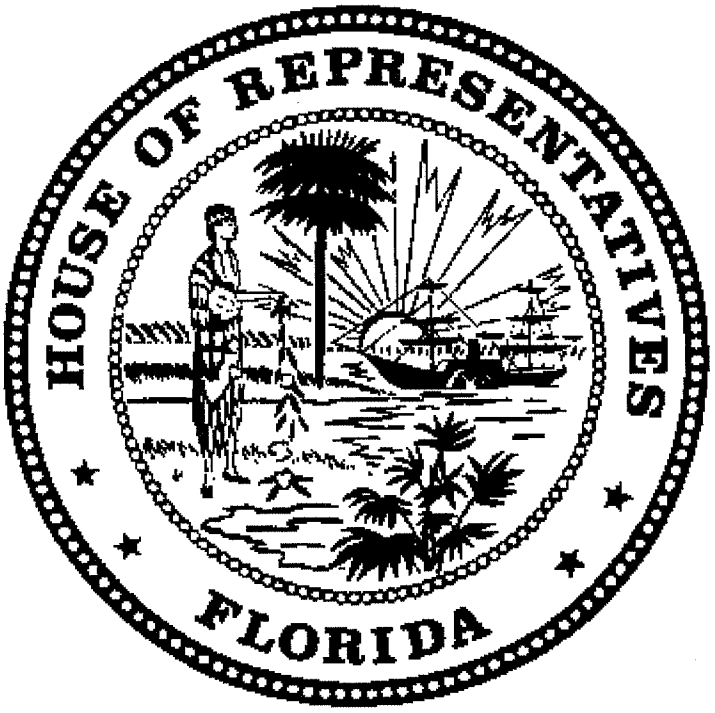

Civil Justice Subcommittee

Tuesday, January 31, 2012
8:00 AM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

official purposes upon approval of the department; or

7. Upon order of any court of competent jurisdiction.

Section 4. Section 743.067, Florida Statutes, is created to read:

743.067 Unaccompanied youths.—An unaccompanied youth, as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, as defined in s. 382.002, who is 16 years of age or older may petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

Section 5. This act shall take effect July 1, 2012.

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Tuesday, January 31, 2012 08:00 am

End Date and Time: Tuesday, January 31, 2012 11:30 am

Location: 404 HOB

Duration: 3.50 hrs

Consideration of the following bill(s):

CS/HB 99 Sexual Exploitation by Health & Human Services Access Subcommittee, Fresen, Nuñez
PCS for HB 149 -- Website Notice of Foreclosure Action
PCS for HB 451 -- Fraudulent Transfers
CS/HB 505 Mortgages by Insurance & Banking Subcommittee, Bernard
PCS for HB 701 -- Florida Evidence Code
CS/CS/HB 711 Sale or Lease of a County, District, or Municipal Hospital by Community & Military Affairs Subcommittee, Health & Human Services Quality Subcommittee, Hooper
HB 839 Abortion by Davis
HB 851 Natural Guardians by Schwartz
HB 1013 Residential Construction Warranties by Artiles
CS/HB 1077 Service Animals by Health & Human Services Access Subcommittee, Kriseman
HB 1123 Effects of Crimes by Steinberg
CS/HB 1163 Adoption by Health & Human Services Access Subcommittee, Adkins
HB 1209 Application of Foreign Law in Certain Cases by Metz
HB 1327 Abortion by Plakon
PCS for HB 1351 -- Homeless Youth

NOTICE FINALIZED on 01/27/2012 16:19 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 99 Sexual Exploitation
SPONSOR(S): Health & Human Services Access Subcommittee; Fresen; Nuñez and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee		Cary JMC	Bond NB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/HB 99 creates the Florida Safe Harbor Act to serve sexually exploited children. The bill::

- Amends definitions relating to abuse and sexual exploitation of children and licensure of facilities.
- Requires that children who have been sexually exploited and taken into custody by the Department of Children and Family Services (DCF) be placed in shelters and facilities that offer treatment for sexual exploitation.
- Requires the DCF to develop guidelines for serving sexually exploited children and to report to the Legislature on criteria used for, and success of, placing children in treatment facilities.
- Creates a program for the creation of safe houses for sexually exploited children.
- Increases the civil penalty for specified violations of prostitution from $500 to $5,000 and directs that the additional $4,500 be paid to the Department of Children and Family Services (DCF) to fund services for sexually exploited children.

DCF estimates that compliance with this bill will require a minimum of 200 specialized sexual exploitation beds initially, distributed across the state, requiring annual recurring funding of between $15.4 million and $23.1 million annually. Revenues raised by this bill potentially may be $2.1 million annually, but are likely significantly lower.

The bill provides an effective date of January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Safe Harbor Act

In 2008, the state of New York signed the "Safe Harbor for Exploited Youth Act" into law. The act requires local districts to provide crisis intervention services for sexually exploited children and decriminalizes child prostitution, recognizing these children as victims, rather than as criminals. The law is designed to provide counseling, emergency services and long term housing solutions for these children.[1] After the passage of this legislation various programs have become available to young children who have been sexually exploited, including GEMS in New York[2] and the Paul and Lisa Program in Connecticut.[3] Both of these programs have received recognition and grant funding through the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.[4]

Sexual Exploitation and Prostitution

Chapter 39, F.S., provides guidance for treating dependent children who are the subject of abuse, neglect or abandonment. Sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution or engage in a sexual performance. [5] Children who are allowed, encouraged or forced to engage in prostitution may be considered dependent by the courts[6] and delivered to DCF for shelter and services in or out of their caregiver's home.[7] The definition of abuse from sexual exploitation in Chapter 39, Florida Statutes, does not include children who willfully engage in prostitution.[8]

The prohibition against prostitution is without respect to the age of the person offering, committing, or engaging in prostitution.[9] A first offense for prostitution is a second-degree misdemeanor, a second offense is a first-degree misdemeanor, and a third or subsequent offense is a third-degree felony.[10] In addition to the criminal penalties, a civil penalty of $500 shall be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.[11]

Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second-degree felony.[12] However, a person commits a first degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.[13]

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[1] Staff Analysis, HB 99 (2012); Department of Children and Family Services.
[2] http://www.gems-girls.org/ (last visited 1/19/2012).
[3] http://www.paulandlisa.org/index.htm (last visited 1/19/2012).
[4] http://www.ojjdp.gov/programs/csec_program.html (last visited on 1/19/2012).
[5] Section 39.01(67)(g), F.S.
[6] Section 39.01(15), F.S.
[7] *See generally* s. 39.013, F.S., *which gives the circuit court exclusive original jurisdiction over a child found to be dependent.*
[8] Section 39.01(67)(g), F.S.
[9] Section 796.07, F.S.
[10] Section 796.07(4), F.S.
[11] Section 769.07(6), F.S.
[12] Section 796.045, F.S.
[13] *Id.*

Sex-Trafficking and Prostitution of Children

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.[14]

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.[15] In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests or detentions in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.[16]

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and is trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes, and are often provided counterfeit identification to use in the event of arrest. The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.[17]

Services Currently Available for Shelter

The Department of Children and Families (DCF) acknowledges that foster homes, group homes and shelters used in the child welfare system are lacking in services or trained staff to address victims of sexual exploitation. DCF notes that victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.[18]

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by DJJ.[19] These shelters are primarily voluntary and a court may order the child to stay in a shelter for a period no longer than 120 days.[20] Even under this longer stay option, only 10 shelters are available statewide.[21] The CINS program shelters are not available for children who have been adjudicated dependent.[22]

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[14] Id.; Richard J. Estes and Neil Alan Weiner, Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico, University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf (last visited 1/19/12)

[15] Staff Analysis, HB 99 (2012); Department of Children and Family Services; Francis T. Miko & Grace Park, Trafficking in Women and Children: The U.S. and International Response, p. 7 (Updated July 10, 2003), at http://www.usembassy.it/pdf/other/RL30545.pdf (last visited 1/19/12).

[16] Staff Analysis, HB 99 (2012); Department of Children and Family Services; Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study, p.22-26, University of New Hampshire Sage Publications.*

[17] Staff Analysis, HB 99 (2012); Department of Children and Family Services;Richard J. Estes and Neil Alan Weiner, Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico, pp. 7-8. University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf (last visited 1/19/12).

[18] Staff Analysis, HB 99 (2012); Department of Children and Family Services.

