following service. An unmarried biological
 1148 father's failure to timely respond to a Notice of Intended

1149 Adoption Plan constitutes an irrevocable legal waiver of any and
 1150 all rights that the father may have to the child. A claim of
 1151 paternity registration form for the Florida Putative Father
 1152 Registry may be obtained from any local office of the Department
 1153 of Health, Office of Vital Statistics, the Department of
 1154 Children and Families, the Internet websites for these agencies,
 1155 and the offices of the clerks of the Florida circuit courts. The
 1156 claim of paternity form must be submitted to the Office of Vital
 1157 Statistics, Attention: Adoption Unit, P.O. Box 210,
 1158 Jacksonville, FL 32231.

1159 8. There are alternatives to adoption, including foster
 1160 care, relative care, and parenting the child. There may be
 1161 services and sources of financial assistance in the community
 1162 available to parents if they choose to parent the child.

1163 9. A parent has the right to have a witness of his or her
 1164 choice, who is unconnected with the adoption entity or the
 1165 adoptive parents, to be present and witness the signing of the
 1166 consent or affidavit of nonpaternity.

1167 10. A parent 14 years of age or younger must have a
 1168 parent, legal guardian, or court-appointed guardian ad litem to
 1169 assist and advise the parent as to the adoption plan and to
 1170 witness consent.

1171 11. A parent has a right to receive supportive counseling
 1172 from a counselor, social worker, physician, clergy, or attorney.

1173 12. The payment of living or medical expenses by the
 1174 prospective adoptive parents before the birth of the child does
 1175 not, in any way, obligate the parent to sign the consent for
 1176 adoption.

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(2) DISCLOSURE TO ADOPTIVE PARENTS.—
 (a) At the time that an adoption entity is responsible for selecting prospective adoptive parents for a born or unborn child whose parents are seeking to place the child for adoption or whose rights were terminated pursuant to chapter 39, the adoption entity must provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity by the parents, legal custodian, or the department. This subsection applies only if the adoption entity identifies the prospective adoptive parents and supervises the ~~physical~~ placement of the child in the prospective adoptive parents' home. If any information cannot be disclosed because the records custodian failed or refused to produce the background information, the adoption entity has a duty to provide the information if it becomes available. An individual or entity contacted by an adoption entity to obtain the background information must release the requested information to the adoption entity without the necessity of a subpoena or a court order. In all cases, the prospective adoptive parents must receive all available information by the date of the final hearing on the petition for adoption. The information to be disclosed includes:

1. A family social and medical history form completed pursuant to s. 63.162(6).
2. The biological mother's medical records documenting her prenatal care and the birth and delivery of the child.
3. A complete set of the child's medical records

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1205 documenting all medical treatment and care since the child's
 1206 birth and before placement.

1207 4. All mental health, psychological, and psychiatric
 1208 records, reports, and evaluations concerning the child before
 1209 placement.

1210 5. The child's educational records, including all records
 1211 concerning any special education needs of the child before
 1212 placement.

1213 6. Records documenting all incidents that required the
 1214 department to provide services to the child, including all
 1215 orders of adjudication of dependency or termination of parental
 1216 rights issued pursuant to chapter 39, any case plans drafted to
 1217 address the child's needs, all protective services
 1218 investigations identifying the child as a victim, and all
 1219 guardian ad litem reports filed with the court concerning the
 1220 child.

1221 7. Written information concerning the availability of
 1222 adoption subsidies for the child, if applicable.

1223 (c) If the prospective adoptive parents waive the receipt
 1224 of any of the records described in paragraph (a), a copy of the
 1225 written notification of the waiver to the adoption entity shall
 1226 be filed with the court.

1227 Section 16. Subsection (6) of section 63.087, Florida
 1228 Statutes, is amended to read:

1229 63.087 Proceeding to terminate parental rights pending
 1230 adoption; general provisions.—

1231 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
 1232 petition or any pleading requiring an answer must be filed in

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1233 accordance with the Florida Family Law Rules of Procedure.
 1234 Failure to file a written response to the petition constitutes
 1235 grounds upon which the court may terminate parental rights.
 1236 Failure to personally appear at the hearing constitutes grounds
 1237 upon which the court may terminate parental rights. Any person
 1238 present at the hearing to terminate parental rights pending
 1239 adoption whose consent to adoption is required under s. 63.062
 1240 must:

1241 (a) Be advised by the court that he or she has a right to
 1242 ask that the hearing be reset for a later date so that the
 1243 person may consult with an attorney; and

1244 (b) Be given an opportunity to admit or deny the
 1245 allegations in the petition.

1246 Section 17. Subsection (4) of section 63.088, Florida
 1247 Statutes, is amended to read:

1248 63.088 Proceeding to terminate parental rights pending
 1249 adoption; notice and service; diligent search.—

1250 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
 1251 63.087, the court shall conduct an inquiry of the person who is
 1252 placing the minor for adoption and of any relative or person
 1253 having legal custody of the minor who is present at the hearing
 1254 and likely to have the following information regarding the
 1255 identity of:

1256 (a) Any man to whom the mother of the minor was married at
 1257 any time when conception of the minor may have occurred or at
 1258 the time of the birth of the minor;

1259 (b) Any man who has filed an affidavit of paternity
 1260 pursuant to s. 382.013(2)(c) before the date that a petition for

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1261 termination of parental rights is filed with the court;
 1262 (c) Any man who has adopted the minor;
 1263 (d) Any man who has been adjudicated by a court as the
 1264 father of the minor child before the date a petition for
 1265 termination of parental rights is filed with the court; and
 1266 (e) Any man whom the mother identified to the adoption
 1267 entity as a potential biological father before the date she
 1268 signed the consent for adoption.

1269
 1270 The information sought under this subsection may be provided to
 1271 the court in the form of a sworn affidavit by a person having
 1272 personal knowledge of the facts, addressing each inquiry
 1273 enumerated in this subsection, except that, if the inquiry
 1274 identifies a father under paragraph (a), paragraph (b), ~~or~~
 1275 paragraph (c), or paragraph (d), the inquiry may not continue
 1276 further. The inquiry required under this subsection may be
 1277 conducted before the birth of the minor.

1278 Section 18. Paragraph (d) of subsection (3), paragraph (b)
 1279 of subsection (4), and subsections (5) and (7) of section
 1280 63.089, Florida Statutes, are amended to read:

1281 63.089 Proceeding to terminate parental rights pending
 1282 adoption; hearing; grounds; dismissal of petition; judgment.—

1283 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
 1284 ADOPTION.—The court may enter a judgment terminating parental
 1285 rights pending adoption if the court determines by clear and
 1286 convincing evidence, supported by written findings of fact, that
 1287 each person whose consent to adoption is required under s.
 1288 63.062:

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1289 (d) Has been properly served notice of the proceeding in
 1290 accordance with the requirements of this chapter and has failed
 1291 to file a written answer or personally appear at the evidentiary
 1292 hearing resulting in the judgment terminating parental rights
 1293 pending adoption;

1294 (4) FINDING OF ABANDONMENT.—A finding of abandonment
 1295 resulting in a termination of parental rights must be based upon
 1296 clear and convincing evidence that a parent or person having
 1297 legal custody has abandoned the child in accordance with the
 1298 definition contained in s. 63.032. A finding of abandonment may
 1299 also be based upon emotional abuse or a refusal to provide
 1300 reasonable financial support, when able, to a birth mother
 1301 during her pregnancy.

1302 (b) The child has been abandoned when the parent of a
 1303 child is incarcerated on or after October 1, 2001, in a federal,
 1304 state, or county correctional institution and:

1305 1. The period of time for which the parent has been or is
 1306 expected to be incarcerated will constitute a significant
 1307 portion of the child's minority. In determining whether the
 1308 period of time is significant, the court shall consider the
 1309 child's age and the child's need for a permanent and stable
 1310 home. The period of time begins on the date that the parent
 1311 enters into incarceration;

1312 2. The incarcerated parent has been determined by a court
 1313 of competent jurisdiction to be a violent career criminal as
 1314 defined in s. 775.084, a habitual violent felony offender as
 1315 defined in s. 775.084, convicted of child abuse as defined in s.
 1316 827.03, or a sexual predator as defined in s. 775.21; has been

1317 convicted of first degree or second degree murder in violation
 1318 of s. 782.04 or a sexual battery that constitutes a capital,
 1319 life, or first degree felony violation of s. 794.011; or has
 1320 been convicted of a substantially similar offense in another
 1321 jurisdiction. As used in this section, the term "substantially
 1322 similar offense" means any offense that is substantially similar
 1323 in elements and penalties to one of those listed in this
 1324 subparagraph, and that is in violation of a law of any other
 1325 jurisdiction, whether that of another state, the District of
 1326 Columbia, the United States or any possession or territory
 1327 thereof, or any foreign jurisdiction; or

1328 3. The court determines by clear and convincing evidence
 1329 that continuing the parental relationship with the incarcerated
 1330 parent would be harmful to the child and, for this reason,
 1331 termination of the parental rights of the incarcerated parent is
 1332 in the best interests ~~interest~~ of the child.

1333 (5) DISMISSAL OF PETITION.—If the court does not find by
 1334 clear and convincing evidence that parental rights of a parent
 1335 should be terminated pending adoption, the court must dismiss
 1336 the petition and that parent's parental rights that were the
 1337 subject of such petition shall remain in full force under the
 1338 law. The order must include written findings in support of the
 1339 dismissal, including findings as to the criteria in subsection
 1340 (4) if rejecting a claim of abandonment.

1341 (a) Parental rights may not be terminated based upon a
 1342 consent that the court finds has been timely revoked ~~withdrawn~~
 1343 under s. 63.082 or a consent to adoption or affidavit of
 1344 nonpaternity that the court finds was obtained by fraud or

1345 duress.

1346 (b) The court must enter an order based upon written

1347 findings providing for the placement of the minor, but the court

1348 may not proceed to determine custody between competing eligible

1349 parties. The placement of the child should revert to the parent

1350 or guardian who had physical custody of the child at the time of

1351 the placement for adoption unless the court determines upon

1352 clear and convincing evidence that this placement is not in the

1353 best interests of the child or is not an available option for

1354 the child. The court may not change the placement of a child who

1355 has established a bonded relationship with the current caregiver

1356 without providing for a reasonable transition plan consistent

1357 with the best interests of the child. The court may direct the

1358 parties to participate in a reunification or unification plan

1359 with a qualified professional to assist the child in the

1360 transition. The court may order scientific testing to determine

1361 the paternity of the minor only if the court has determined that

1362 the consent of the alleged father would be required, unless all

1363 parties agree that such testing is in the best interests of the

1364 child. The court may not order scientific testing to determine

1365 paternity of an unmarried biological father if the child has a

1366 father as described in s. 63.088(4)(a)-(d) whose rights have not

1367 been previously terminated at any time during which the court

1368 has jurisdiction over the minor. Further proceedings, if any,

1369 regarding the minor must be brought in a separate custody action

1370 under chapter 61, a dependency action under chapter 39, or a

1371 paternity action under chapter 742.

1372 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1373 (a) A motion for relief from a judgment terminating
 1374 parental rights must be filed with the court originally entering
 1375 the judgment. The motion must be filed within a reasonable time,
 1376 but not later than 1 year after the entry of the judgment. An
 1377 unmarried biological father does not have standing to seek
 1378 relief from a judgment terminating parental rights if the mother
 1379 did not identify him to the adoption entity before the date she
 1380 signed a consent for adoption or if he was not located because
 1381 the mother failed or refused to provide sufficient information
 1382 to locate him.

1383 (b) No later than 30 days after the filing of a motion
 1384 under this subsection, the court must conduct a preliminary
 1385 hearing to determine what contact, if any, shall be permitted
 1386 between a parent and the child pending resolution of the motion.
 1387 Such contact shall be considered only if it is requested by a
 1388 parent who has appeared at the hearing and may not be awarded
 1389 unless the parent previously established a bonded relationship
 1390 with the child and the parent has pled a legitimate legal basis
 1391 and established a prima facie case for setting aside the
 1392 judgment terminating parental rights. If the court orders
 1393 contact between a parent and child, the order must be issued in
 1394 writing as expeditiously as possible and must state with
 1395 specificity any provisions regarding contact with persons other
 1396 than those with whom the child resides.

1397 (c) At the preliminary hearing, the court, upon the motion
 1398 of any party or upon its own motion, may order scientific
 1399 testing to determine the paternity of the minor if the person
 1400 seeking to set aside the judgment is alleging to be the child's

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1401 father and that fact has not previously been determined by
 1402 legitimacy or scientific testing. The court may order visitation
 1403 with a person for whom scientific testing for paternity has been
 1404 ordered and who has previously established a bonded relationship
 1405 with the child.

1406 (d) Unless otherwise agreed between the parties or for
 1407 good cause shown, the court shall conduct a final hearing on the
 1408 motion for relief from judgment within 45 days after the filing
 1409 and enter its written order as expeditiously as possible
 1410 thereafter.

1411 (e) If the court grants relief from the judgment
 1412 terminating parental rights and no new pleading is filed to
 1413 terminate parental rights, the placement of the child should
 1414 revert to the parent or guardian who had physical custody of the
 1415 child at the time of the original placement for adoption unless
 1416 the court determines upon clear and convincing evidence that
 1417 this placement is not in the best interests of the child or is
 1418 not an available option for the child. The court may not change
 1419 the placement of a child who has established a bonded
 1420 relationship with the current caregiver without providing for a
 1421 reasonable transition plan consistent with the best interests of
 1422 the child. The court may direct the parties to participate in a
 1423 reunification or unification plan with a qualified professional
 1424 to assist the child in the transition. The court may not direct
 1425 the placement of a child with a person other than the adoptive
 1426 parents without first obtaining a favorable home study of that
 1427 person and any other persons residing in the proposed home and
 1428 shall take whatever additional steps are necessary and

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1429 appropriate for the physical and emotional protection of the
 1430 child.

1431 Section 19. Subsection (3) of section 63.092, Florida
 1432 Statutes, is amended to read:

1433 63.092 Report to the court of intended placement by an
 1434 adoption entity; at-risk placement; preliminary study.—

1435 (3) PRELIMINARY HOME STUDY.—Before placing the minor in
 1436 the intended adoptive home, a preliminary home study must be
 1437 performed by a licensed child-placing agency, a child-caring
 1438 agency registered under s. 409.176, a licensed professional, or
 1439 agency described in s. 61.20(2), unless the adoptee is an adult
 1440 or the petitioner is a stepparent or a relative. If the adoptee
 1441 is an adult or the petitioner is a stepparent or a relative, a
 1442 preliminary home study may be required by the court for good
 1443 cause shown. The department is required to perform the
 1444 preliminary home study only if there is no licensed child-
 1445 placing agency, child-caring agency registered under s. 409.176,
 1446 licensed professional, or agency described in s. 61.20(2), in
 1447 the county where the prospective adoptive parents reside. The
 1448 preliminary home study must be made to determine the suitability
 1449 of the intended adoptive parents and may be completed prior to
 1450 identification of a prospective adoptive minor. A favorable
 1451 preliminary home study is valid for 1 year after the date of its
 1452 completion. Upon its completion, a signed copy of the home study
 1453 must be provided to the intended adoptive parents who were the
 1454 subject of the home study. A minor may not be placed in an
 1455 intended adoptive home before a favorable preliminary home study
 1456 is completed unless the adoptive home is also a licensed foster

1457 home under s. 409.175. The preliminary home study must include,
 1458 at a minimum:

- 1459 (a) An interview with the intended adoptive parents;
- 1460 (b) Records checks of the department's central abuse
 1461 registry and criminal records correspondence checks under s.
 1462 39.0138 through the Department of Law Enforcement on the
 1463 intended adoptive parents;
- 1464 (c) An assessment of the physical environment of the home;
- 1465 (d) A determination of the financial security of the
 1466 intended adoptive parents;
- 1467 (e) Documentation of counseling and education of the
 1468 intended adoptive parents on adoptive parenting;
- 1469 (f) Documentation that information on adoption and the
 1470 adoption process has been provided to the intended adoptive
 1471 parents;
- 1472 (g) Documentation that information on support services
 1473 available in the community has been provided to the intended
 1474 adoptive parents; and
- 1475 (h) A copy of each signed acknowledgment of receipt of
 1476 disclosure required by s. 63.085.

1477
 1478 If the preliminary home study is favorable, a minor may be
 1479 placed in the home pending entry of the judgment of adoption. A
 1480 minor may not be placed in the home if the preliminary home
 1481 study is unfavorable. If the preliminary home study is
 1482 unfavorable, the adoption entity may, within 20 days after
 1483 receipt of a copy of the written recommendation, petition the
 1484 court to determine the suitability of the intended adoptive

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1485 home. A determination as to suitability under this subsection
 1486 does not act as a presumption of suitability at the final
 1487 hearing. In determining the suitability of the intended adoptive
 1488 home, the court must consider the totality of the circumstances
 1489 in the home. A ~~No~~ minor may not be placed in a home in which
 1490 there resides any person determined by the court to be a sexual
 1491 predator as defined in s. 775.21 or to have been convicted of an
 1492 offense listed in s. 63.089(4)(b)2.

1493 Section 20. Section 63.152, Florida Statutes, is amended
 1494 to read:

1495 63.152 Application for new birth record.—Within 30 days
 1496 after entry of a judgment of adoption, the clerk of the court or
 1497 the adoption entity shall transmit a certified statement of the
 1498 entry to the state registrar of vital statistics on a form
 1499 provided by the registrar. A new birth record containing the
 1500 necessary information supplied by the certificate shall be
 1501 issued by the registrar on application of the adopting parents
 1502 or the adopted person.

1503 Section 21. Subsection (7) of section 63.162, Florida
 1504 Statutes, is amended to read:

1505 63.162 Hearings and records in adoption proceedings;
 1506 confidential nature.—

1507 (7) The court may, upon petition of an adult adoptee or
 1508 birth parent, for good cause shown, appoint an intermediary or a
 1509 licensed child-placing agency to contact a birth parent or adult
 1510 adoptee, as applicable, who has not registered with the adoption
 1511 registry pursuant to s. 63.165 and advise both ~~them~~ of the
 1512 availability of the intermediary or agency and that the birth

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1513 parent or adult adoptee, as applicable, wishes to establish
 1514 contact same.