[19] *Id*

[20] Section 984.226(4), F.S.

[21] Staff Analysis, HB 99 (2012); Department of Children and Family Services.

[22] Section 984.226(5)(d), F.S.

Currently, DCF has identified 69 possible victims of sexual exploitation that are being served within the foster care system. Additionally, DCF has identified 55 children within the last year who have been arrested for prostitution and are currently being served through the Department of Juvenile Justice system.[23] The Florida Department of Law Enforcement (FDLE) reports that during 2009, 22 children were arrested under the age of 16 for prostitution pursuant to 796.07(2), F.S.[24]

Effect of Proposed Changes

Purpose and Intent Language

The bill is titled the Florida Safe Harbor Act. The bill amends s. 39.001, F.S., to provide legislative intent language as it relates to children that are victims of sexual exploitation. The bill recognizes that sexual exploitation is a problem in the state of Florida and nationwide, identifying that many of these children have a history of abuse and neglect and are often a hard population to serve. The legislative intent states that traffickers maintain control of these children through manipulation and force. The intent language also establishes goals of the Legislature in treating these children.

Definitions

The bill amends the following definitions in s. 39.01, F.S:

- "Abuse" is amended so that it includes sexual abuse.
- "Child who is found to be dependent" is amended to include children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will specifically include sexually exploited children within dependency actions.
- "Sexual abuse of a child" is amended to include participation in sex trafficking as an act of sexual exploitation of a child.

Shelter Placement

The bill amends s. 39.402, F.S., to require that a child who is in the custody of DCF and has been sexually exploited be placed in a shelter that offers treatment for sexually exploited children.

Disposition Hearings

The bill amends s. 39.521, F.S., to direct the court, when determining a child to be dependent, to place a child who is alleged to be sexually exploited in a facility that offers treatment for sexually exploited children.

Placement of Sexually Exploited Children

The bill creates s. 39.524, F.S., to require that any dependent child 6 years of age or older who has been found to be a victim of sexual exploitation be assessed for placement in a facility which is appropriate to serve sexually exploited children. This does not apply to children who have been removed from their caregiver's home, are receiving medical screenings or other proceedings pursuant to s. 39.407, F.S. The bill includes the manner in which the assessment is conducted as well as a requirement that the results of assessments be included in the judicial reviews for dependent children. The bill requires facilities serving sexually exploited children to report to DCF its success in achieving permanency for those children.

The bill requires DCF to address, in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, lead agencies and subcontract providers, local

[23] Staff Analysis, HB 99 (2012); Department of Children and Family Services.
[24] Staff Analysis. HB 99 (2012); Florida Department of Law Enforcement.

guardians ad litem, public defenders, state attorney's offices, and child advocates and service providers, the child welfare service needs of sexually exploited children as a component of the department's master plan. The bill also requires DCF to develop guidelines and a plan for serving children who have been sexually exploited. The plan must be submitted to the House of Representatives and the Senate by June 1, 2013, and address the assessment of estimated number of children that need services currently and over the next five years, options for treatment, recommendations of specific services needed, and recommendations concerning partnerships with law enforcement and other state and local government entities. The bill also provides that DCF may contract with local law enforcement to train officers working with sexually exploited children. Finally, DCF is required to report annually to the Legislature regarding the placement of children in facilities that provide treatment for sexually exploited children.

Safe House Services for Children Who Are Victims of Sexual Exploitation

The bill creates s. 409.1678, F.S., to provide the following definitions:

- "Child advocate" means an employee of a short-term safe house who shall accompany the child to court, meet with law enforcement and serve as a liaison between the safe house and the court. It is not clear from the bill how this advocate will coordinate with case management staff of community based care lead agencies and the guardian ad litem in their advocacy role with the court.
- "Safe house" means a living environment that has set aside gender-specific, separate and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The safe house is required to be licensed by DCF as a child-caring agency under s. 409.175, F.S.
- "Secure" means that a child is supervised 24 hours a day by staff who are awake while on duty.
- "Sexually exploited child" means a dependent child who has suffered sexual abuse, as defined in 39.01(67)(g), and is not eligible for federal benefits through the Trafficking Victims Protection Act.[25].
- "Short-term safe house" means a shelter operated by a licensed child-caring agency, including runaway youth center, gender specific, separate living quarters for sexually exploited children, and which provides care and counseling to exploited children.

The bill provides that the lead agency, not-for-profit agency or local government entity that is providing safe house services is responsible for security, counseling, residential care, food, clothing, etc., for children who are placed there. The bill also provides that a lead agency or other service provider providing a safe house program for children has specific legal authority to enroll the child in school, sign for driver's license, cosign loans and insurance for the child, sign for medical treatment and other such activities.

Licensure of Safe Houses and Short Term Safe Houses

The bill amends s. 409.175, F.S., to define "family foster home" and "residential child-caring agency" to include a "safe house" and a "short-term safe house". This addition to the current licensure definitions of foster homes and residential child caring agencies recognizes a safe house and a short term safe house as an option for placement of a dependent child who has been sexually exploited.

Civil Penalty Related to Prostitution

The bill amends s. 796.07, F.S., to increase the civil penalty that may be assessed against violators of specified provisions related to prostitution. Currently, a civil penalty of $500 must be assessed against a person who violates s. 796.07(2)(f), by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill increases the civil penalty to $5,000 and directs that $4,500 of the penalty be paid to DCF to fund services for sexually exploited children and the remaining $500 shall be paid to the circuit court administrator. The effect of this change creates a proposed

[25] 22 U.S.C. ss.7101

funding source for services for sexually exploited children. According to information provided by the Clerk of Courts, the collections of the fines by counties are not always certain and collection amounts vary by year.[26]

Eligibility for Victim Assistance Award

The Florida Crimes Compensation Act directs the Office of the Attorney General to administer the Crimes Compensation Trust Fund to provide financial assistance to victims of violent crimes and to provide information and referral services that can help victims cope with the effects of the crimes against them. The Crimes Compensation Trust Fund receives funding derived from court-ordered assessments from offenders, including a mandatory court cost, a surcharge on fines, restitution, and subrogation, when appropriate.[27] The Victim Assistance program is overseen by the Attorney General's office and provides financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury, to persons who are eligible.[28]

The bill amends s. 960.065, F.S., to allow victims of sexual exploitation pursuant to a definition in s.39.01 (67)(g), F.S., to be eligible for compensation awards.

B. SECTION DIRECTORY:

Section provides a title of Florida Safe Harbor Act.

Section 2 amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 3 amends s. 39.01, F.S., relating to definitions.

Section 4 amends s. 39.402, F.S., relating to placement in a shelter.

Section 5 amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 6 creates s. 39.524, F.S., relating to placement of sexually exploited children.

Section 7 creates s. 409.1678, F.S., relating to safe house services for children who are victims of sexual exploitation.

Section 8 amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, child-placing agencies; public records exemption.

Section 9 amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

Section 10 amends s. 960.065, F.S., relating to eligibility for awards.

Section 11 provides an effective date of January 1, 2013.

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[26] E-mail from Randy Long at the Clerk of Courts, received 11/16/2011. (on file with committee staff).
[27] Sections 938.03, 938.04, 775.0835, 775.089, F.S.
[28] http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument (last visited 1/20/2012).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate and likely minimal. See Fiscal Comments.

2. Expenditures:

   DCF estimates that funding required to comply with this bill is between $15.4 million and $23.1 million annually. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Collection of the Civil Penalty.

At line 443, the civil penalty related to solicitation of prostitution is increased by this bill from $500 to $5,000. The $4,500 increase is to be provided to DCF for services to sexually exploited children. According to information provided by the Clerk of Courts, while data is inconsistent from circuit to circuit, the collections of the fines by counties are not always certain and collection amounts vary by year.[29]

The current $500 penalty is collected by the clerks and distributed to the local drug courts. Collection statistics and rates are not kept on a statewide basis, and there is no reliable statewide data on what percentage of the current fee is collected. Assuming the statewide average collection rate for county court criminal fines is 38.5% [30] and an estimated 1,244 offenders annually,[31] yields potential revenue of $2,155,230 annually. However, the current collection rate related to this offense appears to be significantly lower than the overall collection rate for misdemeanor offenders. For instance, Miami-Dade County collected a total of $862 in FY 2010 and $415 in FY 2011 from such offenders.

Child Protection Expenditures

Lines 216-218 and 233-23 require that a dependent child who was sexually exploited must be placed in a facility that offers treatment for sexually exploited children. DCF estimates that compliance with this requirement of the bill will require a minimum of 200 specialized sexual exploitation beds initially, distributed across the state. That number would most likely rise after the bill is passed due to better identification of possible sexual exploitation victims, as there may be as many as 300 to 800 victims annually. [32] DCF provides the following information:

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[29] E-mail from Randy Long at the Clerk of Courts, received 11/16/2011. (on file with committee staff).
[30] Florida Association of Court Clerks/Comptrollers, Collection Rate Analysis, November 2011.
[31] Florida Department of Law Enforcement (FDLE) reports that in the last 10 years there were 12,441 charges under s. 796.07(2)(f), F.S., according to an e-mail from FDLE staff to Civil Justice Subcommittee staff (on file with committee staff).
[32] Staff Analysis of HB 99 (2012); Department of Children and Family Services, dated September 15, 2011.

If the estimate number of identified victims falls within the estimated annual 200-300 range that would mean that in approximately 2 years there is the potential for a minimum additional annual outlay of $12,410,000 to $18,615,000 in additional funds to meet the intensive service needs of this population in a highly specialized treatment environment.[33]

The bill creates an additional cost to the state beyond placement. Any child who spends at least 6 months living in the foster care system before his or her 18th birthday is eligible for financial assistance up to the age of 23 through independent living transition services, as set forth in s. 409.1451, F.S. Since most victims are identified between the ages of 16 and 17 years old, and most residential placement programs assist victims for 12 to 18 months, there is a strong possibility that most identified victims will become eligible for funding under the program. The maximum monthly stipend is $1254 per month for a victim fully-enrolled in full time educational program. If there are 200-300 victims per year to age out of the foster care system, DCF estimates an additional need of approximately $3,000,000 to $4,500,000 per year would be required to fund this program.[34]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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 bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Funding for drug courts come from many different sources, including from a civil penalty for violations of s. 796.07(2)(f), F.S. (which is solicitation of prostitution). The bill increases the civil penalty to $5,000, with $4,500 of that going to DCF to fund services for sexually exploited children. However, as drafted the bill requires monies collected to be split pro rata between services for sexually exploited children and drug courts. In cases where less than the maximum penalty is collected from an individual offender, drug court funding from this source will be reduced by 90%.

Section 39.01(15)(g), F.S., as amended by this bill, provides that a finding by the court that a child has been sexually exploited automatically makes the child a dependent of the court, even if the caregiver had no part in the exploitation. The current wording appears to require the court to put the child in dependent status even if there is a current caregiver, unless the current caregiver is a parent, legal custodian, or responsible adult relative.

Section 409.1678(1)(a), F.S. provides for a definition of "child advocate," requiring the advocate to accompany the child to all court appearances. It is not clear how this advocate will coordinate with case management staff of community based care lead agencies and the Guardian ad Litem, which often already represent the child's interests in advocacy efforts.

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[33] *Id.*
[34] *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGE

On December 7, 2011, the Health and Human Services Access Subcommittee adopted a strike all amendment to House Bill 99.

The strike all amendment makes the following changes to the bill:

- Amends the definition of abuse to clarify that it includes sexual abuse. The definition of a child who is dependent is amended to recognize sexual exploitation as one of the possible findings of the court. Further, the bill clarifies that sexual exploitation includes sex trafficking.
- Removes rebuttable presumption language that law enforcement must deliver a child to a safe house if one is available. The amendment keeps intact law enforcements current process for addressing these children.
- Requires that children who have been sexually exploited be placed in shelters and facilities that offer treatment for sexually exploited children.
- Requires the Department of Children and Families (DCF) to develop guidelines for serving sexually exploited children and to produce reports to the Legislature.
- The amendment adds the term "safe house" and "short term safe house" to s. 409.175, F.S., relating to licensure of facilities.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

A bill to be entitled

An act relating to sexual exploitation; providing a short title; amending s. 39.001, F.S.; providing legislative intent and goals; conforming cross-references; amending s. 39.01, F.S.; revising the definitions of the terms "abuse," "child who is found to be dependent," and "sexual abuse of a child"; amending ss. 39.402 and 39.521, F.S.; requiring a child who has been or is alleged to have been sexually exploited to be placed in a facility that offers treatment; creating s. 39.524, F.S.; requiring assessment of certain children for placement in a facility that treats sexually exploited children; providing for use of such assessments; requiring facilities to report to the Department of Children and Family Services their success in achieving permanency for children who have been sexually exploited; requiring the department to address child welfare service needs of sexually exploited children as a component of its master plan; requiring the department to develop guidelines for treating sexually exploited children; authorizing the department, to the extent that funds are available, to contract with an appropriate not-for-profit agency having experience working with sexually exploited children to train law enforcement officials who are likely to encounter such children; requiring certain reports to the Legislature; creating s. 409.1678, F.S.; providing

definitions; providing duties, responsibilities, and requirements for safe houses and their operators; amending s. 409.175, F.S.; revising the definitions of the terms "family foster home" and "residential child-caring agency" to include safe houses; amending s. 796.07, F.S.; increasing the civil penalty for soliciting another to commit prostitution or related acts; providing for disposition of proceeds; amending s. 960.065, F.S.; allowing victim compensation for sexually exploited children; providing an effective date.

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

Section 1. This act may be cited as the "Florida Safe Harbor Act."

Section 2. Subsections (4) through (12) of section 39.001, Florida Statutes, are renumbered as subsections (5) through (13), respectively, paragraph (c) of present subsection (7) and paragraph (b) of present subsection (9) are amended, and a new subsection (4) is added to that section, to read:

39.001 Purposes and intent; personnel standards and screening.—

(4) SEXUAL EXPLOITATION SERVICES.—

(a) The Legislature recognizes that child sexual exploitation is a serious problem nationwide and in this state. Many of these children have a history of abuse and neglect. Traffickers maintain control of child victims through

psychological manipulation, force, drug addiction, or the exploitation of economic, physical, or emotional vulnerability. Children exploited through the sex trade often find it difficult to trust adults because of their abusive experiences. These children make up a population that is difficult to serve and even more difficult to rehabilitate.

(b) The Legislature establishes the following goals for the state related to the status and treatment of sexually exploited children in the dependency process:

1. To ensure the safety of children.

2. To provide for the treatment of such children.

3. To sever the bond between exploited children and traffickers and to reunite these children with their families or provide them with appropriate guardians.

4. To enable such children to be willing and reliable witnesses in the prosecution of traffickers.

(c) The Legislature finds that sexually exploited children need special care and services, including counseling, health care, substance abuse treatment, educational opportunities, and a safe environment secure from traffickers.

(d) It is the intent of the Legislature that this state provide such care and services to all sexually exploited children in this state who are not otherwise receiving comparable services, such as those under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(8) ~~(7)~~ OFFICE OF ADOPTION AND CHILD PROTECTION.—

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state

plan established under subsection (9) ~~(8)~~ and revise and update the state plan as necessary.

2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

d. Efforts to promote adoption.

e. Postadoptive services to support adoptive families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January

1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.

c. A summary of the child abuse prevention data collected and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.

d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.

e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.

6. Work with the direct-support organization established under s. 39.0011 to receive financial assistance.

(10) ~~(9)~~ FUNDING AND SUBSEQUENT PLANS.—

(b) The office and the other agencies and organizations listed in paragraph (9)(a) ~~(8)(a)~~ shall readdress the state plan

and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report shall be submitted to update the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state plan for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required above.

Section 3. Subsections (2) and (15) and paragraph (g) of subsection (67) of section 39.01, Florida Statutes, are amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual <u>abuse,</u> injury<u>,</u> or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes

does not in itself constitute abuse when it does not result in harm to the child.

(15) "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care; ~~or~~

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or

(g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate

supervision and care.

(67) "Sexual abuse of a child" means one or more of the following acts:

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; ~~or~~

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of sex trafficking as provided in s. 796.035.

Section 4. Subsection (2) of section 39.402, Florida Statutes, is amended to read:

39.402 Placement in a shelter.—

(2) A child taken into custody may be placed or continued in a shelter only if one or more of the criteria in subsection (1) apply ~~applies~~ and the court has made a specific finding of fact regarding the necessity for removal of the child from the home and has made a determination that the provision of appropriate and available services will not eliminate the need for placement. If a child has been sexually exploited, the child shall be placed in a facility that offers treatment for sexually exploited children.