1515 Section 22. Paragraph (c) of subsection (2) of section
 1516 63.167, Florida Statutes, is amended to read:

1517 63.167 State adoption information center.—

1518 (2) The functions of the state adoption information center
 1519 shall include:

1520 (c) Operating a toll-free telephone number to provide
 1521 information and referral services. The state adoption
 1522 information center shall provide contact information for all
 1523 adoption entities in the caller's county or, if no adoption
 1524 entities are located in the caller's county, the number of the
 1525 nearest adoption entity when contacted for a referral to make an
 1526 adoption plan and shall rotate the order in which the names of
 1527 adoption entities are provided to callers.

1528 Section 23. Paragraph (g) of subsection (1) and
 1529 subsections (2) and (8) of section 63.212, Florida Statutes, are
 1530 amended to read:

1531 63.212 Prohibited acts; penalties for violation.—

1532 (1) It is unlawful for any person:

1533 (g) Except an adoption entity, to advertise or offer to
 1534 the public, in any way, by any medium whatever that a minor is
 1535 available for adoption or that a minor is sought for adoption;
 1536 and, further, it is unlawful for any person to publish or
 1537 broadcast any such advertisement or assist an unlicensed person
 1538 or entity in publishing or broadcasting any such advertisement
 1539 without including a Florida license number of the agency or
 1540 attorney placing the advertisement. Only a person who is an

1541 attorney licensed to practice law in this state or an adoption
 1542 entity licensed under the laws of this state may place a paid
 1543 advertisement or paid listing of the person's telephone number,
 1544 on the person's own behalf, in a telephone directory that:

- 1545 1. A child is offered or wanted for adoption; or
- 1546 2. The person is able to place, locate, or receive a child
 1547 for adoption.

1548 (b) A person who publishes a telephone directory that is
 1549 distributed in this state:

- 1550 1. Shall include, at the beginning of any classified
 1551 heading for adoption and adoption services, a statement that
 1552 informs directory users that only attorneys licensed to practice
 1553 law in this state and licensed adoption entities may legally
 1554 provide adoption services under state law.

1555 2. May publish an advertisement described in paragraph (a)
 1556 in the telephone directory only if the advertisement contains
 1557 the following:

1558 a. For an attorney licensed to practice law in this state,
 1559 the person's Florida Bar number.

1560 b. For a child placing agency licensed under the laws of
 1561 this state, the number on the person's adoption entity license.

1562 (2) Any person who is a birth mother, or a woman who holds
 1563 herself out to be a birth mother, who is interested in making an
 1564 adoption plan and who knowingly or intentionally benefits from
 1565 the payment of adoption-related expenses in connection with that
 1566 adoption plan commits adoption deception if:

1567 (a) The person knows or should have known that the person
 1568 is not pregnant at the time the sums were requested or received;

1569 (b) The person accepts living expenses assistance from a
 1570 prospective adoptive parent or adoption entity without
 1571 disclosing that she is receiving living expenses assistance from
 1572 another prospective adoptive parent or adoption entity at the
 1573 same time in an effort to adopt the same child; or

1574 (c) The person knowingly makes false representations to
 1575 induce the payment of living expenses and does not intend to
 1576 make an adoptive placement.

1577 ~~It is unlawful for:~~

- 1578 ~~(a) Any person or adoption entity under this chapter to:~~
 1579 ~~1. Knowingly provide false information; or~~
 1580 ~~2. Knowingly withhold material information.~~

1581 ~~(b) A parent, with the intent to defraud, to accept~~
 1582 ~~benefits related to the same pregnancy from more than one~~
 1583 ~~adoption entity without disclosing that fact to each entity.~~

1584
 1585 Any person who willfully commits adoption deception ~~violates any~~
 1586 ~~provision of this subsection~~ commits a misdemeanor of the second
 1587 degree, punishable as provided in s. 775.082 or s. 775.083, if
 1588 the sums received by the birth mother or woman holding herself
 1589 out to be a birth mother do not exceed \$300, and a felony of the
 1590 third degree, punishable as provided in s. 775.082, s. 775.083,
 1591 or s. 775.084, if the sums received by the birth mother or woman
 1592 holding herself out to be a birth mother exceed \$300. In
 1593 addition, the person is liable for damages caused by such acts
 1594 or omissions, including reasonable attorney ~~attorney's~~ fees and
 1595 costs incurred by the adoption entity or the prospective
 1596 adoptive parent. Damages may be awarded through restitution in

1597 any related criminal prosecution or by filing a separate civil
 1598 action.

1599 (8) Unless otherwise indicated, a person who willfully and
 1600 with criminal intent violates any provision of this section,
 1601 excluding paragraph (1)(g), commits a felony of the third
 1602 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1603 775.084. A person who willfully and with criminal intent
 1604 violates paragraph (1)(g) commits a misdemeanor of the second
 1605 degree, punishable as provided in s. 775.083; and each day of
 1606 continuing violation shall be considered a separate offense. In
 1607 addition, any person who knowingly publishes or assists with the
 1608 publication of any advertisement or other publication which
 1609 violates the requirements of paragraph (1)(g) commits a
 1610 misdemeanor of the second degree, punishable as provided in s.
 1611 775.083, and may be required to pay a fine of up to \$150 per day
 1612 for each day of continuing violation.

1613 Section 24. Paragraph (b) of subsection (1), paragraphs
 1614 (a) and (e) of subsection (2), and paragraphs (b), (h), and (i)
 1615 of subsection (6) of section 63.213, Florida Statutes, are
 1616 amended to read:

1617 63.213 Preplanned adoption agreement.—

1618 (1) Individuals may enter into a preplanned adoption
 1619 arrangement as specified in this section, but such arrangement
 1620 may not in any way:

1621 (b) Constitute consent of a mother to place her biological
 1622 child for adoption until 48 hours after the ~~following~~ birth of
 1623 the child and unless the court making the custody determination
 1624 or approving the adoption determines that the mother was aware

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1625 of her right to rescind within the 48-hour period after the
 1626 ~~following~~ birth of the child but chose not to rescind such
 1627 consent. The volunteer mother's right to rescind her consent in
 1628 a preplanned adoption applies only when the child is genetically
 1629 related to her.

1630 (2) A preplanned adoption agreement must include, but need
 1631 not be limited to, the following terms:

1632 (a) That the volunteer mother agrees to become pregnant by
 1633 the fertility technique specified in the agreement, to bear the
 1634 child, and to terminate any parental rights and responsibilities
 1635 to the child she might have through a written consent executed
 1636 at the same time as the preplanned adoption agreement, subject
 1637 to a right of rescission by the volunteer mother any time within
 1638 48 hours after the birth of the child, if the volunteer mother
 1639 is genetically related to the child.

1640 (e) That the intended father and intended mother
 1641 acknowledge that they may not receive custody or the parental
 1642 rights under the agreement if the volunteer mother terminates
 1643 the agreement or if the volunteer mother rescinds her consent to
 1644 place her child for adoption within 48 hours after the birth of
 1645 the child, if the volunteer mother is genetically related to the
 1646 child.

1647 (6) As used in this section, the term:

1648 (b) "Child" means the child or children conceived by means
 1649 of a fertility technique ~~an insemination~~ that is part of a
 1650 preplanned adoption arrangement.

1651 (h) "Preplanned adoption arrangement" means the
 1652 arrangement through which the parties enter into an agreement

1653 for the volunteer mother to bear the child, for payment by the
 1654 intended father and intended mother of the expenses allowed by
 1655 this section, for the intended father and intended mother to
 1656 assert full parental rights and responsibilities to the child if
 1657 consent to adoption is not rescinded after birth by a the
 1658 volunteer mother who is genetically related to the child, and
 1659 for the volunteer mother to terminate, subject to any a right of
 1660 rescission, all her parental rights and responsibilities to the
 1661 child in favor of the intended father and intended mother.

1662 (i) "Volunteer mother" means a female at least 18 years of
 1663 age who voluntarily agrees, subject to a right of rescission if
 1664 it is her biological child, that if she should become pregnant
 1665 pursuant to a preplanned adoption arrangement, she will
 1666 terminate her parental rights and responsibilities to the child
 1667 in favor of the intended father and intended mother.

1668 Section 25. Section 63.222, Florida Statutes, is amended
 1669 to read:

1670 63.222 Effect on prior adoption proceedings.—Any adoption
 1671 made before July 1, 2012, is the effective date of this act
 1672 ~~shall be valid, and any proceedings pending on that the~~
 1673 ~~effective date and any subsequent amendments thereto of this act~~
 1674 are not affected thereby unless the amendment is designated as a
 1675 remedial provision.

1676 Section 26. Section 63.2325, Florida Statutes, is amended
 1677 to read:

1678 63.2325 Conditions for invalidation ~~revocation~~ of a
 1679 consent to adoption or affidavit of nonpaternity.—
 1680 Notwithstanding the requirements of this chapter, a failure to

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1681 meet any of those requirements does not constitute grounds for
 1682 invalidation ~~revocation~~ of a consent to adoption or revocation
 1683 ~~withdrawal~~ of an affidavit of nonpaternity unless the extent and
 1684 circumstances of such a failure result in a material failure of
 1685 fundamental fairness in the administration of due process, or
 1686 the failure constitutes or contributes to fraud or duress in
 1687 obtaining a consent to adoption or affidavit of nonpaternity.
 1688 Section 27. This act shall take effect July 1, 2012.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Access Subcommittee
 3 Representative Adkins offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Paragraphs (e) through (m) of subsection (4) of
 8 section 63.022, Florida Statutes, are redesignated as paragraphs
 9 (d) through (l), respectively, and subsection (2) and present
 10 paragraph (d) of subsection (4) of that section are amended to
 11 read:

12 63.022 Legislative intent.—

13 (2) It is the intent of the Legislature that in every
 14 adoption, the best interest of the child should govern and be of
 15 foremost concern in the court's determination. The court shall
 16 make a specific finding as to the best interests ~~interest~~ of the
 17 child in accordance with the provisions of this chapter.

18 (4) The basic safeguards intended to be provided by this
 19 chapter are that:

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20 ~~(d) All placements of minors for adoption are reported to~~
21 ~~the Department of Children and Family Services, except relative,~~
22 ~~adult, and stepparent adoptions.~~

23 Section 1. Subsection (3) of section 63.032, Florida
24 Statutes, is amended to read:

25 63.032 Definitions.—As used in this chapter, the term:

26 (3) "Adoption entity" means the department, an agency, a
27 child-caring agency registered under s. 409.176, an
28 intermediary, or a child-placing agency licensed in another
29 state which is qualified by the department to place children in
30 the State of Florida.

31 Section 2. Subsections (1), (12), (17), and (19) of
32 section 63.032, Florida Statutes, are amended to read:

33 63.032 Definitions.—As used in this chapter, the term:

34 (1) "Abandoned" means a situation in which the parent or
35 person having legal custody of a child, while being able, makes
36 little or no provision for the child's support or ~~and~~ makes
37 little or no effort to communicate with the child, which
38 situation is sufficient to evince an intent to reject parental
39 responsibilities. If, in the opinion of the court, the efforts
40 of such parent or person having legal custody of the child to
41 support and communicate with the child are only marginal efforts
42 that do not evince a settled purpose to assume all parental
43 duties, the court may declare the child to be abandoned. In
44 making this decision, the court may consider the conduct of a
45 father towards the child's mother during her pregnancy.

46 (3) "Adoption entity" means the department, an agency, a
47 child-caring agency registered under s. 409.176, an

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48 intermediary, a Florida licensed child-placing agency, or a
49 child-placing agency licensed in another state which is
50 qualified by the department to place children in the State of
51 Florida.

52 (12) "Parent" means a woman who gives birth to a child and
53 who is not a gestational surrogate as defined in s. 742.13 or a
54 man whose consent to the adoption of the child would be required
55 under s. 63.062(1). If a child has been legally adopted, the
56 term "parent" means the adoptive mother or father of the child.
57 The term does not include an individual whose parental
58 relationship to the child has been legally terminated or an
59 alleged or prospective parent.

60 (17) "Suitability of the intended placement" means the
61 fitness of the intended placement, with primary consideration
62 being given to the best interests ~~interest~~ of the child.

63 (19) "Unmarried biological father" means the child's
64 biological father who is not married to the child's mother at
65 the time of conception or on the date of the birth of the child
66 and who, before the filing of a petition to terminate parental
67 rights, has not been adjudicated by a court of competent
68 jurisdiction to be the legal father of the child or has not
69 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

70 Section 3. Section 63.037, Florida Statutes, is amended to
71 read:

72 63.037 Proceedings applicable to cases resulting from a
73 termination of parental rights under chapter 39.—A case in which
74 a minor becomes available for adoption after the parental rights
75 of each parent have been terminated by a judgment entered

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76 pursuant to chapter 39 shall be governed by s. 39.812 and this
77 chapter. Adoption proceedings initiated under chapter 39 are
78 exempt from the following provisions of this chapter:
79 requirement for search of the Florida Putative Father Registry
80 provided in s. 63.054(7), if previously completed and
81 documentation of the search is contained in the case file;
82 disclosure requirements for the adoption entity provided in s.
83 63.085(1); general provisions governing termination of parental
84 rights pending adoption provided in s. 63.087; notice and
85 service provisions governing termination of parental rights
86 pending adoption provided in s. 63.088; and procedures for
87 terminating parental rights pending adoption provided in s.
88 63.089.

89 Section 4. Subsections (2) through (4) of section 63.039,
90 Florida Statutes, are renumbered as subsections (3) through (5),
91 respectively, and a new subsection (2) is added to that section
92 to read:

93 63.039 Duty of adoption entity to prospective adoptive
94 parents; sanctions.—

95 (2) With the exception of an adoption by a relative or
96 stepparent, all adoptions of minor children require the use of
97 an adoption entity that will assume the responsibilities
98 provided in this section.

99 Section 5. Paragraph (c) of subsection (2) of section
100 63.042, Florida Statutes, is amended to read:

101 63.042 Who may be adopted; who may adopt.—

102 (2) The following persons may adopt:

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103 (c) A married person without his or her ~~the other~~ spouse
104 joining as a petitioner, if the person to be adopted is not his
105 or her spouse, and if:

106 1. His or her ~~The other~~ spouse is a parent of the person
107 to be adopted and consents to the adoption; or

108 2. The failure of his or her ~~the other~~ spouse to join in
109 the petition or to consent to the adoption is excused by the
110 court for good cause shown or in the best interests ~~interest~~ of
111 the child.

112 Section 6. Subsections (1), (2), (3), (4), (7), (8), and
113 (9) of section 63.0423, Florida Statutes, are amended to read:

114 63.0423 Procedures with respect to surrendered infants.—

115 (1) Upon entry of final judgment terminating parental
116 rights, an adoption entity ~~A licensed child placing agency~~ that
117 takes physical custody of an infant surrendered at a hospital,
118 emergency medical services station, or fire station pursuant to
119 s. 383.50 assumes ~~shall assume~~ responsibility for the all
120 ~~medical costs~~ and ~~all~~ other costs associated with the emergency
121 services and care of the surrendered infant from the time the
122 adoption entity ~~licensed child placing agency~~ takes physical
123 custody of the surrendered infant.

124 (2) The adoption entity ~~licensed child placing agency~~
125 shall immediately seek an order from the circuit court for
126 emergency custody of the surrendered infant. The emergency
127 custody order shall remain in effect until the court orders
128 preliminary approval of placement of the surrendered infant in
129 the prospective home, at which time the prospective adoptive
130 parents become guardians pending termination of parental rights

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131 and finalization of adoption or until the court orders
132 otherwise. The guardianship of the prospective adoptive parents
133 shall remain subject to the right of the adoption entity
134 ~~licensed child placing agency~~ to remove the surrendered infant
135 from the placement during the pendency of the proceedings if
136 such removal is deemed by the adoption entity ~~licensed child-~~
137 ~~placing agency~~ to be in the best interests ~~interest~~ of the
138 child. The adoption entity ~~licensed child placing agency~~ may
139 immediately seek to place the surrendered infant in a
140 prospective adoptive home.

141 (3) The adoption entity ~~licensed child placing agency~~ that
142 takes physical custody of the surrendered infant shall, within
143 24 hours thereafter, request assistance from law enforcement
144 officials to investigate and determine, through the Missing
145 Children Information Clearinghouse, the National Center for
146 Missing and Exploited Children, and any other national and state
147 resources, whether the surrendered infant is a missing child.

148 (4) The parent who surrenders the infant in accordance
149 with s. 383.50 is presumed to have consented to termination of
150 parental rights, and express consent is not required. Except
151 when there is actual or suspected child abuse or neglect, the
152 adoption entity may ~~licensed child placing agency shall~~ not
153 attempt to pursue, search for, or notify that parent as provided
154 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
155 section, an infant who tests positive for illegal drugs,
156 narcotic prescription drugs, alcohol, or other substances, but
157 shows no other signs of child abuse or neglect, shall be placed
158 in the custody of an adoption entity. If the department is

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159 contacted regarding an infant properly surrendered under s.
160 383.50 and this section, the department shall provide
161 instruction to contact an adoption entity and may not take
162 custody of the infant unless reasonable efforts to contact an
163 adoption entity to accept the infant have not been successful.

164 (7) If a claim of parental rights of a surrendered infant
165 is made before the judgment to terminate parental rights is
166 entered, the circuit court may hold the action for termination
167 of parental rights ~~pending subsequent adoption~~ in abeyance for a
168 period of time not to exceed 60 days.

169 (a) The court may order scientific testing to determine
170 maternity or paternity at the expense of the parent claiming
171 parental rights.

172 (b) The court shall appoint a guardian ad litem for the
173 surrendered infant and order whatever investigation, home
174 evaluation, and psychological evaluation are necessary to
175 determine what is in the best interests ~~interest~~ of the
176 surrendered infant.

177 (c) The court may not terminate parental rights solely on
178 the basis that the parent left the infant at a hospital,
179 emergency medical services station, or fire station in
180 accordance with s. 383.50.