Section 5. Paragraph (d) of subsection (3) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(3) When any child is adjudicated by a court to be dependent, the court shall determine the appropriate placement for the child as follows:

(d) If the child cannot be safely placed in a nonlicensed placement, the court shall commit the child to the temporary legal custody of the department. Such commitment invests in the department all rights and responsibilities of a legal custodian. The department shall not return any child to the physical care and custody of the person from whom the child was removed, except for court-approved visitation periods, without the approval of the court. Any order for visitation or other contact must conform to the provisions of s. 39.0139. If a child is alleged to have been sexually exploited, the child shall be placed in a facility that offers treatment for sexually exploited children. The term of such commitment continues until terminated by the court or until the child reaches the age of 18. After the child is committed to the temporary legal custody of the department, all further proceedings under this section are governed by this chapter.

Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the

powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 6. Section 39.524, Florida Statutes, is created to read:

39.524 Placement of sexually exploited children.—

(1) Except as provided in s. 39.407, any dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(67)(g) must be assessed for placement in a facility that is appropriate to serve sexually exploited children. The assessment shall be conducted by the department or its agent and shall incorporate and address current and historical information from any law enforcement reports; psychological testing or evaluation that has occurred; current and historical information from the guardian ad litem, if one has been assigned; current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and any other information concerning the availability and suitability of appropriate placement.

(2) The results of the assessment described in subsection (1) and the actions taken as a result of the assessment must be included in the next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference

regarding the stability of the placement and the permanency planning for the child.

(3) Each facility shall report to the department its success in achieving permanency for children who have been sexually exploited and placed by the department at intervals that allow the current information to be provided to the court at each judicial review for the child.

(4)(a) The department shall address the child welfare service needs of sexually exploited children as a component of the department's master plan. This determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, lead agencies and subcontract providers, local guardians ad litem, public defenders, state attorney's offices, and child advocates and service providers who work directly with sexually exploited youth.

(b) The department shall develop guidelines for serving children who have been sexually exploited and shall submit a report to the President of the Senate and the Speaker of the House of Representatives detailing the department's master plan and guidelines by June 1, 2013. At a minimum, the plan must include:

1. The estimated number of children who have been sexually exploited who are in need of services currently and over the next 5 years.

2. Options for treating children who have been sexually exploited and recommendations on the best types of care for these children and reunification with the child's family, if

appropriate.

3. Recommendations of specific services needed, including, but not limited to, assessment, security, and crisis and behavioral health services for children who have been sexually exploited.

4. Recommendations concerning partnerships with law enforcement and other state and local government entities to best serve children who have been sexually exploited.

(c) The department may, to the extent that funds are available and in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency having experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children.

(5) By December 1 of each year, the department shall report to the Legislature on the placement of children in facilities that provide treatment for sexually exploited children during the year, including the criteria used to determine the placement of children, the number of children who were evaluated for placement, the number of children who were placed based upon the evaluation, and the number of children who were not placed.

Section 7. Section 409.1678, Florida Statutes, is created to read:

409.1678 Safe house services for children who are victims of sexual exploitation.—

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

(a) "Child advocate" means an employee of a short-term safe house who has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances, meetings with law enforcement, and the state attorney's office and shall serve as a liaison between the short-term safe house and the court.

(b) "Safe house" means a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure residential facility with staff members awake 24 hours a day. A safe house shall be operated by a licensed family foster home or residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441. Each facility must be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175 and must be accredited by July 1, 2013. A safe house serving children who have been sexually exploited must have available staff or contract personnel with the clinical expertise, credentials, and training to provide services identified in paragraph (2)(a).

(c) "Secure" means that a child is supervised 24 hours a day by staff members who are awake while on duty.

(d) "Sexually exploited child" means a dependent child who has suffered sexual exploitation as defined in s. 39.01(67)(g)

and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(e) "Short-term safe house" means a shelter operated by a licensed residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441, that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children. In addition to shelter, the house shall provide services and care to sexually exploited children, including food, clothing, medical care, counseling, and appropriate crisis intervention services at the time they are taken into custody by law enforcement or the department.

(2)(a) The lead agency, not-for-profit agency, or local government entity providing safe-house services is responsible for security, crisis intervention services, general counseling and victim-witness counseling, a comprehensive assessment, residential care, transportation, access to behavioral health services, recreational activities, food, clothing, supplies, infant care, and miscellaneous expenses associated with caring for sexually exploited children; for necessary arrangement for or provision of educational services, including life skills services and planning services to successfully transition residents back to the community; and for ensuring necessary and appropriate health and dental care.

(b) This section does not prohibit any provider of these services from appropriately billing Medicaid for services rendered, from contracting with a local school district for educational services, or from obtaining federal or local funding

for services provided, as long as two or more funding sources do not pay for the same specific service that has been provided to a child.

(c) The lead agency, not-for-profit agency, or local government entity providing safe-house services has the legal authority for children served in a safe-house program, as provided in chapter 39 or this chapter, as appropriate, to enroll the child in school, to sign for a driver license for the child, to cosign loans and insurance for the child, to sign for medical treatment of the child, and to authorize other such activities.

Section 8. Paragraphs (e) and (j) of subsection (2) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(2) As used in this section, the term:

(e) "Family foster home" means a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes, safe houses, and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home.

(j) "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, short-term safe houses, safe houses, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.

Section 9. Paragraph (f) of subsection (2) of section 796.07, Florida Statutes, is republished, and subsection (6) of that section is amended, to read:

796.07 Prohibiting prostitution and related acts~~, etc.; evidence; penalties; definitions~~.—

(2) It is unlawful:

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(6) A person who violates paragraph (2)(f) shall be assessed a civil penalty of $5,000 ~~$500~~ if the violation results in any judicial disposition other than acquittal or dismissal. Of the proceeds from each penalty ~~penalties~~ assessed under this subsection, $500 shall be paid to the circuit court

administrator for the sole purpose of paying the administrative costs of treatment-based drug court programs provided under s. 397.334 and $4,500 shall be paid to the Department of Children and Family Services for the sole purpose of funding services for sexually exploited children.

Section 10. Section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this chapter:

(a) A victim.

(b) An intervenor.

(c) A surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor.

(d) Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.

(2) Any claim filed by or on behalf of a person who:

(a) Committed or aided in the commission of the crime upon which the claim for compensation was based;

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based;

(c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

(d) Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal under s.

775.084; or

(e) Has been adjudicated guilty of a forcible felony offense as described in s. 776.08~~,~~

is ineligible ~~shall not be eligible~~ for an award.

(3) Any claim filed by or on behalf of a person who was in custody or confined, regardless of adjudication, in a county or municipal facility, a state or federal correctional facility, or a juvenile detention, commitment, or assessment facility at the time of the crime upon which the claim is based, who has been adjudicated as a habitual felony offender under s. 775.084, or who has been adjudicated guilty of a forcible felony offense as described in s. 776.08, is ineligible ~~shall not be eligible~~ for an award. Notwithstanding the foregoing, upon a finding by the Crime Victims' Services Office of the existence of mitigating or special circumstances that would render such a disqualification unjust, an award may be approved. A decision that mitigating or special circumstances do not exist in a case subject to this section does ~~shall~~ not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57.

(4) Payment may not be made under this chapter if the person who committed the crime upon which the claim is based will receive any direct or indirect financial benefit from such payment, unless such benefit is minimal or inconsequential. Payment may not be denied based on the victim's familial relationship to the offender or based upon the sharing of a residence by the victim and offender, except to prevent unjust enrichment of the offender.

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(67)(g).

Section 11. This act shall take effect January 1, 2013.

PCS for HB 149

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 149 Website Notice of Foreclosure Action
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary JMC	Bond YTB

SUMMARY ANALYSIS

There are two points in a foreclosure case in which the plaintiff may have to publish legal notice in a local newspaper:

- If any defendant cannot be found for personal service, a "Notice of Action" must be published.
- If the foreclosing plaintiff prevails, notice of the sale must be published.

The bill provides for these legal notices to be published on the internet rather than in a local newspaper. The bill provides for selection of a vendor by each clerk of the court, and includes requirements for the bidding, contract, and operation of the website.