181 (d) The court shall enter a judgment with written findings
182 of fact and conclusions of law.

183 (8) Within 7 business days after recording the judgment,
184 the clerk of the court shall mail a copy of the judgment to the
185 department, the petitioner, and any person ~~the persons~~ whose

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186 consent was ~~were~~ required, if known. The clerk shall execute a
187 certificate of each mailing.

188 (9) (a) A judgment terminating parental rights pending
189 adoption is voidable, and any later judgment of adoption of that
190 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
191 court finds that a person knowingly gave false information that
192 prevented the ~~birth~~ parent from timely making known his or her
193 desire to assume parental responsibilities toward the minor or
194 from exercising his or her parental rights. A motion under this
195 subsection must be filed with the court originally entering the
196 judgment. The motion must be filed within a reasonable time but
197 not later than 1 year after the entry of the judgment
198 terminating parental rights.

199 (b) No later than 30 days after the filing of a motion
200 under this subsection, the court shall conduct a preliminary
201 hearing to determine what contact, if any, will be permitted
202 between a ~~birth~~ parent and the child pending resolution of the
203 motion. Such contact may be allowed only if it is requested by a
204 parent who has appeared at the hearing and the court determines
205 that it is in the best interests ~~interest~~ of the child. If the
206 court orders contact between a ~~birth~~ parent and the child, the
207 order must be issued in writing as expeditiously as possible and
208 must state with specificity any provisions regarding contact
209 with persons other than those with whom the child resides.

210 (c) ~~At the preliminary hearing, The court, upon the motion~~
211 ~~of any party or upon its own motion, may not order scientific~~
212 ~~testing to determine the paternity or maternity of the minor~~
213 until such time as the court determines that a previously

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214 entered judgment terminating the parental rights of that parent
215 is voidable pursuant to paragraph (a), unless all parties agree
216 that such testing is in the best interests of the child ~~if the~~
217 ~~person seeking to set aside the judgment is alleging to be the~~
218 ~~child's birth parent but has not previously been determined by~~
219 ~~legal proceedings or scientific testing to be the birth parent.~~
220 Upon the filing of test results establishing that person's
221 maternity or paternity of the surrendered infant, the court may
222 order visitation only if it appears to be as it deems
223 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

224 (d) Within 45 days after the preliminary hearing, the
225 court shall conduct a final hearing on the motion to set aside
226 the judgment and shall enter its written order as expeditiously
227 as possible thereafter.

228 Section 7. Subsection (1) of section 63.0425, Florida
229 Statutes, is amended to read:

230 63.0425 Grandparent's right to notice.-

231 (1) If a child has lived with a grandparent for at least 6
232 continuous months within the 24-month period immediately
233 preceding the filing of a petition for termination of parental
234 rights pending adoption, the adoption entity shall provide
235 notice to that grandparent of the hearing on the petition.

236 Section 8. Section 63.0427, Florida Statutes, is amended
237 to read:

238 63.0427 Agreements for Adopted minor's right to continued
239 communication or contact between adopted child and with
240 siblings, parents, and other relatives.-

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241 (1) A child whose parents have had their parental rights
242 terminated and whose custody has been awarded to the department
243 pursuant to s. 39.811, and who is the subject of a petition for
244 adoption under this chapter, shall have the right to have the
245 court consider the appropriateness of postadoption communication
246 or contact, including, but not limited to, visits, written
247 correspondence, or telephone calls, with his or her siblings or,
248 upon agreement of the adoptive parents, with the parents who
249 have had their parental rights terminated or other specified
250 biological relatives. The court shall consider the following in
251 making such determination:

252 (a) Any orders of the court pursuant to s. 39.811(7).

253 (b) Recommendations of the department, the foster parents
254 if other than the adoptive parents, and the guardian ad litem.

255 (c) Statements of the prospective adoptive parents.

256 (d) Any other information deemed relevant and material by
257 the court.

258
259 If the court determines that the child's best interests will be
260 served by postadoption communication or contact, the court shall
261 so order, stating the nature and frequency of ~~for~~ the
262 communication or contact. This order shall be made a part of the
263 final adoption order, but ~~in no event shall~~ the continuing
264 validity of the adoption may not be contingent upon such
265 postadoption communication or contact and, ~~nor shall~~ the ability
266 of the adoptive parents and child to change residence within or
267 outside the State of Florida may not be impaired by such
268 communication or contact.

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269 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
270 adoptive parent may, at any time, petition for review of a
271 communication or contact order entered pursuant to subsection
272 (1), if the adoptive parent believes that the best interests of
273 the adopted child are being compromised, and the court may ~~shall~~
274 ~~have authority to~~ order the communication or contact to be
275 terminated or modified, as the court deems to be in the best
276 interests of the adopted child; however, the court may not
277 increase contact between the adopted child and siblings, birth
278 parents, or other relatives without the consent of the adoptive
279 parent or parents. As part of the review process, the court may
280 order the parties to engage in mediation. The department shall
281 not be required to be a party to such review.

282 (3) Prospective adoptive parents may enter into an
283 agreement for contact between the child to be adopted and the
284 birth parent, other relative, or previous foster parent of the
285 child to be adopted. Such contact may include visits, written
286 correspondence, telephone contact, exchange of photographs, or
287 other similar types of contact. The agreement is enforceable by
288 the court only if:

289 (a) The agreement was in writing and was submitted to the
290 court.

291 (b) The adoptive parents have agreed to the terms of the
292 contact agreement.

293 (c) The court finds the contact to be in the best
294 interests of the child.

295 (d) The child, if 12 years of age or older, has agreed to
296 the contact outlined in the agreement.

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297 | (4) All parties acknowledge that a dispute regarding the
298 | contact agreement does not affect the validity or finality of
299 | the adoption and that a breach of the agreement may not be
300 | grounds to set aside the adoption or otherwise impact the
301 | validity or finality of the adoption in any way.

302 | (5) An adoptive parent may terminate the contact between
303 | the child and the birth parent, other relative, or foster parent
304 | if the adoptive parent reasonably believes that the contact is
305 | detrimental to the best interests of the child.

306 | (6) In order to terminate the agreement for contact, the
307 | adoptive parent must file a notice of intent to terminate the
308 | contact agreement with the court that initially approved the
309 | contact agreement, and provide a copy of the notice to the
310 | adoption entity that placed the child, if any, and to the birth
311 | parent, other relative, or foster parent of the child who is a
312 | party to the agreement, outlining the reasons for termination of
313 | the agreement.

314 | (7) If appropriate under the circumstances of the case,
315 | the court may order the parties to participate in mediation to
316 | attempt to resolve the issues with the contact agreement. The
317 | mediation shall be conducted pursuant to the provisions of s.
318 | 61.183. The petitioner shall be responsible for payment of the
319 | services of the mediator.

320 | (8) The court may modify the terms of the agreement in
321 | order to serve the best interests of the child, but may not
322 | increase the amount or type of contact unless the adoptive
323 | parents agree to the increase in contact or change in the type
324 | of contact.

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325 (9) An agreement for contact entered into under this
326 subsection is enforceable even if it does not fully disclose the
327 identity of the parties to the agreement or if identifying
328 information has been redacted from the agreement.

329 Section 9. Subsections (1), (2), (3), and (6) of section
330 63.052, Florida Statutes, are amended to read:

331 63.052 Guardians designated; proof of commitment.-

332 (1) For minors who have been placed for adoption with ~~and~~
333 ~~permanently committed to~~ an adoption entity, other than an
334 intermediary, such adoption entity shall be the guardian of the
335 person of the minor and has the responsibility and authority to
336 provide for the needs and welfare of the minor.

337 (2) For minors who have been voluntarily surrendered to an
338 intermediary through an execution of a consent to adoption, the
339 intermediary shall be responsible for the minor until the time a
340 court orders preliminary approval of placement of the minor in
341 the prospective adoptive home, after which time the prospective
342 adoptive parents shall become guardians pending finalization of
343 adoption, subject to the intermediary's right and responsibility
344 to remove the child from the prospective adoptive home if the
345 removal is deemed by the intermediary to be in the best
346 interests interest of the child. The intermediary may not remove
347 the child without a court order unless the child is in danger of
348 imminent harm. The intermediary does not become responsible for
349 the minor child's medical bills that were incurred before taking
350 physical custody of the child after the execution of adoption
351 consents. Prior to the court's entry of an order granting
352 preliminary approval of the placement, the intermediary shall

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353 have the responsibility and authority to provide for the needs
354 and welfare of the minor. A ~~No~~ minor may not ~~shall~~ be placed in
355 a prospective adoptive home until that home has received a
356 favorable preliminary home study, as provided in s. 63.092,
357 completed and approved within 1 year before such placement in
358 the prospective home. The provisions of s. 627.6578 shall remain
359 in effect notwithstanding the guardianship provisions in this
360 section.

361 (3) If a minor is surrendered to an adoption entity for
362 subsequent adoption and a suitable prospective adoptive home is
363 not available pursuant to s. 63.092 at the time the minor is
364 surrendered to the adoption entity, the minor must be placed in
365 a licensed foster care home, ~~or~~ with a person or family that has
366 received a favorable preliminary home study pursuant to
367 subsection (2), or with a relative until ~~such~~ a suitable
368 prospective adoptive home is available.

369 (6) Unless otherwise authorized by law or ordered by the
370 court, the department is not responsible for expenses incurred
371 by other adoption entities participating in a placement of a
372 minor.

373 Section 10. Subsections (2) and (3) of section 63.053,
374 Florida Statutes, are amended to read:

375 63.053 Rights and responsibilities of an unmarried
376 biological father; legislative findings.-

377 (2) The Legislature finds that the interests of the state,
378 the mother, the child, and the adoptive parents described in
379 this chapter outweigh the interest of an unmarried biological
380 father who does not take action in a timely manner to establish

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381 and demonstrate a relationship with his child in accordance with
382 the requirements of this chapter. An unmarried biological father
383 has the primary responsibility to protect his rights and is
384 presumed to know that his child may be adopted without his
385 consent unless he strictly complies with ~~the provisions of~~ this
386 chapter and demonstrates a prompt and full commitment to his
387 parental responsibilities.

388 (3) The Legislature finds that a birth mother and a birth
389 father have a right of ~~to~~ privacy.

390 Section 11. Subsections (1), (2), (4), and (13) of section
391 63.054, Florida Statutes, are amended to read:

392 63.054 Actions required by an unmarried biological father
393 to establish parental rights; Florida Putative Father Registry.—

394 (1) In order to preserve the right to notice and consent
395 to an adoption under this chapter, an unmarried biological
396 father must, as the "registrant," file a notarized claim of
397 paternity form with the Florida Putative Father Registry
398 maintained by the Office of Vital Statistics of the Department
399 of Health which includes confirmation of his willingness and
400 intent to support the child for whom paternity is claimed in
401 accordance with state law. The claim of paternity may be filed
402 at any time before the child's birth, but may not be filed after
403 the date a petition is filed for termination of parental rights.
404 In each proceeding for termination of parental rights, the
405 petitioner must submit to the Office of Vital Statistics a copy
406 of the petition for termination of parental rights or a document
407 executed by the clerk of the court showing the style of the
408 case, the names of the persons whose rights are sought to be

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409 terminated, and the date and time of the filing of the petition.

410 The Office of Vital Statistics may not record a claim of
411 paternity after the date a petition for termination of parental
412 rights is filed. The failure of an unmarried biological father
413 to file a claim of paternity with the registry before the date a
414 petition for termination of parental rights is filed also bars
415 him from filing a paternity claim under chapter 742.

416 (a) An unmarried biological father is excepted from the
417 time limitations for filing a claim of paternity with the
418 registry or for filing a paternity claim under chapter 742, if:

419 1. The mother identifies him to the adoption entity as a
420 potential biological father by the date she executes a consent
421 for adoption; and

422 2. He is served with a notice of intended adoption plan
423 pursuant to s. 63.062(3) and the 30-day mandatory response date
424 is later than the date the petition for termination of parental
425 rights is filed with the court.

426 (b) If an unmarried biological father falls within the
427 exception provided by paragraph (a), the petitioner shall also
428 submit to the Office of Vital Statistics a copy of the notice of
429 intended adoption plan and proof of service of the notice on the
430 potential biological father.

431 (c) An unmarried biological father who falls within the
432 exception provided by paragraph (a) may not file a claim of
433 paternity with the registry or a paternity claim under chapter
434 742 after the 30-day mandatory response date to the notice of
435 intended adoption plan has expired. The Office of Vital

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436 Statistics may not record a claim of paternity 30 days after
437 service of the notice of intended adoption plan.

438 (2) By filing a claim of paternity form with the Office of
439 Vital Statistics, the registrant expressly consents to submit to
440 and pay for DNA testing upon the request of any party, the
441 registrant, or the adoption entity with respect to the child
442 referenced in the claim of paternity.

443 (4) Upon initial registration, or at any time thereafter,
444 the registrant may designate a physical ~~an~~ address other than
445 his residential address for sending any communication regarding
446 his registration. Similarly, upon initial registration, or at
447 any time thereafter, the registrant may designate, in writing,
448 an agent or representative to receive any communication on his
449 behalf and receive service of process. The agent or
450 representative must file an acceptance of the designation, in
451 writing, in order to receive notice or service of process. The
452 failure of the designated representative or agent of the
453 registrant to deliver or otherwise notify the registrant of
454 receipt of correspondence from the Florida Putative Father
455 Registry is at the registrant's own risk and may ~~shall~~ not serve
456 as a valid defense based upon lack of notice.

457 (13) The filing of a claim of paternity with the Florida
458 Putative Father Registry does not excuse or waive the obligation
459 of a petitioner to comply with the requirements of s. 63.088(4)
460 for conducting a diligent search and required inquiry with
461 respect to the identity of an unmarried biological father or
462 legal father which are set forth in this chapter.

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463 Section 12. Paragraph (b) of subsection (1), subsections
464 (2), (3), and (4), and paragraph (a) of subsection (8) of
465 section 63.062, Florida Statutes, are amended to read:

466 63.062 Persons required to consent to adoption; affidavit
467 of nonpaternity; waiver of venue.—

468 (1) Unless supported by one or more of the grounds
469 enumerated under s. 63.089(3), a petition to terminate parental
470 rights pending adoption may be granted only if written consent
471 has been executed as provided in s. 63.082 after the birth of
472 the minor or notice has been served under s. 63.088 to:

473 (b) The father of the minor, if:

474 1. The minor was conceived or born while the father was
475 married to the mother;

476 2. The minor is his child by adoption;

477 3. The minor has been adjudicated by the court to be his
478 child before ~~by~~ the date a petition ~~is filed~~ for termination of
479 parental rights is filed;

480 4. He has filed an affidavit of paternity pursuant to s.
481 382.013(2)(c) or he is listed on the child's birth certificate
482 before ~~by~~ the date a petition ~~is filed~~ for termination of
483 parental rights is filed; or

484 5. In the case of an unmarried biological father, he has
485 acknowledged in writing, signed in the presence of a competent
486 witness, that he is the father of the minor, has filed such
487 acknowledgment with the Office of Vital Statistics of the
488 Department of Health within the required timeframes, and has
489 complied with the requirements of subsection (2).

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491 The status of the father shall be determined at the time of the
492 filing of the petition to terminate parental rights and may not
493 be modified, except as otherwise provided in s. 63.0423(9)(a),
494 for purposes of his obligations and rights under this chapter by
495 acts occurring after the filing of the petition to terminate
496 parental rights.

497 (2) In accordance with subsection (1), the consent of an
498 unmarried biological father shall be necessary only if the
499 unmarried biological father has complied with the requirements
500 of this subsection.

501 (a)1. With regard to a child who is placed with adoptive
502 parents more than 6 months after the child's birth, an unmarried
503 biological father must have developed a substantial relationship
504 with the child, taken some measure of responsibility for the
505 child and the child's future, and demonstrated a full commitment
506 to the responsibilities of parenthood by providing reasonable
507 and regular financial support to the child in accordance with
508 the unmarried biological father's ability, if not prevented from
509 doing so by the person or authorized agency having lawful
510 custody of the child, and either:

511 a. Regularly visited the child at least monthly, when
512 physically and financially able to do so and when not prevented
513 from doing so by the birth mother or the person or authorized
514 agency having lawful custody of the child; or

515 b. Maintained regular communication with the child or with
516 the person or agency having the care or custody of the child,
517 when physically or financially unable to visit the child or when

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518 not prevented from doing so by the birth mother or person or
519 authorized agency having lawful custody of the child.

520 ~~2. The mere fact that an unmarried biological father~~
521 ~~expresses a desire to fulfill his responsibilities towards his~~
522 ~~child which is unsupported by acts evidencing this intent does~~
523 ~~not preclude a finding by the court that the unmarried~~
524 ~~biological father failed to comply with the requirements of this~~
525 ~~subsection.~~

526 2.3. An unmarried biological father who openly lived with
527 the child for at least 6 months within the 1-year period
528 following the birth of the child and immediately preceding
529 placement of the child with adoptive parents and who openly held
530 himself out to be the father of the child during that period
531 shall be deemed to have developed a substantial relationship
532 with the child and to have otherwise met the requirements of
533 this paragraph.

534 (b) With regard to a child who is ~~younger than~~ 6 months of
535 age or younger at the time the child is placed with the adoptive
536 parents, an unmarried biological father must have demonstrated a
537 full commitment to his parental responsibility by having
538 performed all of the following acts prior to the time the mother
539 executes her consent for adoption:

540 1. Filed a notarized claim of paternity form with the
541 Florida Putative Father Registry within the Office of Vital
542 Statistics of the Department of Health, which form shall be
543 maintained in the confidential registry established for that
544 purpose and shall be considered filed when the notice is entered
545 in the registry of notices from unmarried biological fathers.

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546 2. Upon service of a notice of an intended adoption plan
547 or a petition for termination of parental rights pending
548 adoption, executed and filed an affidavit in that proceeding
549 stating that he is personally fully able and willing to take
550 responsibility for the child, setting forth his plans for care
551 of the child, and agreeing to a court order of child support and
552 a contribution to the payment of living and medical expenses
553 incurred for the mother's pregnancy and the child's birth in
554 accordance with his ability to pay.