The bill does not appear to have a fiscal impact on state or local governments. The bill limits the cost of placing such legal advertisements at $100, which represents a substantial savings to foreclosing parties and a substantial loss of revenue to local newspapers.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The plaintiff in a foreclosure action, as with any other civil action, must provide notice of the proceeding to each defendant. A plaintiff must first attempt service of original process by personal service or by leaving the initial pleading at the defendant's usual place of abode with any person residing there who is 15 years old or older.[1] Substitute service may be made on the defendant's spouse at any place in the county if they are currently residing together.[2] When the plaintiff attempts to make personal and substitute service but fails, the plaintiff may serve process through constructive notice by publication.[3]

Service by publication in a foreclosure action is governed by a separate statute. In counties with more than 1 million total population as determined by the 2000 official census, any notice of publication must be made in a newspaper that has been entered as a periodical matter at a post office in the county in which the newspaper is published. The paper must be published at least five days per week and must have been in existence for at least one year.[4]

For counties with a population of a million or less, the same constructive service of process rules apply as would apply to any other civil actions: the newspaper must be published at least weekly and must be at least 25% written in English and must contain information of a public character or of interest or of value to the residents or owners of property in the county, or of interest or of value to the general public.[5] The costs of such advertisements vary significantly by market.

Florida is a judicial foreclosure state, meaning that foreclosure actions must be litigated and a judge must approve the sale of foreclosed property. Sections 45.031 and 702.035, F.S., set forth requirements for the judicial sale, including publication requirements.

Effects of the Bill

The bill creates s. 50.015, F.S., providing for online legal publication, advertisement, notice of sale, and notice of foreclosure in lieu of publication in any other form of media. The online publication must be made on a website and the site must meet certain criteria:

- The website must be publically accessible and approved by the Florida Clerks of Court Operations Corporation for legal publication, advertisement, notice of sale, and notice of foreclosure.
- A legal publication, advertisement, notice of sale, or notice of foreclosure must be posted for 90 days unless otherwise provided by this bill.
- The website must maintain a searchable archive for each legal publication, advertisement, notice of sale, or notice of foreclosure for 10 years following the first day of posting.
- A link to the website must be displayed on the homepage of each clerk of court in a conspicuous location.
- The website must maintain a customer support line with live electronic communication and telephone support, available during normal business hours.
- All information other than the legal publication, advertisement, notice of sale, or notice of foreclosure must be in both the English and Spanish language.
- The website must post online tutorials for users.

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[1] Section 48.031(1)(a), F.S.
[2] Section 48.031(2)(a), F.S.
[3] Section 49.021, F.S.
[4] Section 702.035, F.S.
[5] Section 50.011, F.S.

- The website must be maintained on a data center that is certified compliant with the Statement on Auditing Standards No. 70.
- A user may not be required to register with the website or be charged for access to a legal publication, advertisement, notice of sale, or notice of foreclosure.

Each clerk of court and deputy clerk must be provided 24-hour access at no charge to all records relevant to the legal publication, advertisement, notice of sale, or notice of foreclosure through a fully secure portal accessed by a unique user name and password. Additionally, each circuit and appellate judge and their respective staffs must have access to all documents published or maintained on the website. The website must develop and maintain a disaster recovery plan for the website and provide the plan to each clerk of court and chief judge.

The bill requires the website provider to publish affidavits electronically in substantial conformity with the law as currently provided, and may use an electronic notary seal. Where a legal publication effects constructive service of process, it must be posted within 3 business days, excluding court holidays, and be continued for 90 consecutive days. An advertisement, notice of sale, or notice of foreclosure must be posted within 3 business days after the date the foreclosure sale is set, and continue for 10 days after the foreclosure sale or 90 consecutive days, whichever is longer. If the defendant refuses to accept or evades service or the process server is not able to effect service, the legal publication or advertisement must be posted on the website beginning on the date the affidavit of nonservice is posted. Any legal publication, advertisement, notice of sale, or notice of foreclosure must conform substantially with current law.

Each clerk of court may contract with a single website for a one-year term. The provider will be chosen by competitive sealed bids capped at $100 per advertisement. The clerk must select the lowest bid. Contracts must provide:

- That the clerk of courts retains title and ownership of all data.
- That the clerk may inspect the physical plant, books and records of the provider at any time without notice.
- That the provider must physically operate within the state, excluding any subcontracts for the purpose of emergency data backup service.
- That the clerk may terminate the contract without notice upon finding a material breach by the provider.
- That the provider is subject to the Florida public records laws.
- That advertisements on the website (other than legal advertisements under ss. 45.031 or 702.035, F.S.) must not exceed 20% of any website and must contain a disclaimer that such advertisements are not endorsed by the clerk of court. Such advertisements must not place a tracking cookie on the computer of the website visitor.

The bill amends s. 702.035, F.S. to conform that section with the provisions of this bill.

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

B. SECTION DIRECTORY:

Section 1 creates s. 50-015, F.S., relating to legal publication, advertisement, notice of sale, or notice of foreclosure on a publically available website.

Section 2 amends s. 702.035, F.S., relating to legal notice concerning foreclosure proceedings.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to cap the cost of a legal publication, advertisement, notice of sale, or notice of foreclosure at $100. There is currently no such service in place to estimate how low the actual bids may end up being, but even assuming the maximum bid, individuals posting a legal publication, advertisement, notice of sale, or notice of foreclosure would realize significant savings in most jurisdictions. Currently, such postings must be made in periodicals and the cost varies by market, so it is difficult to make a state-wide generalization of how much money might be saved by this bill, but it is expected to be significant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to 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 bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that advertisements "shall not exceed 20% of any webpage" but does not clarify that legal advertisements are not included in that calculation. Also, with this language, such advertisements could take up the entire front page until the user scrolls down to find the legal publication, advertisement, notice of sale, or notice of foreclosure section.

The bill appears to require clerks of court to accept the lowest bid, regardless of the reputation of the responsibility of the bidder, unless two or more bids tie for low bid.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to website notice of foreclosure action; creating s. 50.015, F.S.; providing that a legal publication, advertisement, notice of sale, or notice relating to a foreclosure proceeding may be placed on a publicly accessible Internet website selected by the clerk of court in lieu of publication in any other form of media; providing criteria for the publicly accessible Internet website; providing for user access to the website; providing for access by clerks of court and chief judges; providing requirements for the website provider; providing posting requirements; authorizing the clerk of court to put out for bids a contract with a publicly accessible Internet website provider; providing for terms in the contract; providing definitions; amending s. 702.035, F.S.; providing for notice of foreclosure to be posted on a publicly accessible Internet website; providing an effective date.

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

Section 1. Section 50.015, Florida Statutes, is created to read:

50.015 Legal publication, advertisement, notice of sale, or notice relating to foreclosure proceeding; publicly accessible website.—

(1) A legal publication, advertisement, notice of sale as provided in s. 45.031, and notice relating to a foreclosure proceeding as provided in s. 702.035 may be placed on a publicly accessible website pursuant to this section in lieu of publication in any other form of media.

(2) The publicly accessible Internet website must:

(a) Be approved for legal publication, advertisement, notice of sale, and notice relating to a foreclosure proceeding by the Florida Clerks of Court Operations Corporation.

(b)1. Maintain a legal publication, advertisement, notice of sale as provided in s. 45.031, or notice relating to a foreclosure proceeding as provided in s. 702.035 for 90 days following the first day of posting or for as long as provided in paragraph (6)(b) or paragraph (6)(c).

2. Maintain a searchable archive of all legal publications, advertisements, notices of sale, and notices relating to foreclosure proceedings previously posted on the publically accessible website as provided in subparagraph 1. for 10 years following the first day of posting.

(c) A link to the website must be displayed on the homepage of the clerk of court in a conspicuous location with the heading "Electronic Legal Publications and Legal Notices Related to Foreclosures."

(d) Maintain a customer support line by the website hosting company with respect to technical issues that may arise with the website, with live electronic communication and telephone support provided by the website provider between the

hours of 8 a.m. and 6 p.m., E.S.T., Monday through Friday, excluding legal holidays.

(e) Post information other than the legal publication, advertisement, notice of sale, or notice relating to a foreclosure proceeding in English and Spanish.

(f) Post online tutorials for users.

(g) Be maintained on a data center that is compliant with the Statement on Auditing Standards No. 70. The website provider shall provide a certificate of compliance to the Florida Clerks of Court Operations Corporation.

(3) A user may not be required to register with the website and may not be charged for access to active or archived postings of legal publications, advertisements, notices of sale, or notices relating to foreclosure proceedings that are posted as provided in subparagraphs (2)(b)1. and 2.