555 3. If he had knowledge of the pregnancy, paid a fair and
556 reasonable amount of the living and medical expenses incurred in
557 connection with the mother's pregnancy and the child's birth, in
558 accordance with his financial ability and when not prevented
559 from doing so by the birth mother or person or authorized agency
560 having lawful custody of the child. The responsibility of the
561 unmarried biological father to provide financial assistance to
562 the birth mother during her pregnancy and to the child after
563 birth is not abated because support is being provided to the
564 birth mother or child by the adoption entity, a prospective
565 adoptive parent, or a third party, nor does it serve as a basis
566 to excuse the birth father's failure to provide support.

567 (c) The mere fact that a father expresses a desire to
568 fulfill his responsibilities towards his child which is
569 unsupported by acts evidencing this intent does not meet the
570 requirements of this section.

571 (d)-(e) The petitioner shall file with the court a
572 certificate from the Office of Vital Statistics stating that a
573 diligent search has been made of the Florida Putative Father
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574 Registry of notices from unmarried biological fathers described
575 in subparagraph (b)1. and that no filing has been found
576 pertaining to the father of the child in question or, if a
577 filing is found, stating the name of the putative father and the
578 time and date of filing. That certificate shall be filed with
579 the court prior to the entry of a final judgment of termination
580 of parental rights.

581 (e)~~(d)~~ An unmarried biological father who does not comply
582 with each of the conditions provided in this subsection is
583 deemed to have waived and surrendered any rights in relation to
584 the child, including the right to notice of any judicial
585 proceeding in connection with the adoption of the child, and his
586 consent to the adoption of the child is not required.

587 (3) Pursuant to chapter 48, an adoption entity shall serve
588 a notice of intended adoption plan upon any known and locatable
589 unmarried biological father who is identified to the adoption
590 entity by the mother by the date she signs her consent for
591 adoption if the child is 6 months of age or less at the time the
592 consent is executed ~~or who is identified by a diligent search of~~
593 ~~the Florida Putative Father Registry, or upon an entity whose~~
594 ~~consent is required~~. Service of the notice of intended adoption
595 plan is not required ~~mandatory~~ when the unmarried biological
596 father signs a consent for adoption or an affidavit of
597 nonpaternity or when the child is more than 6 months of age at
598 the time of the execution of the consent by the mother. The
599 notice may be served at any time before the child's birth or
600 before placing the child in the adoptive home. The recipient of
601 the notice may waive service of process by executing a waiver

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602 and acknowledging receipt of the plan. The notice of intended
603 adoption plan must specifically state that if the unmarried
604 biological father desires to contest the adoption plan he must,
605 within 30 days after service, file with the court a verified
606 response that contains a pledge of commitment to the child in
607 substantial compliance with subparagraph (2)(b)2. and a claim of
608 paternity form with the Office of Vital Statistics, and must
609 provide the adoption entity with a copy of the verified response
610 filed with the court and the claim of paternity form filed with
611 the Office of Vital Statistics. The notice must also include
612 instructions for submitting a claim of paternity form to the
613 Office of Vital Statistics and the address to which the claim
614 must be sent. If the party served with the notice of intended
615 adoption plan is an entity whose consent is required, the notice
616 must specifically state that the entity must file, within 30
617 days after service, a verified response setting forth a legal
618 basis for contesting the intended adoption plan, specifically
619 addressing the best interests ~~interest~~ of the child.

620 (a) If the unmarried biological father or entity whose
621 consent is required fails to timely and properly file a verified
622 response with the court and, in the case of an unmarried
623 biological father, a claim of paternity form with the Office of
624 Vital Statistics, the court shall enter a default judgment
625 against the ~~any~~ unmarried biological father or entity and the
626 consent of that unmarried biological father or entity shall no
627 longer be required under this chapter and shall be deemed to
628 have waived any claim of rights to the child. To avoid an entry

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629 of a default judgment, within 30 days after receipt of service
630 of the notice of intended adoption plan:

631 1. The unmarried biological father must:

632 a. File a claim of paternity with the Florida Putative
633 Father Registry maintained by the Office of Vital Statistics;

634 b. File a verified response with the court which contains
635 a pledge of commitment to the child in substantial compliance
636 with subparagraph (2)(b)2.; and

637 c. Provide support for the birth mother and the child.

638 2. The entity whose consent is required must file a
639 verified response setting forth a legal basis for contesting the
640 intended adoption plan, specifically addressing the best
641 interests ~~interest~~ of the child.

642 (b) If the mother identifies a potential unmarried
643 biological father within the timeframes required by the statute,
644 whose location is unknown, the adoption entity shall conduct a
645 diligent search pursuant to s. 63.088. If, upon completion of a
646 diligent search, the potential unmarried biological father's
647 location remains unknown and a search of the Florida Putative
648 Father Registry fails to reveal a match, the adoption entity
649 shall request in the petition for termination of parental rights
650 pending adoption that the court declare the diligent search to
651 be in compliance with s. 63.088, that the adoption entity has no
652 further obligation to provide notice to the potential unmarried
653 biological father, and that the potential unmarried biological
654 father's consent to the adoption is not required.

655 (4) Any person whose consent is required under paragraph
656 (1)(b), or any other man, may execute an irrevocable affidavit

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657 of nonpaternity in lieu of a consent under this section and by
658 doing so waives notice to all court proceedings after the date
659 of execution. An affidavit of nonpaternity must be executed as
660 provided in s. 63.082. The affidavit of nonpaternity may be
661 executed prior to the birth of the child. The person executing
662 the affidavit must receive disclosure under s. 63.085 prior to
663 signing the affidavit. For purposes of this chapter, an
664 affidavit of nonpaternity is sufficient if it contains a
665 specific denial of parental obligations and does not need to
666 deny the existence of a biological relationship.

667 (8) A petition to adopt an adult may be granted if:

668 (a) Written consent to adoption has been executed by the
669 adult and the adult's spouse, if any, unless the spouse's
670 consent is waived by the court for good cause.

671 Section 13. Subsection (2) of section 63.063, Florida
672 Statutes, is amended to read:

673 63.063 Responsibility of parents for actions; fraud or
674 misrepresentation; contesting termination of parental rights and
675 adoption.-

676 (2) Any person injured by a fraudulent representation or
677 action in connection with an adoption may pursue civil or
678 criminal penalties as provided by law. A fraudulent
679 representation is not a defense to compliance with the
680 requirements of this chapter and is not a basis for dismissing a
681 petition for termination of parental rights or a petition for
682 adoption, for vacating an adoption decree, or for granting
683 custody to the offended party. Custody and adoption

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684 determinations must be based on the best interests ~~interest~~ of
685 the child in accordance with s. 61.13.

686 Section 14. Paragraph (d) of subsection (1), paragraphs
687 (c) and (d) of subsection (3), paragraphs (a), (d), and (e) of
688 subsection (4), and subsections (6) and (7) of section 63.082,
689 Florida Statutes, are amended to read:

690 63.082 Execution of consent to adoption or affidavit of
691 nonpaternity; family social and medical history; revocation
692 ~~withdrawal~~ of consent.-

693 (1)

694 (d) The notice and consent provisions of this chapter as
695 they relate to the father ~~birth~~ of a child ~~or to legal fathers~~
696 do not apply in cases in which the child is conceived as a
697 result of a violation of the criminal laws of this or another
698 state or country, including, but not limited to, sexual battery,
699 unlawful sexual activity with certain minors under s. 794.05,
700 lewd acts perpetrated upon a minor, or incest. A criminal
701 conviction is not required for the court to find that the child
702 was conceived as a result of a violation of the criminal laws of
703 this state or another state or country.

704 (3)

705 (c) If any person who is required to consent is
706 unavailable because the person cannot be located, an the
707 ~~petition to terminate parental rights pending adoption must be~~
708 ~~accompanied by the~~ affidavit of diligent search required under
709 s. 63.088 shall be filed.

710 (d) If any person who is required to consent is
711 unavailable because the person is deceased, the petition to

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712 terminate parental rights pending adoption must be accompanied
713 by a certified copy of the death certificate. In an adoption of
714 a stepchild or a relative, the certified copy of the death
715 certificate of the person whose consent is required may ~~must~~ be
716 attached to the petition for adoption if a separate petition for
717 termination of parental rights is not being filed.

718 (4) (a) An affidavit of nonpaternity may be executed before
719 the birth of the minor; however, the consent to an adoption may
720 ~~shall~~ not be executed before the birth of the minor except in a
721 preplanned adoption pursuant to s. 63.213.

722 (d) The consent to adoption or the affidavit of
723 nonpaternity must be signed in the presence of two witnesses and
724 be acknowledged before a notary public who is not signing as one
725 of the witnesses. The notary public must legibly note on the
726 consent or the affidavit the date and time of execution. The
727 witnesses' names must be typed or printed underneath their
728 signatures. The witnesses' home or business addresses must be
729 included. The person who signs the consent or the affidavit has
730 the right to have at least one of the witnesses be an individual
731 who does not have an employment, professional, or personal
732 relationship with the adoption entity or the prospective
733 adoptive parents. The adoption entity must give reasonable
734 advance notice to the person signing the consent or affidavit of
735 the right to select a witness of his or her own choosing. The
736 person who signs the consent or affidavit must acknowledge in
737 writing on the consent or affidavit that such notice was given
738 and indicate the witness, if any, who was selected by the person
739 signing the consent or affidavit. The adoption entity must

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740 include its name, address, and telephone number on the consent
741 to adoption or affidavit of nonpaternity.

742 (e) A consent to adoption being executed by the birth
743 parent must be in at least 12-point boldfaced type and shall
744 contain the following recitation of rights in substantially the
745 following form:

746 CONSENT TO ADOPTION

747

748 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT
749 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
750 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
751 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
752 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
753 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
754 WITNESSES YOU SELECTED, IF ANY.

755

756 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
757 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
758 CONSENT:

759

- 760 1. CONSULT WITH AN ATTORNEY;
- 761 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
762 LEGALLY PROHIBITED;
- 763 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
764 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE
765 CHILD;
- 766 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY
767 PROHIBITED; AND

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

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5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE
ADOPTION.

IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO
YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED
FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE
IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF
BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
DURESS.

IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS
AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
YOU WISH TO WITHDRAW YOUR CONSENT; AND

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795 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD
796 OR DURESS.

797

798 This statement of rights is not required for the adoption of a
799 relative, an adult, a stepchild, or a child older than 6 months
800 of age. A consent form for the adoption of a child older than 6
801 months of age at the time of the execution of consent must
802 contain a statement outlining the revocation rights provided in
803 paragraph (c).

804 (6)(a) If a parent executes a consent for placement of a
805 minor with an adoption entity or qualified prospective adoptive
806 parents and the minor child is in the custody of the department,
807 but parental rights have not yet been terminated, the adoption
808 consent is valid, binding, and enforceable by the court.

809 (b) Upon execution of the consent of the parent, the
810 adoption entity shall be permitted to ~~may~~ intervene in the
811 dependency case as a party in interest and must provide the
812 court that acquired ~~having~~ jurisdiction over the minor, pursuant
813 to the shelter or dependency petition filed by the department, a
814 copy of the preliminary home study of the prospective adoptive
815 parents and any other evidence of the suitability of the
816 placement. The preliminary home study must be maintained with
817 strictest confidentiality within the dependency court file and
818 the department's file. A preliminary home study must be provided
819 to the court in all cases in which an adoption entity has
820 intervened pursuant to this section. Unless the court has
821 concerns regarding the qualifications of the home study
822 provider, or concerns that the home study may not be adequate to

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823 determine the best interests of the child, the home study
824 provided by the adoption entity shall be deemed to be sufficient
825 and no additional home study needs to be performed by the
826 department.

827 (c) If an adoption entity files a motion to intervene in
828 the dependency case in accordance with this chapter, the
829 dependency court shall promptly grant a hearing to determine
830 whether the adoption entity has filed the required documents to
831 be permitted to intervene and whether a change of placement of
832 the child is appropriate.

833 (d)-(e) Upon a determination by the court that the
834 prospective adoptive parents are properly qualified to adopt the
835 minor child and that the adoption appears to be in the best
836 interests ~~interest~~ of the minor child, the court shall
837 immediately order the transfer of custody of the minor child to
838 the prospective adoptive parents, under the supervision of the
839 adoption entity. The adoption entity shall thereafter provide
840 monthly supervision reports to the department until finalization
841 of the adoption.

842 (e)-(d) In determining whether the best interests ~~interest~~
843 of the child are ~~is~~ served by transferring the custody of the
844 minor child to the prospective adoptive parent selected by the
845 parent, the court shall consider the rights of the parent to
846 determine an appropriate placement for the child, the permanency
847 offered, the child's bonding with any potential adoptive home
848 that the child has been residing in, and the importance of
849 maintaining sibling relationships, if possible.

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850 (7) If a person is seeking to revoke ~~withdraw~~ consent for
851 a child older than 6 months of age ~~who has been placed with~~
852 ~~prospective adoptive parents:~~

853 (a) The person seeking to revoke ~~withdraw~~ consent must, in
854 accordance with paragraph (4)(c), notify the adoption entity in
855 writing by certified mail, return receipt requested, within 3
856 business days after execution of the consent. As used in this
857 subsection, the term "business day" means any day on which the
858 United States Postal Service accepts certified mail for
859 delivery.

860 (b) Upon receiving timely written notice from a person
861 whose consent to adoption is required of that person's desire to
862 revoke ~~withdraw~~ consent, the adoption entity must contact the
863 prospective adoptive parent to arrange a time certain for the
864 adoption entity to regain physical custody of the minor, unless,
865 upon a motion for emergency hearing by the adoption entity, the
866 court determines in written findings that placement of the minor
867 with the person who had legal or physical custody of the child
868 immediately before the child was placed for adoption may
869 endanger the minor or that the person who desires to revoke
870 ~~withdraw~~ consent is not required to consent to the adoption, has
871 been determined to have abandoned the child, or is otherwise
872 subject to a determination that the person's consent is waived
873 under this chapter.

874 (c) If the court finds that the placement may endanger the
875 minor, the court shall enter an order continuing the placement
876 of the minor with the prospective adoptive parents pending
877 further proceedings if they desire continued placement. If the

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878 prospective adoptive parents do not desire continued placement,
879 the order must include, but need not be limited to, a
880 determination of whether temporary placement in foster care,
881 with the person who had legal or physical custody of the child
882 immediately before placing the child for adoption, or with a
883 relative is in the best interests ~~interest~~ of the child and
884 whether an investigation by the department is recommended.

885 (d) If the person revoking ~~withdrawing~~ consent claims to
886 be the father of the minor but has not been established to be
887 the father by marriage, court order, or scientific testing, the
888 court may order scientific paternity testing and reserve ruling
889 on removal of the minor until the results of such testing have
890 been filed with the court.

891 (e) The adoption entity must return the minor within 3
892 business days after timely and proper notification of the
893 revocation ~~withdrawal~~ of consent or after the court determines
894 that revocation ~~withdrawal~~ is timely and in accordance with the
895 requirements of this chapter ~~valid and binding~~ upon
896 consideration of an emergency motion, as filed pursuant to
897 paragraph (b), to the physical custody of the person revoking
898 ~~withdrawing~~ consent or the person directed by the court. If the
899 person seeking to revoke ~~withdraw~~ consent claims to be the
900 father of the minor but has not been established to be the
901 father by marriage, court order, or scientific testing, the
902 adoption entity may return the minor to the care and custody of
903 the mother, if she desires such placement and she is not
904 otherwise prohibited by law from having custody of the child.

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905 (f) Following the revocation period ~~for withdrawal of~~
906 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
907 ~~child with the prospective adoptive parents, whichever occurs~~
908 ~~later~~, consent may be set aside ~~withdrawn~~ only when the court
909 finds that the consent was obtained by fraud or duress.

910 (g) An affidavit of nonpaternity may be set aside
911 ~~withdrawn~~ only if the court finds that the affidavit was
912 obtained by fraud or duress.

913 (h) If the consent of one parent is set aside or revoked
914 in accordance with this chapter, any other consents executed by
915 the other parent or a third party whose consent is required for
916 the adoption of the child may not be used by the parent who
917 consent was revoked or set aside to terminate or diminish the
918 rights of the other parent or third party whose consent was
919 required for the adoption of the child.

920 Section 15. Subsection (1) and paragraph (a) of subsection
921 (2) of section 63.085, Florida Statutes, are amended, and
922 paragraph (c) is added to subsection (2) of that section, to
923 read:

924 63.085 Disclosure by adoption entity.—

925 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE
926 ADOPTIVE PARENTS.—Within 14 days after a person seeking to adopt
927 a minor or a person seeking to place a minor for adoption
928 contacts an adoption entity in person or provides the adoption
929 entity with a mailing address, the entity must provide a written
930 disclosure statement to that person if the entity agrees or
931 continues to work with the person. The adoption entity shall
932 also provide the written disclosure to the parent who did not

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933 initiate contact with the adoption entity within 14 days after
934 that parent is identified and located. For purposes of providing
935 the written disclosure, a person is considered to be seeking to
936 place a minor for adoption if that person has sought information
937 or advice from the adoption entity regarding the option of
938 adoptive placement. The written disclosure statement must be in
939 substantially the following form:

940

941

ADOPTION DISCLOSURE

942

THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL
943 PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR
944 FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING
945 ADOPTION UNDER FLORIDA LAW:

946

947 1. The name, address, and telephone number of the adoption
948 entity providing this disclosure is:

949

Name:

950

Address:

951

Telephone Number:

952

953 2. The adoption entity does not provide legal
954 representation or advice to parents or anyone signing a consent
955 for adoption or affidavit of nonpaternity, and parents have the
956 right to consult with an attorney of their own choosing to
advise them.

957

958 3. With the exception of an adoption by a stepparent or
959 relative, a child cannot be placed into a prospective adoptive
home unless the prospective adoptive parents have received a

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960 favorable preliminary home study, including criminal and child
961 abuse clearances.

962 4. A valid consent for adoption may not be signed by the
963 birth mother until 48 hours after the birth of the child, or the
964 day the birth mother is notified, in writing, that she is fit
965 for discharge from the licensed hospital or birth center. Any
966 man may sign a valid consent for adoption at any time after the
967 birth of the child.