(4)(a) Each clerk of court and deputy clerk shall have 24-hour access at no charge to all records relevant to the legal publications, advertisements, notices of sale, and notices relating to foreclosure proceedings in the county of that clerk of court through a fully secure portal accessed by a distinct user name and password.

(b) Each circuit judge, appellate judge, and their staff, shall have access at no charge to all documents published or maintained on the website.

(5) The website provider shall develop and maintain on file, and provide to the clerk of court and the chief judge of the judicial circuit, a disaster recovery plan for the website.

(6)(a) The website provider shall publish its affidavits electronically in substantial conformity with ss. 50.041 and 50.051, and may use an electronic notary seal.

(b) Legal publications to effect constructive service of process under chapter 49 shall be posted within 3 business days, excluding court holidays, after issuance of a notice of action by the clerk of court or judge and shall continue for at least 90 consecutive days.

(c) Advertisements or notices of sale as provided in s. 45.031, including notices relating to foreclosure proceedings as provided in s. 702.035, shall be posted within 3 business days, excluding court holidays, after the date for the foreclosure sale is set, and shall continue for 10 days after the foreclosure sale or for 90 consecutive days, whichever period is longer. This paragraph does not affect the remaining provisions in s. 45.031 except as provided herein.

(d) If the defendant refuses to accept or evades service or if the agent serving process is unable to effect service, legal publication or advertisement shall be posted on the website beginning on the date that the affidavit of nonservice is recorded and shall continue through the conclusion of the action or for 90 consecutive days, whichever period is longer.

(7) The legal publication, advertisement, or notice of sale as provided in s. 45.031, including the notice relating to a foreclosure proceeding as provided in s. 702.035, on the website must conform substantially with the requirements of s. 50.011, unless inconsistent with this section.

(8) Each clerk of the circuit court may contract with a single publicly accessible Internet website provider for legal publication, advertisement, or notice of sale as provided in s. 45.031, including notice relating to a foreclosure proceeding as provided in s. 702.035. Each contract shall be for a one year term, and shall provide:

(a) That title and ownership of all data is and shall remain in the clerk of the circuit court.

(b) For the right of the clerk to inspect the physical plant, books and records of the provider at any time without notice.

(c) That the provider will operate in a physical location within the state. However, this requirement shall not preclude the provider from subcontracting with a provider for emergency data backup services maintained in another state.

(d) For termination by the clerk without notice upon a finding of material breach of the contract.

(e) That the provider is subject to the public records laws of the state.

(f) That advertisements shall not exceed 20% of any webpage, shall clearly be indicated as advertisements, shall clearly indicate that such advertisements are not endorsed by the clerk of the court, and that advertisements shall not place a tracking cookie on the computer of a website visitor.

(9) The provider shall be chosen by competitive sealed bids. The maximum bid shall be $100 per advertisement. The clerk shall, from all qualified bidders, determine the lowest bid based on the fees per legal advertisement. The winning bid

shall be the lowest offered fee per advertisement. If the two lowest bidders have identical bids, the clerk shall select the most responsible bidder. Two or more clerks may conduct a joint procurement.

(10) For purposes of this section, the term:

(a) "Website hosting company" means the company that hosts the web server on which the website of the provider resides.

(b) "Website provider" means the company or individual contracted by the Secretary of State to provide the service of maintaining the website content.

Section 2. Section 702.035, Florida Statutes, is amended to read:

702.035 Legal notice concerning foreclosure proceedings.—Whenever a legal advertisement, publication, or notice relating to a foreclosure proceeding is required to be placed in a newspaper or posted on a publicly accessible Internet website as provided in s. 50.015, it is the responsibility of the petitioner or petitioner's attorney to place such advertisement, publication, or notice. Unless posted on a publicly accessible Internet website, for counties with more than 1 million total population as reflected in the 2000 Official Decennial Census of the United States Census Bureau as shown on the official website of the United States Census Bureau, any notice of publication required by this section shall be deemed to have been published in accordance with the law if the notice is published in a newspaper that has been entered as a periodical matter at a post office in the county in which the newspaper is published, is published a minimum of 5 days a week, exclusive of legal

holidays, and has been in existence and published a minimum of 5 days a week, exclusive of legal holidays, for 1 year or is a direct successor to a newspaper that has been in existence for 1 year that has been published a minimum of 5 days a week, exclusive of legal holidays. The advertisement, publication, or notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by the clerk of the court. Only the actual costs charged by the newspaper or Internet website provider for the advertisement, publication, or notice may be charged as costs in the action.

Section 3. This act shall take effect July 1, 2012.

PCS for HB 451

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 451 Fraudulent Transfers
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary JMC	Bond NB

SUMMARY ANALYSIS

The Uniform Fraudulent Transfer Act provides a creditor with the means to reach assets a debtor has transferred to another person. One form of fraudulent transfer is a transfer made without receiving a reasonably equivalent value in exchange for the transfer. Most fraudulent transfers may be recovered from the recipient up to 4 years after the transfer. A gift to charity is a transfer made without receiving a reasonably equivalent value in exchange.

The bill reduces the limitations period for recovery from a charity from 4 years to 2 years.

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

The bill provides an effective date of upon becoming a law and applies to any charitable contributions made after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 726, F.S., is Florida's Uniform Fraudulent Transfer Act (hereinafter referred to as the "Act"), It is based on the 1984 model act of the same name.[1] According to the National Conference of Commissioners on Uniform State Laws,

> The Uniform Act was a codification of the "better" decisions applying the Statute of 13 Elizabeth. See Analysis of H.R. 12339, 74th Cong., 2d Sess. 213 (1936). The English statute was enacted in some form in many states, but, whether or not so enacted, the voidability of fraudulent transfer was part of the law of every American jurisdiction. Since the intent to hinder, delay, or defraud creditors is seldom susceptible of direct proof, courts have relied on badges of fraud. The weight given these badges varied greatly from jurisdiction, and the Conference sought to minimize or eliminate the diversity by providing that proof of certain fact combinations would conclusively establish fraud. In the absence of evidence of the existence of such facts, proof of a fraudulent transfer was to depend on evidence of actual intent. An important reform effected by the Uniform Act was the elimination of any requirement that a creditor have obtained a judgment or execution returned unsatisfied before bringing an action to avoid a transfer as fraudulent.[2]

The Act provides a "claw back", whereby a creditor who is a victim of fraud may have some recourse against the recipient of a transfer from the debtor if the transfer was made with actual intent to hinder, delay, or defraud any creditor of the debtor, or if the transfer was made without receiving reasonably equivalent value in exchange for the transfer.[3] If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.[4] The Act provides a four-year statute of limitations on such an action.[5]

There is no exception in the Act for conveyances accepted by charitable organizations in good faith. When a charity accepts a donation in good faith, it can create a great hardship to the charity to be forced to relinquish funds if the funds have already been obligated or spent.[6]

Effects of the Bill

The bill amends s. 726.102, F.S., to add a definition of "qualified charity" to mean an entity described as such in the federal Internal Revenue Code.

The bill amends s. 726.110, F.S., to create a two year statute of limitations for a creditor to bring an action against the recipient of a fraudulent transfer where the transfer was accepted by a qualified charity in good faith.

The bill provides an effective date upon becoming a law, and applies to any charitable contribution made on or after the effective date.

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[1] Chapter 87-79, L.O.F.
[2] National Conference of Commissioners of Uniform State Laws, Uniform Fraudulent Transfer Act Prefatory Note
[3] Section 726.105, F.S.
[4] Section 726.108, F.S.
[5] Section 726.110, F.S. In limited circumstances, when the transfer was made to an insider for an antecedent debt, with other conditions, there is a one-year statute of limitations.
[6] David Donell and Eric Rieder, *Charities Face Greater Threat From Ponzi Schemes Than Lost Investments*, Huffington Post Business, http://www.huffingtonpost.com/david-donell/charities-face-greater-th_b_223088.html (last visited January 28, 2012).

B. SECTION DIRECTORY:

Section 1 amends s. 726.102, F.S., relating to definitions.

Section 2 amends s. 726.110, F.S., relating to extinguishment of a cause of action.

Section 3 provides an effective date of upon becoming a law and dates of application.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Qualified charities will be able to keep charitable donations at the expense of creditors and victims of the person who made the fraudulent transfer if the cause of action is not brought within the shorter statute of limitation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to 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 bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to fraudulent transfers; amending s. 726.102, F.S.; defining the term "qualified charity" for purposes of the Uniform Fraudulent Transfer Act; amending s. 726.110, F.S.; limiting the period in which a charitable contribution made to a qualified charity may be avoided; providing an effective date.

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

Section 1. Subsections (12) and (13) of section 726.102, Florida Statutes, are renumbered as subsections (13) and (14) respectively, and subsection (12) is added to that section, to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(12) "Qualified charity" means an entity described in 26 U.S.C. section 501(c)(3).

Section 2. Section 726.110, Florida Statutes, is amended to read:

726.110 Extinguishment of cause of action.—

(1) Except as provided in subsection (2), a cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought:

(a) ~~(1)~~ Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) ~~(2)~~ Under s. 726.105(1)(b) or s. 726.106(1), within 4

years after the transfer was made or the obligation was incurred; or

(c) ~~(3)~~ Under s. 726.106(2), within 1 year after the transfer was made or the obligation was incurred.

(2) Notwithstanding paragraph (1)(b), a cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought under s. 726.105(1)(b) within 2 years after the transfer was made or the obligation was incurred if the transfer was a charitable contribution made to a qualified charity and accepted by that qualified charity in good faith.

Section 3. This act shall take effect upon becoming a law, and shall apply to any charitable contribution made on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 505 Mortgages
SPONSOR(S): Insurance & Banking Subcommittee and Bernard
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Gault	Cooper
2) Civil Justice Subcommittee		Cary JMC	Bond NB
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Mortgagors may request and receive, within 14 days, information about their loan from the mortgagee. The bill allows a record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, to also request and receive this information.

To receive information about the mortgage, the bill requires a record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, to provide an instrument proving title or lawful authorization. The mortgagee must then provide the total unpaid balance on a per-day basis, but may also include additional information.

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

The bill becomes effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Cancellation of Mortgages

Current law specifically allows the person who takes out a mortgage (the mortgagor) to request and receive from the holder of the mortgage (the mortgagee), within 14 days of the request, an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.[1] Generally, only the mortgagor is able to request and receive this information from the mortgagee.[2]

This bill amends s. 701.04, F.S., to extend the right to request and receive information on the unpaid balance to a record title owner of the property or any person lawfully authorized[3] to act on behalf of the mortgagor or record title owner of the property.

As with current law, the bill requires the estoppel letter requested by the mortgagor to contain the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance. The bill differs, however, because it adds requirements specific to a request from a record title owner of the property or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property. A record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, must provide an instrument with one's request that proves one's title or legal authorization. The mortgagee's returned document may contain all of the information provided to the mortgagor, but must at least contain the total unpaid balance on a per-day basis.

Privacy Laws

Under current law, if the mortgagee is a financial institution,[4] the mortgagee may violate privacy laws and face penalties by releasing the mortgagor's mortgage information. The books and records of a financial institution are confidential and shall be made available for inspection and examination only in specifically enumerated circumstances or by specifically listed individuals or entities.[5] This bill amends s. 655.059, F.S., to add a record title owner of the property or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property to the list of persons to whom information may be provided.

B. SECTION DIRECTORY:

Section 1 amends s. 701.04, F.S., relating to cancellation of mortgages, liens, and judgments.

Section 2 amends s. 655.059, F.S., relating to access to confidential books and records.

Section 3 provides that the act will become effective upon becoming a law.

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[1] Section 701.04, F.S.

[2] Access to a financial institution's books, for persons other than the mortgagor, is appropriate under certain circumstances under s. 655.059, F.S.

[3] For example, in the administration of an estate, the personal representative could be someone legally authorized to act on behalf of the mortgagor or record title owner of the property.

[4] Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

[5] Section 655.059, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Mortgagees may have to increase their time and costs to accommodate additional requests, though the number and cost of any additional requests as a result of the bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The 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 revenues in the aggregate, nor reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Insurance & Banking Subcommittee unanimously adopted one strike-all amendment to HB 505. The strike-all made the following changes:

- Removed the phrase "owner of an interest in property encumbered by a mortgage" and replaced it with the phrase "record title owner of the property or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property." To account for this change, some technical changes were made as well.
- Added a section relieving financial institutions of liability for releasing certain mortgage information to the record title owner of the property or any person lawfully authorized to act on behalf of a mortgagor or record titled owner of the property.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to mortgages; amending s. 701.04, F.S.; requiring a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if a mortgagor, a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property makes a written request under certain circumstances; amending s. 655.059, F.S.; allowing financial institutions to release certain mortgagor information to specified persons without penalty; providing an effective date.

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

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of a mortgagor, a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the holder of a mortgage shall deliver or cause the servicer of the mortgage to deliver to the person making the request ~~mortgagor~~ at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.~~,~~

(a) If the mortgagor makes the request, the estoppel

letter must include an itemization of the ~~including~~ principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.

(b) If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request, the request must include a copy of the instrument showing title in the property or lawful authorization, and the estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

(2) Whenever the amount of money due on any mortgage, lien, or judgment has been ~~shall be~~ fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the ~~such~~ payment was ~~shall have been~~ made, shall execute in writing an instrument acknowledging satisfaction of the ~~said~~ mortgage, lien, or judgment and have the instrument ~~same~~ acknowledged, or proven, and duly entered ~~of record in the book provided by law for such purposes~~ in the official records of the proper county. Within 60 days after ~~of~~ the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of ~~the provisions of~~ this section, the prevailing party is ~~shall be~~

entitled to attorney ~~attorney's~~ fees and costs.

(3) ~~(2)~~ Whenever a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is ~~shall be~~ the responsibility of the party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 2. Paragraph (h) of subsection (1) of section 655.059, Florida Statutes, is amended, present paragraph (i) of that subsection is redesignated as paragraph (j), and a new paragraph (i) is added to that subsection, to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(1) The books and records of a financial institution are confidential and shall be made available for inspection and examination only:

(h) As authorized by the board of directors of the financial institution; ~~or~~

(i) As provided by s. 701.04; or

(j) ~~(i)~~ As provided in subsection (2).

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 701 Florida Evidence Code
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Smith	Bond

SUMMARY ANALYSIS

Currently, a hearsay statement is not admissible in court, unless an exception applies. Under Florida law, exceptions fall into two categories: those where the availability of the person who made the statement is irrelevant, and those where the person who made the statement must be unavailable to testify in court.

The Federal Rules of Evidence provide an exception to the hearsay rule when the unavailability of a witness is caused by the opposing party's wrongful conduct. Florida law does not provide such an exception.

The bill creates a "forfeiture by wrongdoing" hearsay exception. The exception mirrors the language in the Federal Rules of Evidence. Under the exception, a hearsay statement would be admissible if the party against whom it is offered engaged in wrongdoing that caused the person who made the statement to be unavailable to testify.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Hearsay Rule

"Hearsay"[1] is a statement,[2] other than one made by the declarant[3] while testifying at trial or a hearing,[4] offered in evidence to prove the truth of the matter asserted.[5]

For example, a victim of domestic violence calls the police. When a police officer arrives, she tells him that "John Doe hit me." If the officer then testifies for the State at trial that he heard the victim say "John Doe hit me," the officer's testimony would be hearsay because "John Doe hit me" is:

- A statement;
- Made outside of the court proceeding; and
- Offered to prove the truth of what it asserts (i.e., that John Doe hit the victim).[6]

Current law provides that hearsay statements are not admissible at trial unless a statutory exception applies.[7] The reasoning behind excluding hearsay statements is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including: the statement is not made under oath; jurors cannot observe the demeanor of the declarant and judge the witness' credibility; and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.[8]

Exceptions to the Hearsay Rule

Exceptions to the hearsay rule fall into two categories: those under s. 90.803, F.S., where the availability of the declarant is irrelevant, and those under s. 90.804, F.S., where the declarant must be unavailable to testify in court. Section 90.804, F.S., provides that a declarant is "unavailable" as a witness if the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement (for example, a declarant is unavailable if the trial court sustains an assertion of the Fifth Amendment privilege against self-incrimination);[9]
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite a court order to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;

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[1] Section 90.801, F.S.

[2] A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion. Section 90.801(1)(a), F.S. For example, the act of pointing to a suspect in a lineup in order to identify her is a "statement." *See* Fed. R. Evid. 801 Advisory Committee Note.