968 5. A consent for adoption signed before the child attains
969 the age of 6 months is binding and irrevocable from the moment
970 it is signed unless it can be proven in court that the consent
971 was obtained by fraud or duress. A consent for adoption signed
972 after the child attains the age of 6 months is valid from the
973 moment it is signed; however, it may be revoked up to 3 business
974 days after it was signed.

975 6. A consent for adoption is not valid if the signature of
976 the person who signed the consent was obtained by fraud or
977 duress.

978 7. An unmarried biological father must act immediately in
979 order to protect his parental rights. Section 63.062, Florida
980 Statutes, prescribes that any father seeking to establish his
981 right to consent to the adoption of his child must file a claim
982 of paternity with the Florida Putative Father Registry
983 maintained by the Office of Vital Statistics of the Department
984 of Health by the date a petition to terminate parental rights is
985 filed with the court, or within 30 days after receiving service
986 of a Notice of Intended Adoption Plan. If he receives a Notice
987 of Intended Adoption Plan, he must file a claim of paternity

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988 with the Florida Putative Father Registry, file a parenting plan
989 with the court, and provide financial support to the mother or
990 child within 30 days following service. An unmarried biological
991 father's failure to timely respond to a Notice of Intended
992 Adoption Plan constitutes an irrevocable legal waiver of any and
993 all rights that the father may have to the child. A claim of
994 paternity registration form for the Florida Putative Father
995 Registry may be obtained from any local office of the Department
996 of Health, Office of Vital Statistics, the Department of
997 Children and Families, the Internet websites for these agencies,
998 and the offices of the clerks of the Florida circuit courts. The
999 claim of paternity form must be submitted to the Office of Vital
1000 Statistics, Attention: Adoption Unit, P.O. Box 210,
1001 Jacksonville, FL 32231.

1002 8. There are alternatives to adoption, including foster
1003 care, relative care, and parenting the child. There may be
1004 services and sources of financial assistance in the community
1005 available to parents if they choose to parent the child.

1006 9. A parent has the right to have a witness of his or her
1007 choice, who is unconnected with the adoption entity or the
1008 adoptive parents, to be present and witness the signing of the
1009 consent or affidavit of nonpaternity.

1010 10. A parent 14 years of age or younger must have a
1011 parent, legal guardian, or court-appointed guardian ad litem to
1012 assist and advise the parent as to the adoption plan and to
1013 witness consent.

1014 11. A parent has a right to receive supportive counseling
1015 from a counselor, social worker, physician, clergy, or attorney.

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1016 12. The payment of living or medical expenses by the
1017 prospective adoptive parents before the birth of the child does
1018 not, in any way, obligate the parent to sign the consent for
1019 adoption.

1020
1021 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1022 (a) At the time that an adoption entity is responsible for
1023 selecting prospective adoptive parents for a born or unborn
1024 child whose parents are seeking to place the child for adoption
1025 or whose rights were terminated pursuant to chapter 39, the
1026 adoption entity must provide the prospective adoptive parents
1027 with information concerning the background of the child to the
1028 extent such information is disclosed to the adoption entity by
1029 the parents, legal custodian, or the department. This subsection
1030 applies only if the adoption entity identifies the prospective
1031 adoptive parents and supervises the ~~physical~~ placement of the
1032 child in the prospective adoptive parents' home. If any
1033 information cannot be disclosed because the records custodian
1034 failed or refused to produce the background information, the
1035 adoption entity has a duty to provide the information if it
1036 becomes available. An individual or entity contacted by an
1037 adoption entity to obtain the background information must
1038 release the requested information to the adoption entity without
1039 the necessity of a subpoena or a court order. In all cases, the
1040 prospective adoptive parents must receive all available
1041 information by the date of the final hearing on the petition for
1042 adoption. The information to be disclosed includes:

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- 1043 1. A family social and medical history form completed
1044 pursuant to s. 63.162(6).
- 1045 2. The biological mother's medical records documenting her
1046 prenatal care and the birth and delivery of the child.
- 1047 3. A complete set of the child's medical records
1048 documenting all medical treatment and care since the child's
1049 birth and before placement.
- 1050 4. All mental health, psychological, and psychiatric
1051 records, reports, and evaluations concerning the child before
1052 placement.
- 1053 5. The child's educational records, including all records
1054 concerning any special education needs of the child before
1055 placement.
- 1056 6. Records documenting all incidents that required the
1057 department to provide services to the child, including all
1058 orders of adjudication of dependency or termination of parental
1059 rights issued pursuant to chapter 39, any case plans drafted to
1060 address the child's needs, all protective services
1061 investigations identifying the child as a victim, and all
1062 guardian ad litem reports filed with the court concerning the
1063 child.
- 1064 7. Written information concerning the availability of
1065 adoption subsidies for the child, if applicable.
- 1066 (c) If the prospective adoptive parents waive the receipt
1067 of any of the records described in paragraph (a), a copy of the
1068 written notification of the waiver to the adoption entity shall
1069 be filed with the court.

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1070 Section 16. Subsection (6) of section 63.087, Florida
1071 Statutes, is amended to read:

1072 63.087 Proceeding to terminate parental rights pending
1073 adoption; general provisions.—

1074 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
1075 petition or any pleading requiring an answer must be filed in
1076 accordance with the Florida Family Law Rules of Procedure.
1077 Failure to file a written response to the petition constitutes
1078 grounds upon which the court may terminate parental rights.
1079 Failure to personally appear at the hearing constitutes grounds
1080 upon which the court may terminate parental rights. Any person
1081 present at the hearing to terminate parental rights pending
1082 adoption whose consent to adoption is required under s. 63.062
1083 must:

1084 (a) Be advised by the court that he or she has a right to
1085 ask that the hearing be reset for a later date so that the
1086 person may consult with an attorney; and

1087 (b) Be given an opportunity to admit or deny the
1088 allegations in the petition.

1089 Section 17. Subsection (4) of section 63.088, Florida
1090 Statutes, is amended to read:

1091 63.088 Proceeding to terminate parental rights pending
1092 adoption; notice and service; diligent search.—

1093 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
1094 63.087, the court shall conduct an inquiry of the person who is
1095 placing the minor for adoption and of any relative or person
1096 having legal custody of the minor who is present at the hearing

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1097 and likely to have the following information regarding the
1098 identity of:

1099 (a) Any man to whom the mother of the minor was married at
1100 any time when conception of the minor may have occurred or at
1101 the time of the birth of the minor;

1102 (b) Any man who has filed an affidavit of paternity
1103 pursuant to s. 382.013(2)(c) before the date that a petition for
1104 termination of parental rights is filed with the court;

1105 (c) Any man who has adopted the minor;

1106 (d) Any man who has been adjudicated by a court as the
1107 father of the minor child before the date a petition for
1108 termination of parental rights is filed with the court; and

1109 (e) Any man whom the mother identified to the adoption
1110 entity as a potential biological father before the date she
1111 signed the consent for adoption.

1112
1113 The information sought under this subsection may be provided to
1114 the court in the form of a sworn affidavit by a person having
1115 personal knowledge of the facts, addressing each inquiry
1116 enumerated in this subsection, except that, if the inquiry
1117 identifies a father under paragraph (a), paragraph (b), ~~or~~
1118 paragraph (c), or paragraph (d), the inquiry may not continue
1119 further. The inquiry required under this subsection may be
1120 conducted before the birth of the minor.

1121 Section 18. Paragraph (d) of subsection (3), paragraph (b)
1122 of subsection (4), and subsections (5) and (7) of section
1123 63.089, Florida Statutes, are amended to read:

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1124 63.089 Proceeding to terminate parental rights pending
1125 adoption; hearing; grounds; dismissal of petition; judgment.--

1126 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
1127 ADOPTION.--The court may enter a judgment terminating parental
1128 rights pending adoption if the court determines by clear and
1129 convincing evidence, supported by written findings of fact, that
1130 each person whose consent to adoption is required under s.
1131 63.062:

1132 (d) Has been properly served notice of the proceeding in
1133 accordance with the requirements of this chapter and has failed
1134 to file a written answer or personally appear at the evidentiary
1135 hearing resulting in the judgment terminating parental rights
1136 pending adoption;

1137 (4) FINDING OF ABANDONMENT.--A finding of abandonment
1138 resulting in a termination of parental rights must be based upon
1139 clear and convincing evidence that a parent or person having
1140 legal custody has abandoned the child in accordance with the
1141 definition contained in s. 63.032. A finding of abandonment may
1142 also be based upon emotional abuse or a refusal to provide
1143 reasonable financial support, when able, to a birth mother
1144 during her pregnancy.

1145 (b) The child has been abandoned when the parent of a
1146 child is incarcerated on or after October 1, 2001, in a federal,
1147 state, or county correctional institution and:

1148 1. The period of time for which the parent has been or is
1149 expected to be incarcerated will constitute a significant
1150 portion of the child's minority. In determining whether the
1151 period of time is significant, the court shall consider the

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1152 child's age and the child's need for a permanent and stable
1153 home. The period of time begins on the date that the parent
1154 enters into incarceration;

1155 2. The incarcerated parent has been determined by a court
1156 of competent jurisdiction to be a violent career criminal as
1157 defined in s. 775.084, a habitual violent felony offender as
1158 defined in s. 775.084, convicted of child abuse as defined in s.
1159 827.03, or a sexual predator as defined in s. 775.21; has been
1160 convicted of first degree or second degree murder in violation
1161 of s. 782.04 or a sexual battery that constitutes a capital,
1162 life, or first degree felony violation of s. 794.011; or has
1163 been convicted of a substantially similar offense in another
1164 jurisdiction. As used in this section, the term "substantially
1165 similar offense" means any offense that is substantially similar
1166 in elements and penalties to one of those listed in this
1167 subparagraph, and that is in violation of a law of any other
1168 jurisdiction, whether that of another state, the District of
1169 Columbia, the United States or any possession or territory
1170 thereof, or any foreign jurisdiction; or

1171 3. The court determines by clear and convincing evidence
1172 that continuing the parental relationship with the incarcerated
1173 parent would be harmful to the child and, for this reason,
1174 termination of the parental rights of the incarcerated parent is
1175 in the best interests ~~interest~~ of the child.

1176 (5) DISMISSAL OF PETITION.—If the court does not find by
1177 clear and convincing evidence that parental rights of a parent
1178 should be terminated pending adoption, the court must dismiss
1179 the petition and that parent's parental rights that were the

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1180 subject of such petition shall remain in full force under the
1181 law. The order must include written findings in support of the
1182 dismissal, including findings as to the criteria in subsection
1183 (4) if rejecting a claim of abandonment.

1184 (a) Parental rights may not be terminated based upon a
1185 consent that the court finds has been timely revoked ~~withdrawn~~
1186 under s. 63.082 or a consent to adoption or affidavit of
1187 nonpaternity that the court finds was obtained by fraud or
1188 duress.

1189 (b) The court must enter an order based upon written
1190 findings providing for the placement of the minor, but the court
1191 may not proceed to determine custody between competing eligible
1192 parties. The placement of the child should revert to the parent
1193 or guardian who had physical custody of the child at the time of
1194 the placement for adoption unless the court determines upon
1195 clear and convincing evidence that this placement is not in the
1196 best interests of the child or is not an available option for
1197 the child. The court may not change the placement of a child who
1198 has established a bonded relationship with the current caregiver
1199 without providing for a reasonable transition plan consistent
1200 with the best interests of the child. The court may direct the
1201 parties to participate in a reunification or unification plan
1202 with a qualified professional to assist the child in the
1203 transition. The court may order scientific testing to determine
1204 the paternity of the minor only if the court has determined that
1205 the consent of the alleged father would be required, unless all
1206 parties agree that such testing is in the best interests of the
1207 child. The court may not order scientific testing to determine

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1208 paternity of an unmarried biological father if the child has a
1209 father as described in s. 63.088(4)(a)-(d) whose rights have not
1210 been previously terminated at any time during which the court
1211 has jurisdiction over the minor. Further proceedings, if any,
1212 regarding the minor must be brought in a separate custody action
1213 under chapter 61, a dependency action under chapter 39, or a
1214 paternity action under chapter 742.

1215 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1216 (a) A motion for relief from a judgment terminating
1217 parental rights must be filed with the court originally entering
1218 the judgment. The motion must be filed within a reasonable time,
1219 but not later than 1 year after the entry of the judgment. An
1220 unmarried biological father does not have standing to seek
1221 relief from a judgment terminating parental rights if the mother
1222 did not identify him to the adoption entity before the date she
1223 signed a consent for adoption or if he was not located because
1224 the mother failed or refused to provide sufficient information
1225 to locate him.

1226 (b) No later than 30 days after the filing of a motion
1227 under this subsection, the court must conduct a preliminary
1228 hearing to determine what contact, if any, shall be permitted
1229 between a parent and the child pending resolution of the motion.
1230 Such contact shall be considered only if it is requested by a
1231 parent who has appeared at the hearing and may not be awarded
1232 unless the parent previously established a bonded relationship
1233 with the child and the parent has pled a legitimate legal basis
1234 and established a prima facie case for setting aside the
1235 judgment terminating parental rights. If the court orders

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1236 contact between a parent and child, the order must be issued in
1237 writing as expeditiously as possible and must state with
1238 specificity any provisions regarding contact with persons other
1239 than those with whom the child resides.

1240 (c) At the preliminary hearing, the court, upon the motion
1241 of any party or upon its own motion, may order scientific
1242 testing to determine the paternity of the minor if the person
1243 seeking to set aside the judgment is alleging to be the child's
1244 father and that fact has not previously been determined by
1245 legitimacy or scientific testing. The court may order visitation
1246 with a person for whom scientific testing for paternity has been
1247 ordered and who has previously established a bonded relationship
1248 with the child.

1249 (d) Unless otherwise agreed between the parties or for
1250 good cause shown, the court shall conduct a final hearing on the
1251 motion for relief from judgment within 45 days after the filing
1252 and enter its written order as expeditiously as possible
1253 thereafter.

1254 (e) If the court grants relief from the judgment
1255 terminating parental rights and no new pleading is filed to
1256 terminate parental rights, the placement of the child should
1257 revert to the parent or guardian who had physical custody of the
1258 child at the time of the original placement for adoption unless
1259 the court determines upon clear and convincing evidence that
1260 this placement is not in the best interests of the child or is
1261 not an available option for the child. The court may not change
1262 the placement of a child who has established a bonded
1263 relationship with the current caregiver without providing for a

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1264 reasonable transition plan consistent with the best interests of
1265 the child. The court may direct the parties to participate in a
1266 reunification or unification plan with a qualified professional
1267 to assist the child in the transition. The court may not direct
1268 the placement of a child with a person other than the adoptive
1269 parents without first obtaining a favorable home study of that
1270 person and any other persons residing in the proposed home and
1271 shall take whatever additional steps are necessary and
1272 appropriate for the physical and emotional protection of the
1273 child.

1274 Section 19. Subsection (3) of section 63.092, Florida
1275 Statutes, is amended to read:

1276 63.092 Report to the court of intended placement by an
1277 adoption entity; at-risk placement; preliminary study.-

1278 (3) PRELIMINARY HOME STUDY.-Before placing the minor in
1279 the intended adoptive home, a preliminary home study must be
1280 performed by a licensed child-placing agency, a child-caring
1281 agency registered under s. 409.176, a licensed professional, or
1282 agency described in s. 61.20(2), unless the adoptee is an adult
1283 or the petitioner is a stepparent or a relative. If the adoptee
1284 is an adult or the petitioner is a stepparent or a relative, a
1285 preliminary home study may be required by the court for good
1286 cause shown. The department is required to perform the
1287 preliminary home study only if there is no licensed child-
1288 placing agency, child-caring agency registered under s. 409.176,
1289 licensed professional, or agency described in s. 61.20(2), in
1290 the county where the prospective adoptive parents reside. The
1291 preliminary home study must be made to determine the suitability

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1292 of the intended adoptive parents and may be completed prior to
1293 identification of a prospective adoptive minor. A favorable
1294 preliminary home study is valid for 1 year after the date of its
1295 completion. Upon its completion, a signed copy of the home study
1296 must be provided to the intended adoptive parents who were the
1297 subject of the home study. A minor may not be placed in an
1298 intended adoptive home before a favorable preliminary home study
1299 is completed unless the adoptive home is also a licensed foster
1300 home under s. 409.175. The preliminary home study must include,
1301 at a minimum:

- 1302 (a) An interview with the intended adoptive parents;
1303 (b) Records checks of the department's central abuse
1304 registry and criminal records correspondence checks under s.
1305 39.0138 through the Department of Law Enforcement on the
1306 intended adoptive parents;
1307 (c) An assessment of the physical environment of the home;
1308 (d) A determination of the financial security of the
1309 intended adoptive parents;
1310 (e) Documentation of counseling and education of the
1311 intended adoptive parents on adoptive parenting;
1312 (f) Documentation that information on adoption and the
1313 adoption process has been provided to the intended adoptive
1314 parents;
1315 (g) Documentation that information on support services
1316 available in the community has been provided to the intended
1317 adoptive parents; and
1318 (h) A copy of each signed acknowledgment of receipt of
1319 disclosure required by s. 63.085.

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1320

1321 If the preliminary home study is favorable, a minor may be
1322 placed in the home pending entry of the judgment of adoption. A
1323 minor may not be placed in the home if the preliminary home
1324 study is unfavorable. If the preliminary home study is
1325 unfavorable, the adoption entity may, within 20 days after
1326 receipt of a copy of the written recommendation, petition the
1327 court to determine the suitability of the intended adoptive
1328 home. A determination as to suitability under this subsection
1329 does not act as a presumption of suitability at the final
1330 hearing. In determining the suitability of the intended adoptive
1331 home, the court must consider the totality of the circumstances
1332 in the home. A ~~No~~ minor may not be placed in a home in which
1333 there resides any person determined by the court to be a sexual
1334 predator as defined in s. 775.21 or to have been convicted of an
1335 offense listed in s. 63.089(4)(b)2.

1336 Section 20. Section 63.152, Florida Statutes, is amended
1337 to read:

1338 63.152 Application for new birth record.—Within 30 days
1339 after entry of a judgment of adoption, the clerk of the court or
1340 the adoption entity shall transmit a certified statement of the
1341 entry to the state registrar of vital statistics on a form
1342 provided by the registrar. A new birth record containing the
1343 necessary information supplied by the certificate shall be
1344 issued by the registrar on application of the adopting parents
1345 or the adopted person.

1346 Section 21. Subsection (7) of section 63.162, Florida
1347 Statutes, is amended to read:

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1348 63.162 Hearings and records in adoption proceedings;
1349 confidential nature.-

1350 (7) The court may, upon petition of an adult adoptee or
1351 birth parent, for good cause shown, appoint an intermediary or a
1352 licensed child-placing agency to contact a birth parent or adult
1353 adoptee, as applicable, who has not registered with the adoption
1354 registry pursuant to s. 63.165 and advise both ~~them~~ of the
1355 availability of the intermediary or agency and that the birth
1356 parent or adult adoptee, as applicable, wishes to establish
1357 contact same.

1358 Section 22. Paragraph (c) of subsection (2) of section
1359 63.167, Florida Statutes, is amended to read:

1360 63.167 State adoption information center.-

1361 (2) The functions of the state adoption information center
1362 shall include:

1363 (c) Operating a toll-free telephone number to provide
1364 information and referral services. The state adoption
1365 information center shall provide contact information for all
1366 adoption entities in the caller's county or, if no adoption
1367 entities are located in the caller's county, the number of the
1368 nearest adoption entity when contacted for a referral to make an
1369 adoption plan and shall rotate the order in which the names of
1370 adoption entities are provided to callers.

1371 Section 23. Paragraph (g) of subsection (1) and
1372 subsections (2) and (8) of section 63.212, Florida Statutes, are
1373 amended to read:

1374 63.212 Prohibited acts; penalties for violation.-

1375 (1) It is unlawful for any person:

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1376 (g) Except an adoption entity, to advertise or offer to
1377 the public, in any way, by any medium whatever that a minor is
1378 available for adoption or that a minor is sought for adoption;
1379 and, further, it is unlawful for any person to publish or
1380 broadcast any such advertisement or assist an unlicensed person
1381 or entity in publishing or broadcasting any such advertisement
1382 without including a Florida license number of the agency or
1383 attorney placing the advertisement. Only a person who is an
1384 attorney licensed to practice law in this state or an adoption
1385 entity licensed under the laws of this state may place a paid
1386 advertisement or paid listing of the person's telephone number,
1387 on the person's own behalf, in a telephone directory that:

1388 1. A child is offered or wanted for adoption; or

1389 2. The person is able to place, locate, or receive a child
1390 for adoption.

1391 (b) A person who publishes a telephone directory that is
1392 distributed in this state:

1393 1. Shall include, at the beginning of any classified
1394 heading for adoption and adoption services, a statement that
1395 informs directory users that only attorneys licensed to practice
1396 law in this state and licensed adoption entities may legally
1397 provide adoption services under state law.

1398 2. May publish an advertisement described in paragraph (a)
1399 in the telephone directory only if the advertisement contains
1400 the following:

1401 a. For an attorney licensed to practice law in this state,
1402 the person's Florida Bar number.

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1403 b. For a child placing agency licensed under the laws of
1404 this state, the number on the person's adoption entity license.

1405 (2) Any person who is a birth mother, or a woman who holds
1406 herself out to be a birth mother, who is interested in making an
1407 adoption plan and who knowingly or intentionally benefits from
1408 the payment of adoption-related expenses in connection with that
1409 adoption plan commits adoption deception if:

1410 (a) The person knows or should have known that the person
1411 is not pregnant at the time the sums were requested or received;

1412 (b) The person accepts living expenses assistance from a
1413 prospective adoptive parent or adoption entity without
1414 disclosing that she is receiving living expenses assistance from
1415 another prospective adoptive parent or adoption entity at the
1416 same time in an effort to adopt the same child; or

1417 (c) The person knowingly makes false representations to
1418 induce the payment of living expenses and does not intend to
1419 make an adoptive placement.

1420 ~~It is unlawful for:~~

1421 ~~(a) Any person or adoption entity under this chapter to:~~

1422 ~~1. Knowingly provide false information; or~~

1423 ~~2. Knowingly withhold material information.~~

1424 ~~(b) A parent, with the intent to defraud, to accept~~
1425 ~~benefits related to the same pregnancy from more than one~~
1426 ~~adoption entity without disclosing that fact to each entity.~~

1427

1428 ~~Any person who willfully commits adoption deception violates any~~
1429 ~~provision of this subsection commits a misdemeanor of the second~~
1430 ~~degree, punishable as provided in s. 775.082 or s. 775.083, if~~

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1431 the sums received by the birth mother or woman holding herself
1432 out to be a birth mother do not exceed \$300, and a felony of the
1433 third degree, punishable as provided in s. 775.082, s. 775.083,
1434 or s. 775.084, if the sums received by the birth mother or woman
1435 holding herself out to be a birth mother exceed \$300. In
1436 addition, the person is liable for damages caused by such acts
1437 or omissions, including reasonable attorney ~~attorney's~~ fees and
1438 costs incurred by the adoption entity or the prospective
1439 adoptive parent. Damages may be awarded through restitution in
1440 any related criminal prosecution or by filing a separate civil
1441 action.

1442 (8) Unless otherwise indicated, a person who willfully and
1443 with criminal intent violates any provision of this section,
1444 excluding paragraph (1)(g), commits a felony of the third
1445 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1446 775.084. A person who willfully and with criminal intent
1447 violates paragraph (1)(g) commits a misdemeanor of the second
1448 degree, punishable as provided in s. 775.083; and each day of
1449 continuing violation shall be considered a separate offense. In
1450 addition, any person who knowingly publishes or assists with the
1451 publication of any advertisement or other publication which
1452 violates the requirements of paragraph (1)(g) commits a
1453 misdemeanor of the second degree, punishable as provided in s.
1454 775.083, and may be required to pay a fine of up to \$150 per day
1455 for each day of continuing violation.

1456 Section 24. Paragraph (b) of subsection (1), paragraphs
1457 (a) and (e) of subsection (2), and paragraphs (b), (h), and (i)

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1458 of subsection (6) of section 63.213, Florida Statutes, are
1459 amended to read:

1460 63.213 Preplanned adoption agreement.—

1461 (1) Individuals may enter into a preplanned adoption
1462 arrangement as specified in this section, but such arrangement
1463 may not in any way:

1464 (b) Constitute consent of a mother to place her biological
1465 child for adoption until 48 hours after the following birth of
1466 the child and unless the court making the custody determination
1467 or approving the adoption determines that the mother was aware
1468 of her right to rescind within the 48-hour period after the
1469 ~~following~~ birth of the child but chose not to rescind such
1470 consent. The volunteer mother's right to rescind her consent in
1471 a preplanned adoption applies only when the child is genetically
1472 related to her.

1473 (2) A preplanned adoption agreement must include, but need
1474 not be limited to, the following terms:

1475 (a) That the volunteer mother agrees to become pregnant by
1476 the fertility technique specified in the agreement, to bear the
1477 child, and to terminate any parental rights and responsibilities
1478 to the child she might have through a written consent executed
1479 at the same time as the preplanned adoption agreement, subject
1480 to a right of rescission by the volunteer mother any time within
1481 48 hours after the birth of the child, if the volunteer mother
1482 is genetically related to the child.

1483 (e) That the intended father and intended mother
1484 acknowledge that they may not receive custody or the parental
1485 rights under the agreement if the volunteer mother terminates

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1486 the agreement or if the volunteer mother rescinds her consent to
1487 place her child for adoption within 48 hours after the birth of
1488 the child, if the volunteer mother is genetically related to the
1489 child.

1490 (6) As used in this section, the term:

1491 (b) "Child" means the child or children conceived by means
1492 of a fertility technique ~~an insemination~~ that is part of a
1493 preplanned adoption arrangement.

1494 (h) "Preplanned adoption arrangement" means the
1495 arrangement through which the parties enter into an agreement
1496 for the volunteer mother to bear the child, for payment by the
1497 intended father and intended mother of the expenses allowed by
1498 this section, for the intended father and intended mother to
1499 assert full parental rights and responsibilities to the child if
1500 consent to adoption is not rescinded after birth by a the
1501 volunteer mother who is genetically related to the child, and
1502 for the volunteer mother to terminate, subject to any a right of
1503 rescission, all her parental rights and responsibilities to the
1504 child in favor of the intended father and intended mother.

1505 (i) "Volunteer mother" means a female at least 18 years of
1506 age who voluntarily agrees, subject to a right of rescission if
1507 it is her biological child, that if she should become pregnant
1508 pursuant to a preplanned adoption arrangement, she will
1509 terminate her parental rights and responsibilities to the child
1510 in favor of the intended father and intended mother.

1511 Section 25. Section 63.222, Florida Statutes, is amended
1512 to read:

Amendment No.

1513 63.222 Effect on prior adoption proceedings.—Any adoption
1514 made before July 1, 2012, is the effective date of this act
1515 ~~shall be valid, and any proceedings pending on that the~~
1516 effective date and any subsequent amendments thereto of this act
1517 are not affected thereby unless the amendment is designated as a
1518 remedial provision.

1519 Section 26. Section 63.2325, Florida Statutes, is amended
1520 to read:

1521 63.2325 Conditions for invalidation ~~revocation~~ of a
1522 consent to adoption or affidavit of nonpaternity.—
1523 Notwithstanding the requirements of this chapter, a failure to
1524 meet any of those requirements does not constitute grounds for
1525 invalidation ~~revocation~~ of a consent to adoption or revocation
1526 ~~withdrawal~~ of an affidavit of nonpaternity unless the extent and
1527 circumstances of such a failure result in a material failure of
1528 fundamental fairness in the administration of due process, or
1529 the failure constitutes or contributes to fraud or duress in
1530 obtaining a consent to adoption or affidavit of nonpaternity.

1531 Section 27. This act shall take effect on July 1, 2012.

1532

1533

1534

T I T L E A M E N D M E N T

1535 Remove the entire title and insert:

1537 An act relating to adoption; amending s. 63.022, F.S.; revising
1538 legislative intent to delete reference to reporting requirements
1539 for placements of minors and exceptions; amending s. 63.032,
1540 F.S.; revising definitions; amending s. 63.037, F.S.; exempting

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

Amendment No.

1541 adoption proceedings initiated under chapter 39, F.S., from a
1542 requirement for a search of the Florida Putative Father
1543 Registry; amending s. 63.039, F.S.; providing that all adoptions
1544 of minor children require the use of an adoption entity that
1545 will assume the responsibilities provided in specified
1546 provisions; providing an exception; amending s. 63.042, F.S.;
1547 revising terminology relating to who may adopt; amending s.
1548 63.0423, F.S.; revising terminology relating to surrendered
1549 infants; providing that an infant who tests positive for illegal
1550 drugs, narcotic prescription drugs, alcohol, or other
1551 substances, but shows no other signs of child abuse or neglect,
1552 is treated as having been properly surrendered; providing that
1553 if the Department of Children and Family Services is contacted
1554 regarding a surrendered infant who does not appear to have been
1555 the victim of actual or suspected child abuse or neglect, it
1556 shall provide instruction to contact an adoption entity and may
1557 not take custody of the infant; providing an exception; revising
1558 provisions relating to scientific testing to determine the
1559 paternity or maternity of a minor; amending s. 63.0425, F.S.;
1560 requiring that a child's residence be continuous for a specified
1561 period in order to entitle the grandparent to notice of certain
1562 proceedings; amending s. 63.0427, F.S.; prohibiting a court from
1563 increasing contact between an adopted child and siblings, birth
1564 parents, or other relatives without the consent of the adoptive
1565 parent or parents; providing for agreements for contact between
1566 a child to be adopted and the birth parent, other relative, or
1567 previous foster parent of the child; amending s. 63.052, F.S.;
1568 deleting a requirement that a minor be permanently committed to

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

Amendment No.

1569 an adoption entity in order for the entity to be guardian of the
1570 person of the minor; limiting the circumstances in which an
1571 intermediary may remove a child; providing that an intermediary
1572 does not become responsible for a minor child's medical bills
1573 that were incurred before taking physical custody of the child;
1574 providing additional placement options for a minor surrendered
1575 to an adoption entity for subsequent adoption when a suitable
1576 prospective adoptive home is not available; amending s. 63.053,
1577 F.S.; requiring that an unmarried biological father strictly
1578 comply with specified provisions in order to protect his
1579 interests; amending s. 63.054, F.S.; authorizing submission of
1580 an alternative document to the Office of Vital Statistics by the
1581 petitioner in each proceeding for termination of parental
1582 rights; providing that by filing a claim of paternity form the
1583 registrant expressly consents to paying for DNA testing;
1584 requiring that an alternative address designated by a registrant
1585 be a physical address; providing that the filing of a claim of
1586 paternity with the Florida Putative Father Registry does not
1587 relieve a person from compliance with specified requirements;
1588 amending s. 63.062, F.S.; revising requirements for when a
1589 minor's father must be served prior to termination of parental
1590 rights; requiring that an unmarried biological father comply
1591 with specified requirements in order for his consent to be
1592 required for adoption; revising such requirements; providing
1593 that the mere fact that a father expresses a desire to fulfill
1594 his responsibilities towards his child which is unsupported by
1595 acts evidencing this intent does not meet the requirements;
1596 providing for the sufficiency of an affidavit of nonpaternity;

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

Amendment No.

1597 providing an exception to a condition to a petition to adopt an
1598 adult; amending s. 63.063, F.S.; conforming terminology;
1599 amending s. 63.082, F.S.; revising language concerning
1600 applicability of notice and consent provisions in cases in which
1601 the child is conceived as a result of a violation of criminal
1602 law; providing that a criminal conviction is not required for
1603 the court to find that the child was conceived as a result of a
1604 violation of criminal law; requiring an affidavit of diligent
1605 search to be filed whenever a person who is required to consent
1606 is unavailable because the person cannot be located; providing
1607 that in an adoption of a stepchild or a relative, a certified
1608 copy of the death certificate of the person whose consent is
1609 required may be attached to the petition for adoption if a
1610 separate petition for termination of parental rights is not
1611 being filed; authorizing the execution of an affidavit of
1612 nonpaternity before the birth of a minor in preplanned
1613 adoptions; revising language of a consent to adoption; providing
1614 that a home study provided by the adoption entity shall be
1615 deemed to be sufficient except in certain circumstances;
1616 providing for a hearing if an adoption entity moves to intervene
1617 in a dependency case; revising language concerning seeking to
1618 revoke consent to an adoption of a child older than 6 months of
1619 age; providing that if the consent of one parent is set aside or
1620 revoked, any other consents executed by the other parent or a
1621 third party whose consent is required for the adoption of the
1622 child may not be used by the parent who consent was revoked or
1623 set aside to terminate or diminish the rights of the other
1624 parent or third party; amending s. 63.085, F.S.; revising

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

Amendment No.

1625 language of an adoption disclosure statement; requiring that a
1626 copy of a waiver by prospective adoptive parents of receipt of
1627 certain records must be filed with the court; amending s.
1628 63.087, F.S.; specifying that a failure to personally appear at
1629 a proceeding to terminate parental rights constitutes grounds
1630 for termination; amending s. 63.088, F.S.; providing that in a
1631 termination of parental rights proceeding if a required inquiry
1632 that identifies a father who has been adjudicated by a court as
1633 the father of the minor child before the date a petition for
1634 termination of parental rights is filed the inquiry must
1635 terminate at that point; amending s. 63.089, F.S.; specifying
1636 that it is a failure to personally appear that provides grounds
1637 for termination of parental rights in certain circumstances;
1638 revising provisions relating to dismissal of petitions to
1639 terminate parental rights; providing that contact between a
1640 parent seeking relief from a judgment terminating parental
1641 rights and a child may be awarded only in certain circumstances;
1642 providing for placement of a child in the event that a court
1643 grants relief from a judgment terminating parental rights and no
1644 new pleading is filed to terminate parental rights; amending s.
1645 63.092, F.S.; requiring that a signed copy of the home study
1646 must be provided to the intended adoptive parents who were the
1647 subject of the study; amending s. 63.152, F.S.; authorizing an
1648 adoption entity to transmit a certified statement of the entry
1649 of a judgment of adoption to the state registrar of vital
1650 statistics; amending s. 63.162, F.S.; authorizing a birth parent
1651 to petition that court to appoint an intermediary or a licensed
1652 child-placing agency to contact an adult adoptee and advise both

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

Amendment No.

1653 of the availability of the adoption registry and that the birth
1654 parent wishes to establish contact; amending s. 63.167, F.S.;
1655 requiring that the state adoption center provide contact
1656 information for all adoption entities in a caller's county or,
1657 if no adoption entities are located in the caller's county, the
1658 number of the nearest adoption entity when contacted for a
1659 referral to make an adoption plan; amending s. 63.212, F.S.;
1660 restricting who may place a paid advertisement or paid listing
1661 of the person's telephone number offering certain adoption
1662 services; requiring of publishers of telephone directories to
1663 include certain statements at the beginning of any classified
1664 heading for adoption and adoption services; providing
1665 requirements for such advertisements; providing criminal
1666 penalties for violations; prohibiting the offense of adoption
1667 deception by a person who is a birth mother or a woman who holds
1668 herself out to be a birth mother; providing criminal penalties;
1669 providing liability by violators for certain damages; amending
1670 s. 63.213, F.S.; providing that a preplanned adoption
1671 arrangement does not constitute consent of a mother to place her
1672 biological child for adoption until 48 hours following birth;
1673 providing that a volunteer mother's right to rescind her consent
1674 in a preplanned adoption applies only when the child is
1675 genetically related to her; revising the definitions of the
1676 terms "child," "preplanned adoption arrangement," and "volunteer
1677 mother"; amending s. 63.222, F.S.; providing that provisions
1678 designated as remedial may apply to any proceedings pending on
1679 the effective date of the provisions; amending s. 63.2325, F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2012)

Amendment No.

1680 revising terminology relating to revocation of consent to
1681 adoption; providing an effective date.

8

Amendment No. *a1*

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Access Subcommittee

3 Representative Horner offered the following:

4
5 **Amendment to Amendment (335249) by Representative Adkins**
6 **(with title amendment)**

7 Between lines 1335 and 1336 of the amendment, insert:
8 Section 20. Subsection (7) of s. 63.097, Florida Statutes, is
9 created to read:

10 63.097 Fees.-

11 (7) In determining reasonable attorney fees, courts shall
12 utilize the following criteria:

13 (a) The time and labor required, the novelty and
14 difficulty of the question involved, and the skill requisite to
15 perform the legal service properly;

16 (b) The likelihood, if apparent to the client, that the
17 acceptance of the particular employment will preclude other
18 employment by the attorney;

Amendment No. .

19 (c) The fee customarily charged in the locality for
20 similar legal services;

21 (d) The amount involved in the subject matter of the
22 representation, the responsibility involved in the
23 representation, and the results obtained;

24 (e) The time limitations imposed by the client or by the
25 circumstances and, as between attorney and client, any
26 additional or special time demands or requests of the attorney
27 by the client;

28 (f) The nature and length of the professional relationship
29 with the client;

30 (g) The experience, reputation, diligence, and ability of
31 the attorney or attorneys performing the service and the skill,
32 expertise, or efficiency of effort reflected in the actual
33 providing of such services; and

34 (h) Whether the fee is fixed or contingent.
35
36
37

38 -----

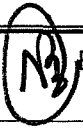
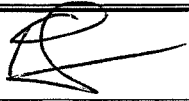
39 **T I T L E A M E N D M E N T**

40 Remove line 1647 of the amendment and insert:

41 Subject of the study; amending s. 63.097, F.S.; providing
42 guidelines for a court considering a reasonable fee associated
43 with adoption services; amending s. 63.152, F.S.; authorizing an
44

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1351 Homeless Youth
SPONSOR(S): Glorioso
TIED BILLS: **IDEN./SIM. BILLS:** SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		 Batchelor	Schoolfield 
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1351 provides the following provisions related to homeless youth:

- The bill provides language allowing certified homeless youth or a minor who has had the disabilities of nonage removed to obtain their birth certificate.
- The bill creates s. 743.067 F.S., and provides that an unaccompanied youth as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, and is 16 years of age or older has the same rights afforded to them as a minor who has had disabilities of nonage removed. The bill provides that a child who meets this definition may not be required to have a parent or legal guardian's consent for any purpose.
- The bill adds the definition of "certified homeless youth" to chapter 382, F.S. Certified homeless youth is defined as a minor who is a homeless child or youth, or unaccompanied youth, as defined in federal law and has been certified as homeless or unaccompanied by:
 - A school district homeless liaison;
 - The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee; or
 - The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee.

The bill does not appear to have a fiscal impact.

The bill provides an effective date upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Homelessness in Florida

Florida has the third largest homeless population in the state, with roughly 60,000 people facing homelessness daily.¹ In the 2009-2010 school year 49,000 school-aged children were identified as homeless in the state.²

Homeless Children and Youths

According to the National Alliance to End Homelessness the prevalence of youth homelessness is difficult to measure; researchers estimate that about 1.6 million youth, aged 13-17, are homeless in the U.S.³ While the reasons for youth homelessness vary by individual, the primary causes appear to be either family breakdown or systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs.⁴ Between 20,000 and 25,000 youth ages 16 and older transition from foster care to legal emancipation, or “age out” of the system annually with few resources and multiple challenges.⁵ As a result, former foster care children and youth are disproportionately represented in the homeless population. Twenty-five percent of former foster youth nationwide reported that they had been homeless at least one night within two-and-a-half to four years after exiting foster care.⁶

Federal law provides definitions for the term “homeless children and youths.” The definitions are as follows:

(a) individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and

(b) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(1) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

¹ Council on Homelessness Annual Report 2011. Florida Department of Children and Families. <http://www.dcf.state.fl.us/programs/homelessness/council/index.shtml>. (last visited January 19, 2012).

² *Id.*

³ The Heterogeneity of Homeless Youth in America. National Alliance to End Homelessness. September 2011.

⁴ Fundamental Issues to Prevent and End Youth Homelessness. Youth Homelessness Series, Brief No. 1. National Alliance to End Homelessness. May, 2006.

⁵ *Id.*

⁶ *Id.*

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (1) through (iii).⁷

The term, “unaccompanied youth,” as defined in federal law means youth not in the physical custody of a parent or guardian.⁸

School District Homeless Liaison

The Florida Department of Education has established a “school district homeless liaison” for each of the 67 counties.⁹ The duties of the liaison include:¹⁰

- Assisting homeless children and youth who do not have immunizations or medical records to obtain necessary immunizations or medical records;
- Helping unaccompanied youth choose and enroll in a school, after considering the youths’ wishes, and provide youth with notice of their right to appeal an enrollment decision that is contrary to their wishes;
- Ensuring that unaccompanied youth are enrolled in school immediately pending the resolution of any dispute that may arise over school enrollment or placement.
- Collaborating and coordinating with State Coordinators for Homeless Education and community and school personnel responsible for the provision of education and related services to children and youth who are homeless.

Emergency Shelter Programs funded by U.S. Department of Housing and Urban Development

The emergency shelter programs funded by the Department of Housing and Urban Development is designed as the first step in the Continuum of Care, the Emergency Shelter Grants Program provides funds for emergency shelters — immediate alternatives to the street — and transitional housing that helps people reach independent living. States use grant funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness.¹¹ The providers of service must document in their files that the youth being served meets the federal definition of a homeless person.¹²

Runway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Youth Center Programs work to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families.¹³ The programs provide youth up to age 18 with emergency shelter, food, clothing, counseling and referrals for health care.¹⁴ Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements.¹⁵ The providers of service must maintain individual case files on the youth that are in the program.¹⁶

⁷ 42 U.S.C. §11434a.

⁸ *Id.*

⁹ Florida Department of Education, District Liaison List.

<http://search.fldoe.org/default.asp?cx=012683245092260330905%3Aalo4lmikgz4&cof=FORID%3A11&q=school+district+homeless+liaison>. (last visited January 19, 2012).

¹⁰ *Id.*

¹¹ U.S. Department of Housing and Homeless Development, Homelessness Resource Exchange.

<http://www.hudhre.info/index.cfm?do=viewEsgProgram>, (last visited January 20, 2012).

¹² U.S. Department of Housing and Homeless Development, Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities. <http://www.hudhre.info/index.cfm?do=viewEsgDeskguideSec4#4-4>. (last visited on January 20, 2012).

¹³ U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Basic Center Program. <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>. (last visited January 20, 2012).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

The Transitional Living Programs supports projects that provide long-term residential services to homeless youth.¹⁷ The Program accepts youth ages 16-21, the services offered are designed to help young people who are homeless make a successful transition to self-sufficient living.¹⁸ Transitional living programs are required to provide youth with stable, safe living accommodations, and services that help them develop the skills necessary to become independent.¹⁹ Living accommodations may include host-family homes, group homes, maternity group homes, or supervised apartments owned by the program or rented in the community.²⁰ The providers of service must maintain individual case files on the youth that are in the program.²¹ This documentation of the youth's homeless status would constitute the basis for a certification under the proposed bill.²²

Disabilities of Nonage

Under current law, minors who meet certain conditions can be granted the same rights as an adult. This process is known in current law as "having the disabilities of nonage removed" and is provided if:

- The minor is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed;²³ or
- A circuit court removes the disabilities of nonage of a minor, age 16 or older, residing in this state upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem.²⁴

In the case of a minor who has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, the minor would be permitted to assume management of his or her estate, contract and be contracted with, sue and be sued and perform all the acts an adult can.²⁵

In the case of a minor who has had the court remove the disabilities of nonage, a court would authorize the minor to perform all acts that the minor could do if he or she was 18 years of age.²⁶

Birth Certificates

The Florida Department of Health, Office of Vital Statistics, maintains all vital records for the state. Under current law, homeless children are not specifically given the ability to obtain their birth certificate. Current law provides that a person must be of legal age to obtain their birth certificate, and if they are not of legal age, the birth certificate can be obtained by parent, guardian, or other legal representative.²⁷ Therefore, homeless children not of legal age and without a parent, guardian or other legal representative would not be able to obtain their birth certificate.

Effect of Proposed Changes

The bill provides language allowing certified homeless youth or a minor who has had the disabilities of nonage removed to obtain their birth certificate.

¹⁷ U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Transitional Program. <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>. (last visited January 20, 2012).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ S. 743.01, F.S.

²⁴ S. 743.015, F.S.

²⁵ S. 743.01, F.S.

²⁶ S. 743.015, F.S.

²⁷ S. 382.025 (1)(a) 1., F.S.

The bill adds the definition of “certified homeless youth” to chapter 382, F.S. Certified homeless youth is defined as a minor who is a homeless child or youth, or unaccompanied youth, as defined in federal law and has been certified as homeless or unaccompanied by:

- A school district homeless liaison;
- The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee; or
- The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director’s designee.²⁸

The bill creates s. 743.0367 F.S., and provides that an unaccompanied youth as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, and is 16 years of age or older has the same rights as an adult. The bill provides that a child who meets this definition may not be required to have a parent or legal guardian’s consent for any purpose.

B. SECTION DIRECTORY:

Section 1: Amends s. 382.002, F.S., relating to definitions.

Section 2: Amends s. 382.0085, F.S., relating to stillbirth registration.

Section 3: Amends s. 382.025, F.S., relating to certified copies of vital records; confidentiality; research.

Section 4: Creates s. 743.067, F.S. relating to unaccompanied youths.

Section 5: 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.

²⁸ The emergency shelter program and the runaway or homeless youth basic center or transitional living program maintain documentation of homeless status for youth in the respective programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Health may need to amend current rules in order to allow a certified homeless youth or a minor who has had disabilities of nonage removed to obtain his or her birth certificate.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to homeless youth; amending s.
 3 382.002, F.S.; defining the term "certified homeless
 4 youth"; conforming a cross-reference; amending s.
 5 382.0085, F.S.; conforming cross-references; amending
 6 s. 382.025, F.S.; providing that a minor who is a
 7 certified homeless youth or who has had the
 8 disabilities on nonage removed under specified
 9 provisions may obtain a certified copy of his or her
 10 birth certificate; creating s. 743.067, F.S.;
 11 providing that unaccompanied youths who are certified
 12 homeless youths 16 years of age or older shall have
 13 specified rights as long as they retain that status;
 14 providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsections (3) through (16) of section
 19 382.002, Florida Statutes, are renumbered as subsections (4)
 20 through (17), respectively, a new subsection (3) is added to
 21 that section, and present subsections (7) and (8) of that
 22 section are amended, to read:

23 382.002 Definitions.—As used in this chapter, the term:
 24 (3) "Certified homeless youth" means a minor who is a
 25 homeless child or youth, including an unaccompanied youth, as
 26 those terms are defined in 42 U.S.C. s. 11434a, and who has been
 27 certified as homeless or unaccompanied by:
 28 (a) A school district homeless liaison;

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29 (b) The director of an emergency shelter program funded by
 30 the United States Department of Housing and Urban Development,
 31 or the director's designee; or

32 (c) The director of a runaway or homeless youth basic
 33 center or transitional living program funded by the United
 34 States Department of Health and Human Services, or the
 35 director's designee.

36 (8)~~(7)~~ "Final disposition" means the burial, interment,
 37 cremation, removal from the state, or other authorized
 38 disposition of a dead body or a fetus as described in subsection
 39 (7) ~~(6)~~. In the case of cremation, dispersion of ashes or
 40 cremation residue is considered to occur after final
 41 disposition; the cremation itself is considered final
 42 disposition.

43 (9)~~(8)~~ "Funeral director" means a licensed funeral
 44 director or direct disposer licensed pursuant to chapter 497 or
 45 other person who first assumes custody of or effects the final
 46 disposition of a dead body or a fetus as described in subsection
 47 (7) ~~(6)~~.

48 Section 2. Subsection (9) of section 382.0085, Florida
 49 Statutes, is amended to read:

50 382.0085 Stillbirth registration.—

51 (9) This section or s. 382.002(15) ~~382.002(14)~~ may not be
 52 used to establish, bring, or support a civil cause of action
 53 seeking damages against any person or entity for bodily injury,
 54 personal injury, or wrongful death for a stillbirth.

55 Section 3. Paragraph (a) of subsection (1) of section
 56 382.025, Florida Statutes, is amended to read:

57 382.025 Certified copies of vital records;
 58 confidentiality; research.—

59 (1) BIRTH RECORDS.—Except for birth records over 100 years
 60 old which are not under seal pursuant to court order, all birth
 61 records of this state shall be confidential and are exempt from
 62 the provisions of s. 119.07(1).

63 (a) Certified copies of the original birth certificate or
 64 a new or amended certificate, or affidavits thereof, are
 65 confidential and exempt from the provisions of s. 119.07(1) and,
 66 upon receipt of a request and payment of the fee prescribed in
 67 s. 382.0255, shall be issued only as authorized by the
 68 department and in the form prescribed by the department, and
 69 only:

70 1. To the registrant, if the registrant is of legal age,
 71 is a certified homeless youth, or is a minor who has had the
 72 disabilities of nonage removed under s. 743.01 or s. 743.015;

73 2. To the registrant's parent or guardian or other legal
 74 representative;

75 3. Upon receipt of the registrant's death certificate, to
 76 the registrant's spouse or to the registrant's child,
 77 grandchild, or sibling, if of legal age, or to the legal
 78 representative of any of such persons;

79 4. To any person if the birth record is over 100 years old
 80 and not under seal pursuant to court order;

81 5. To a law enforcement agency for official purposes;

82 6. To any agency of the state or the United States for
 83 official purposes upon approval of the department; or

84 7. Upon order of any court of competent jurisdiction.


85 Section 4. Section 743.067, Florida Statutes, is created
 86 to read:

87 743.067 Unaccompanied youths.—An unaccompanied youth, as
 88 defined in 42 U.S.C. s. 11434a, who is also a certified homeless
 89 youth, as defined in s. 382.002, who is 16 years of age or older
 90 shall have the same rights as a minor who has had the
 91 disabilities of nonage removed under s. 743.015 and may not be
 92 required to have a parent or guardian's consent for any purpose
 93 for as long as he or she meets the criteria of those
 94 definitions.

95 Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1077 Service Animals
SPONSOR(S): Kriseman
TIED BILLS: IDEN./SIM. BILLS: SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield 
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1077 amends s. 413.08, F.S. relating to the rights of an individual with a disability and the use of a service animal. The bill does the following:

- Creates a definition for "owner" to mean a person who owns a service animal or who is authorized by the owner to use a service animal.
- Amends the definition of "service animal" to only mean a dog. Current law does not limit the type of animal in the definition. Limiting the definition to dogs will preclude owners of other service animals from the effects of the legislation.
- Specifies that an individual with a disability or a person who trains service animals and is a student at a public or private school in this state has the right to be accompanied by a service animal.
- Clarifies that if federal law, rule or agency requires a public accommodation to provide care, food, or a special location for an animal to relieve itself, they must do so.
- Provides that a person, firm or corporation, may not deny or interfere with the renting, leasing, or purchasing of housing accommodations for a person with a disability or a service animal trainer. Current law provides misdemeanor penalties for violations of this law.
- Clarifies that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations.
- Provides that a trainer of a service animal for an accredited school is also entitled to full and equal access to all housing accommodations and may not be required to pay extra compensation for the service animal.
- Provides that any person who trains a service animal has the same rights and access to housing accommodations as an individual with a disability, as long as the trainer is training the animal.
- Provides that a trainer has the same rights, privileges and liabilities as a person with a disability as it relates to a service animal.
- Provides that any person who knowingly and fraudulently represents themselves as a service animal trainer commits a misdemeanor of the second degree punishable as provided in s. 775.082,¹ F.S. and s. 775.083,² F.S.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

¹ For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days

² A maximum of \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1077.HSAS.DOCX

DATE: 1/22/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act defines an individual with a disability as someone who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.³ The ADA provides that persons with disabilities shall not be discriminated against when applying for a job, and that public services and transportation shall accommodate such individuals.⁴

The ADA provides that an individual with a disability is permitted to bring their service animal with them to publicly and privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities.⁵ The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.⁶

Fair Housing Act

The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin.⁷ Its coverage includes private housing, housing that receives Federal financial assistance, and state and local government housing.⁸ It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence.⁹ The U.S. Department of Housing and Urban Development investigates complaints of violations against the Fair Housing Act, including discrimination in housing.¹⁰ If someone is convicted of violating the Fair Housing Act he or she may be required to do the following:¹¹

- To compensate the victim for actual damages, including humiliation, pain and suffering;
- To provide injunctive or other equitable relief;
- To pay the Federal Government a civil penalty to vindicate the public interest. The maximum penalties are \$16,000 for a first violation and \$65,000 for a third violation within seven years.
- To pay reasonable attorney's fees and costs.

Service Animal Trainers

The ADA defines service animals as animals that are individually trained to perform tasks for people with disabilities such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks.¹² Most service animals are dogs,¹³ however, monkeys¹⁴, miniature horses¹⁵ and other animals

³ 42 U.S.C. 12101

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 42 U.S.C. s. 3601

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Department of Housing and Urban Development. Housing.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement. (last visited January 21, 2012).

¹¹ *Id.*

¹² Americans with Disabilities Brief, Service Animals, April 2002. <http://www.ada.gov/svcanimb.htm>. (last visited January 21, 2012).

are also used for this function. Prior to an animal being used by an individual with a disability, the animal goes through a training course with a service animal trainer. The American Behavior College provides courses for people interested in becoming a certified dog trainer; courses include, but are not limited to: a basic study of canines, learning theory, training, obedience and safety.¹⁶ Similar courses are also available for miniature horse trainers¹⁷ and monkey trainers.¹⁸

Effect of Proposed Changes

The bill creates a definition for “owner” to mean a person who owns a service animal or who is authorized by the owner to use a service animal. This definition would provide that an owner of a service animal could be an individual with a disability, a service animal trainer, or someone who has been authorized by the owner to use the service animal.

The bill amends the definition of “service animal” to only mean a dog. Limiting the definition to dogs will preclude owners of other service animals from the rights and protections of the legislation. The definition is expanded to include that a service animal may help an individual who has low vision or who is suffering with a psychiatric or neurological disability by helping interrupt impulsive and destructive behaviors.

The bill specifies that an individual with a disability or a person who trains service animals and is a student at a public or private school in this state has the right to be accompanied by a service animal. The ADA provides that public and privately owned facilities, which would include schools, are required to allow an individual with a disability to be accompanied by a service animal. The bill provides that a service trainer would also be allowed to be accompanied by a service animal at a public or private school in the state.

Current state law does not require a public accommodation (places to which the general public is invited and modes of transportation)¹⁹ to provide care, food or a special location for the service animal to relieve itself. The bill clarifies that if federal law, rule or agency requires a public accommodation to provide such services they must do so. Additionally, if a public accommodation has a secured area, a special location shall be designated for the service animal to relieve itself.

The bill provides that any person, firm, corporation, or the agent of any person, firm or corporation, who denies or interferes with the renting, leasing, or purchasing of housing accommodations for an individual with a disability or a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082,²⁰ or s. 775.083,²¹ F.S. The U.S. Department of Fair Housing and Urban Development, under the Fair Housing Act provides penalties for someone who is convicted of unlawful housing practices. The bill will provide both civil and criminal sanctions to someone in this state who is convicted of unlawful housing practices.

The bill clarifies that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations.

The bill provides that a trainer of a service animal for an accredited school is also entitled to full and equal advantages, facilities and privileges in all housing accommodations and may not be required to pay extra compensation for the service animal. The bill does not specify what an accredited school is or the verification process for trainers.

¹³ International Association of Assistance Dog Partners. <http://www.iaadp.org/A-dogWorld.html>. (last visited January 21, 2012).

¹⁴ Helping Hands, Monkey Helpers for the Disabled. <http://www.monkeyhelpers.org//index.html>. (last visited January 21, 2012).

¹⁵ The Guide Horse Foundation. <http://www.guidehorse.org/>. (last visited January 21, 2012).

¹⁶ American Behavior College. Curriculum. <http://www.animalbehaviorcollege.com/curriculum.asp>. (last visited January 21, 2012).

¹⁷ The Guide Horse Foundation. <http://www.guidehorse.org/>. (last visited January 21, 2012).

¹⁸ Helping Hands, Monkey Helpers for the Disabled. <http://www.monkeyhelpers.org//index.html>. (last visited January 21, 2012).

¹⁹ S. 413.08, F.S.

²⁰ For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

²¹ A maximum of \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

The bill provides that any person who trains a public service animal has the same rights and access to public and housing accommodations as an individual with a disability, as long as the trainer is training the animal.

The bill provides that a trainer has the same rights, privileges and liabilities as a person with a disability as it relates to a service animal.

The bill provides that any person who knowingly and fraudulently represents themselves as a service animal trainer commits a misdemeanor of the second degree punishable as provided in s. 775.082,²² F.S. and s. 775.083,²³ F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 413.08, F.S. relating to Rights of an individual with a disability; use of service animal; discrimination in public employment or housing accommodations – penalties.

Section 2: Provides an effective date of July 1, 2012.

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:

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

²² For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

²³ A maximum of \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 136 refers to an accredited school for service animal trainers. It is unclear what the accreditation requirements are for such a school or trainer.

The bill does not provide a definition for "trainer" which could clarify how someone is verified as a trainer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to service animals; amending s.
 413.08, F.S.; revising and providing definitions;
 revising designation and duties of a service animal;
 providing rights of an individual with a disability
 accompanied by a service animal or a person who trains
 service animals with regard to public or housing
 accommodations under certain conditions; providing a
 penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 413.08, Florida Statutes, is amended to read:

413.08 Rights of an individual with a disability; use of a service animal; discrimination in public employment or housing accommodations; penalties.—

(1) As used in this section and s. 413.081, the term:

(a) "Housing accommodation" means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(b) "Individual with a disability" means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled. As used in this paragraph, the term:

29 1. "Hard of hearing" means an individual who has suffered
 30 a permanent hearing impairment that is severe enough to
 31 necessitate the use of amplification devices to discriminate
 32 speech sounds in verbal communication.

33 2. "Physically disabled" means any person who has a
 34 physical impairment that substantially limits one or more major
 35 life activities.

36 (c) "Owner" means a person who owns a service animal or
 37 who is authorized by the owner to use a service animal.

38 (d)(e) "Public accommodation" means a common carrier,
 39 airplane, motor vehicle, railroad train, motor bus, streetcar,
 40 boat, or other public conveyance or mode of transportation;
 41 hotel; lodging place; place of public accommodation, amusement,
 42 or resort; and other places to which the general public is
 43 invited, subject only to the conditions and limitations
 44 established by law and applicable alike to all persons.

45 (e)(d) "Service animal" means a dog an animal that is
 46 trained to perform tasks for an individual with a disability.
 47 The tasks may include, but are not limited to, guiding a person
 48 who is visually impaired, has low vision, or is blind, alerting
 49 a person who is deaf or hard of hearing, pulling a wheelchair,
 50 assisting with mobility or balance, alerting and protecting a
 51 person who is having a seizure, retrieving objects, helping a
 52 person with a psychiatric or neurological disability by
 53 preventing or interrupting impulsive or destructive behaviors,
 54 or performing other specialized special tasks. A service animal
 55 is not a pet.

56 (2) An individual with a disability is entitled to full

57 and equal accommodations, advantages, facilities, and privileges
 58 in all public accommodations. This section does not require any
 59 person, firm, business, or corporation, or any agent thereof, to
 60 modify or provide any vehicle, premises, facility, or service to
 61 a higher degree of accommodation than is required for a person
 62 not so disabled. If an individual with a disability or a person
 63 who trains service animals is a student at a private or public
 64 school in the state, that person has the right to be accompanied
 65 by a service animal subject to the conditions established under
 66 this section.

67 (3) An individual with a disability has the right to be
 68 accompanied by a service animal in all areas of a public
 69 accommodation that the public or customers are normally
 70 permitted to occupy.

71 (a) Documentation that the service animal is trained is
 72 not a precondition for providing service to an individual
 73 accompanied by a service animal. A public accommodation may ask
 74 if an animal is a service animal or what tasks the animal has
 75 been trained to perform in order to determine the difference
 76 between a service animal and a pet.

77 (b) A public accommodation may not impose a deposit or
 78 surcharge on an individual with a disability as a precondition
 79 to permitting a service animal to accompany the individual with
 80 a disability, even if a deposit is routinely required for pets.

81 (c) An individual with a disability is liable for damage
 82 caused by a service animal if it is the regular policy and
 83 practice of the public accommodation to charge nondisabled
 84 persons for damages caused by their pets.

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85 (d) The care or supervision of a service animal is the
86 responsibility of the individual owner. A public accommodation
87 is not required to provide care or food or a special location
88 for the service animal or assistance with removing animal
89 excrement, unless required by any federal agency, federal law,
90 or federal regulation. In those instances, if a public
91 accommodation has a secured area, the public accommodation must
92 provide a special location for the service animal to relieve
93 itself within those secured areas.

94 (e) A public accommodation may exclude or remove any
95 animal from the premises, including a service animal, if the
96 animal's behavior poses a direct threat to the health and safety
97 of others. Allergies and fear of animals are not valid reasons
98 for denying access or refusing service to an individual with a
99 service animal. If a service animal is excluded or removed for
100 being a direct threat to others, the public accommodation must
101 provide the individual with a disability the option of
102 continuing access to the public accommodation without having the
103 service animal on the premises.

104 (4) Any person, firm, or corporation, or the agent of any
105 person, firm, or corporation, who denies or interferes with
106 admittance to~~7~~ or enjoyment of~~7~~ a public accommodation;
107 interferes with the renting, leasing, or purchasing of housing
108 accommodations; or otherwise interferes with the rights of an
109 individual with a disability or the trainer of a service animal
110 while engaged in the training of such an animal pursuant to
111 subsection (8)~~7~~ commits a misdemeanor of the second degree,
112 punishable as provided in s. 775.082 or s. 775.083.

113 (5) It is the policy of this state that an individual with
 114 a disability be employed in the service of the state or
 115 political subdivisions of the state, in the public schools, and
 116 in all other employment supported in whole or in part by public
 117 funds, and an employer may not refuse employment to such a
 118 person on the basis of the disability alone, unless it is shown
 119 that the particular disability prevents the satisfactory
 120 performance of the work involved.

121 (6) An individual with a disability who is accompanied by
 122 a service animal is entitled to full and equal advantages,
 123 facilities, and privileges in all housing accommodations and is
 124 entitled to rent, lease, or purchase, as other members of the
 125 general public, any housing accommodations offered for rent,
 126 lease, or other compensation in this state, subject to the
 127 conditions and limitations established by law and applicable
 128 alike to all persons.

129 (a) This section does not require any person renting,
 130 leasing, or otherwise providing real property for compensation
 131 to modify her or his property in any way or provide a higher
 132 degree of care for an individual with a disability than for a
 133 person who is not disabled.

134 (b) An individual with a disability who has a service
 135 animal, ~~or~~ who obtains a service animal, or who is the trainer
 136 of a service animal for an accredited school is entitled to full
 137 and equal access to all housing accommodations provided for in
 138 this section, and such a person may not be required to pay extra
 139 compensation for the service animal. However, such a person is
 140 liable for any damage done to the premises or to another person

141 on the premises by such an animal. A housing accommodation may
 142 request proof of compliance with vaccination requirements.

143 (7) An employer covered under subsection (5) who
 144 discriminates against an individual with a disability in
 145 employment, unless it is shown that the particular disability
 146 prevents the satisfactory performance of the work involved, or
 147 any person, firm, or corporation, or the agent of any person,
 148 firm, or corporation, providing housing accommodations as
 149 provided in subsection (6) who discriminates against an
 150 individual with a disability, commits a misdemeanor of the
 151 second degree, punishable as provided in s. 775.082 or s.
 152 775.083.

153 (8) Any person who trains ~~trainer of~~ a service animal,
 154 while engaged in the training of such an animal, has the same
 155 rights and privileges with respect to access to public and
 156 housing accommodations ~~facilities~~ and the same liability for
 157 damage as is provided for a person ~~those persons~~ described in
 158 subsection (3) or subsection (6) who is accompanied by a service
 159 animal, so long as: ~~animals.~~

160 (a) The service animal is being held on a leash and is
 161 under the control of the person training the service animal for
 162 an accredited school for service animals.

163 (b) The person has on her or his person and available for
 164 inspection credentials from the accredited school for which the
 165 service animal is being trained.

166 (c) The service animal is wearing a collar, leash, or
 167 other appropriate apparel that identifies the dog with the
 168 accredited school for which the service animal is being trained.

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169 (9) A person who knowingly and fraudulently represents
170 herself or himself, through her or his conduct or verbal or
171 written notice, as the owner or trainer of a service animal
172 commits a misdemeanor of the second degree, punishable as
173 provided in s. 775.082 or s. 775.083.

174 Section 2. This act shall take effect July 1, 2012.

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Access Subcommittee

3 Representative Kriseman offered the following:

4
 5 **Amendment**

6 Remove lines 28-168 and insert:
 7 physically disabled, or who has a psychological or neurological
 8 disability. As used in this paragraph, the term:

9 1. "Hard of hearing" means an individual who has suffered
 10 a permanent hearing impairment that is severe enough to
 11 necessitate the use of amplification devices to discriminate
 12 speech sounds in verbal communication.

13 2. "Physically disabled" means any person who has a
 14 physical, psychological, or neurological disability ~~impairment~~
 15 that substantially limits one or more major life activities.

16 (c) "Owner" means a person who owns a service animal or
 17 who is authorized by the owner to use a service animal.

18 (d)-(e) "Public accommodation" means a common carrier,
 19 airplane, motor vehicle, railroad train, motor bus, streetcar,

Amendment No.1

20 boat, or other public conveyance or mode of transportation;
21 hotel; lodging place; place of public accommodation, amusement,
22 or resort; and other places to which the general public is
23 invited, subject only to the conditions and limitations
24 established by law and applicable alike to all persons.

25 (e)~~(d)~~ "Service animal" means an animal that is trained to
26 perform tasks for an individual with a disability. The tasks may
27 include, but are not limited to, guiding a person who is
28 visually impaired, has low vision, or is blind, alerting a
29 person who is deaf or hard of hearing, pulling a wheelchair,
30 assisting with mobility or balance, alerting and protecting a
31 person who is having a seizure, retrieving objects, helping a
32 person with a psychological or neurological disability by
33 preventing or interrupting impulsive or destructive behaviors,
34 or performing other specialized ~~special~~ tasks. A service animal
35 is not a pet.

36 (2) An individual with a disability is entitled to full
37 and equal accommodations, advantages, facilities, and privileges
38 in all public accommodations. This section does not require any
39 person, firm, business, or corporation, or any agent thereof, to
40 modify or provide any vehicle, premises, facility, or service to
41 a higher degree of accommodation than is required for a person
42 not so disabled. If an individual with a disability or a person
43 who trains service animals is a student at a private or public
44 school in the state, that person has the right to be accompanied
45 by a service animal subject to the conditions established under
46 this section.

Amendment No.1

47 (3) An individual with a disability has the right to be
48 accompanied by a service animal in all areas of a public
49 accommodation that the public or customers are normally
50 permitted to occupy.

51 (a) Documentation that the service animal is trained is
52 not a precondition for providing service to an individual
53 accompanied by a service animal. A public accommodation may ask
54 if an animal is a service animal or what tasks the animal has
55 been trained to perform in order to determine the difference
56 between a service animal and a pet.

57 (b) A public accommodation may not impose a deposit or
58 surcharge on an individual with a disability as a precondition
59 to permitting a service animal to accompany the individual with
60 a disability, even if a deposit is routinely required for pets.

61 (c) An individual with a disability is liable for damage
62 caused by a service animal if it is the regular policy and
63 practice of the public accommodation to charge nondisabled
64 persons for damages caused by their pets.

65 (d) The care or supervision of a service animal is the
66 responsibility of the individual owner. A public accommodation
67 is not required to provide care or food or a special location
68 for the service animal or assistance with removing animal
69 excrement, unless required by any federal agency, federal law,
70 or federal regulation. In those instances, if a public
71 accommodation has a secured area, the public accommodation must
72 provide a special location for the service animal to relieve
73 itself within those secured areas.

Amendment No.1

74 (e) A public accommodation may exclude or remove any
75 animal from the premises, including a service animal, if the
76 animal fails to remain under the control of the handler, or if
77 the animal's behavior is inappropriate, including, but not
78 limited to, growling, excessive barking, or biting, or poses a
79 direct threat to the health and safety of others. Allergies and
80 fear of animals are not valid reasons for denying access or
81 refusing service to an individual with a service animal. If a
82 service animal is excluded or removed for being a direct threat
83 to others, the public accommodation must provide the individual
84 with a disability the option of continuing access to the public
85 accommodation without having the service animal on the premises.

86 (4) Any person, firm, or corporation, or the agent of any
87 person, firm, or corporation, who denies or interferes with
88 admittance to, or enjoyment of, a public accommodation;
89 interferes with the renting, leasing, or purchasing of housing
90 accommodations; or otherwise interferes with the rights of an
91 individual with a disability or the trainer of a service animal
92 while engaged in the training of such an animal pursuant to
93 subsection (8), commits a misdemeanor of the second degree,
94 punishable as provided in s. 775.082 or s. 775.083.

95 (5) It is the policy of this state that an individual with
96 a disability be employed in the service of the state or
97 political subdivisions of the state, in the public schools, and
98 in all other employment supported in whole or in part by public
99 funds, and an employer may not refuse employment to such a
100 person on the basis of the disability alone, unless it is shown

Amendment No.1

101 that the particular disability prevents the satisfactory
102 performance of the work involved.

103 (6) An individual with a disability who is accompanied by
104 a service animal is entitled to full and equal advantages,
105 facilities, and privileges in all housing accommodations and is
106 entitled to rent, lease, or purchase, as other members of the
107 general public, any housing accommodations offered for rent,
108 lease, or other compensation in this state, subject to the
109 conditions and limitations established by law and applicable
110 alike to all persons.

111 (a) This section does not require any person renting,
112 leasing, or otherwise providing real property for compensation
113 to modify her or his property in any way or provide a higher
114 degree of care for an individual with a disability than for a
115 person who is not disabled.

116 (b) An individual with a disability who has a service
117 animal, ~~or~~ who obtains a service animal, or who is the trainer
118 of a service animal is entitled to full and equal access to all
119 housing accommodations provided for in this section, and such a
120 person may not be required to pay extra compensation for the
121 service animal. However, such a person is liable for any damage
122 done to the premises or to another person on the premises by
123 such an animal. A housing accommodation may request proof of
124 compliance with vaccination requirements.

125 (7) An employer covered under subsection (5) who
126 discriminates against an individual with a disability in
127 employment, unless it is shown that the particular disability
128 prevents the satisfactory performance of the work involved, or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1077 (2012)

Amendment No.1

129 | any person, firm, or corporation, or the agent of any person,
130 | firm, or corporation, providing housing accommodations as
131 | provided in subsection (6) who discriminates against an
132 | individual with a disability, commits a misdemeanor of the
133 | second degree, punishable as provided in s. 775.082 or s.
134 | 775.083.

135 | (8) Any person who trains ~~trainer~~ of a service animal,
136 | while engaged in the training of such an animal, has the same
137 | rights and privileges with respect to access to public and
138 | housing accommodations ~~facilities~~ and the same liability for
139 | damage as is provided for a person ~~these persons~~ described in
140 | subsection (3) accompanied by service animals.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1077 (2012)

Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Access Subcommittee
3 Representative Kriseman offered the following:

Amendment (with title amendment)

Between lines 14 and 15, insert:

7 Section 1. This act may be cited as the "Dawson and David
8 Caras Act".

T I T L E A M E N D M E N T

14 Remove line 2 and insert:

15 An act relating to service animals; providing a short title;
16 amending s.