[3] The "declarant" is the person who made the statement. Section 90.801(1)(b), F.S.

[4] Often referred to simply as an "out-of-court statement."

[5] Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.

[6] *Rodriguez v. State*, 9 So.3d 745, 745-46 (Fla. 2d DCA 2009).

[7] Section 90.802, F.S.

[8] *Lyles v. State*, 412 So.2d 458, 459 (Fla. 2d DCA 1982); *see also* Charles W. Ehrhardt, *Florida Evidence*, s. 801.1, 770 (2008 ed.).

[9] *Perry v. State*, 675 So.2d 976, 980 (Fla. 4th DCA 1996).

- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.[10]

The section also provides that a witness is not unavailable if the party who seeks to admit the statement caused the unavailability by wrongful conduct.[11]

The party seeking to introduce a hearsay statement under the exception at s. 90.804, F.S. exception bears the burden of establishing that the declarant is unavailable as a witness. The trial judge makes the determination of such unavailability at a pretrial hearing.[12]

Forfeiture by Wrongdoing of the Opposing Party

The Federal Rules of Evidence, and the evidence laws of some other states, provide an exception to the hearsay rule when the unavailability of a witness is caused by the opposing party's wrongful conduct. The Federal Rules of Evidence provide that a statement by an unavailable witness is admissible if the statement is "offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result."[13] Several states have passed legislation adopting the Federal hearsay exception.[14] Florida does not have a forfeiture-by-wrongdoing exception.

Effect of the Bill

The bill creates a new hearsay exception under s. 90.804(2)(f), F.S., that adopts the language of the Federal Rules of Evidence's "forfeiture by wrongdoing" exception.[15] Under the exception, a statement offered against a party is admissible if that party wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

B. SECTION DIRECTORY:

Section 1 amends s. 90.804, F.S., relating to hearsay exceptions where the declarant is unavailable as a witness.

Section 2 provides for an effective date upon the bill becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

[10] Section 90.804, F.S.
[11] *Id.*
[12] *See Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).
[13] Fed. R. Evid. 804(b)(6).
[14] *See, e.g.*: California (Cal. Evid. Code § 1350 (West 1995)); Deleware (Del. R. Evid. 804(b)(6)); Hawaii (Haw. R. Evid. 804(b)(7)); Louisiana (La. Code Evid. Ann. art. 804)); Michigan (Mich. R. Evid. 804(b)(6)); North Dakota (N.D. R. Evid. 804(b)(6)); Pennsylvania (Pa. R. Evid. 804(b)(6)); South Dakota (S.D. R. Evid. 804(b)(6)); Tennessee (Tenn. R. Evid. 804(b)(6)); Illinois (limited to domestic violence cases (725 Ill. Comp. Stat. Ann 5/115-10.2a (West 2004)).
[15] Fed. R. Evid. 804(b)(6).

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact local government revenues.

2. Expenditures:

The bill does not appear to have any impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to 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 Confrontation Clause ("CC") of the Sixth Amendment provides, in part, that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him."[16] In Crawford v. Washington, the U.S. Supreme Court held that Confrontation Clause applies to testimonial statements.[17] The Court has emphasized that there is no bright-line test to determine whether a statement is testimonial, the determination involves a "highly context-dependent inquiry."[18]

An out-of-court statement by a witness that is testimonial is inadmissible at trial under Confrontation Clause unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness.[19] An out-of-court statement that violates Confrontation Clause is inadmissible at trial even if it falls within a state's statutory hearsay exception.[20] In contrast, if a statement is non-testimonial, it does not implicate the Confrontation Clause, and therefore admission of such statements is determined by state hearsay exceptions.[21]

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[16] Amend. VI, U.S. Const.

[17] The definition of a "testimonial statement" includes statements made during police interrogations. *Crawford*, 541 U.S. at 68. The Court has clarified that "police interrogations" are not defined in the "technical, legal sense." *Davis v. Washington*, 547 U.S. 813, 822 (2006).

[18] *Michigan v. Bryant*, 131 S.Ct 1143, 1158 (2011); *see also Davis*, 547 at 822 (The Court explained that in general, statements made to law enforcement where the circumstances indicate that the "primary purpose" of the statement is to aid the police in addressing an ongoing emergency are not testimonial. On the other hand, statements made to law enforcement where the circumstances indicate that the primary purpose of the statement is to establish the facts of a past event that may be relevant in prosecuting a defendant at trial are testimonial.).

[19] *Crawford*, 541 U.S. at 54.

[20] *Id.* at 51 (2004) (finding that CC applies to out-of-court statements introduced at trial, regardless of admissibility of statements under law of evidence); *see also State v. Lopez*, 974 So. 2d 340, 345 (Fla. 2008); *22 Fla. Prac., Criminal Procedure* § 12:6 (2011 ed.).

[21] *Id.* at 68 ("Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law.").

However, in *Crawford*, the Court recognized the constitutional validity of the "forfeiture by wrongdoing" exception to excluding testimonial statements. Such wrongdoing "extinguishes [defendant's] confrontation claims on essentially equitable grounds."[22]

B. RULE-MAKING AUTHORITY:

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.[23] The case law interpreting Art. V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Art. V, s. 2.[24] On the other hand, legislation concerning matters of practice and procedure, are within the Court's "exclusive authority to regulate."[25] However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."[26] Evidence law is considered by the court to be procedural, although the court usually accedes to changes in the statutory evidence laws.

The Florida Supreme Court held in one case involving the hearsay exception at s. 921.141, F.S., does not violate art. V, s. 2(a).[27] In contrast, the First District Court of Appeals held that s. 90.803(22), F.S., the "former testimony" hearsay exception, violated Art. V, s. 2 because it infringed on the Court's authority to adopt procedural rules.[28] The court noted that one of the reasons the exception was different than other hearsay exceptions adopted by the Court was that it was not modeled after the Federal Rules of Evidence.[29] The bill adopts a portion of the Federal Rules of Evidence hearsay exception.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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[22] *Crawford*, 541 U.S. at 62 (citing *Reynolds v. United States*, 98 U.S. 145, 158 (1878) ("The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.").

[23] Art. V, s. 2(a), Fla. Const.

[24] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991).

[25] *Id.*

[26] *In re Commitment of Cartwright*, 870 So. 2d 152, 158 (Fla. 2d DCA 2004) (citing *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53-54 (Fla. 2000)).

[27] *Cartwright*, 870 So. 2d at 161 (citing *Booker v. State*, 397 So. 2d 910, 918 (Fla. 1981) (rejecting the challenge under article V, section 2(a), to the provision in section 921.141, Florida Statutes (1977), permitting the admission of hearsay evidence).

[28] *Grabau v. Dep't of Health, Bd. of Psychology*, 816 So.2d 701, 709 (Fla. 1st DCA 2002) (holding section 90.803(22) to be unconstitutional on various grounds, including *160 "as an infringement on the authority conferred on the Florida Supreme Court by article V, section 2(a)")

[29] *Id.* at 708 (citing *In re Amendments to the Florida Evidence Code*, 782 So. 2d 339, 340-42 (Fla. 2000)).

A bill to be entitled

An act relating to the Florida Evidence Code; amending s. 90.804, F.S.; providing that a statement offered against a party that wrongfully caused the declarant's unavailability is not excluded as hearsay; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (2) of section 90.804, Florida Statutes, to read:

90.804 Hearsay exceptions; declarant unavailable.—

(2) HEARSAY EXCEPTIONS.—The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness:

(f) *Statement offered against a party that wrongfully caused the declarant's unavailability.*--A statement offered against a party that wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 711 Sale or Lease of a County, District, or Municipal Hospital
SPONSOR(S): Community & Military Affairs Subcommittee; Health & Human Services Quality Subcommittee; Hooper
TIED BILLS: None **IDEN./SIM. BILLS:** SB 464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	15 Y, 0 N, As CS	Mathieson	Calamas
2) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Duncan	Hoagland
3) Civil Justice Subcommittee		Caridad DC	Bond HB
4) Health & Human Services Committee			

SUMMARY ANALYSIS

County, district and municipal hospitals are created pursuant to a special enabling act, rather than a general act. The special act sets out the hospital authority's power to levy taxes to support the maintenance of the hospital, the framework for the governing board and defines the ability to issue bonds.

The process for the sale or lease of a county, district or municipal hospital is established in Florida statute. Currently, the authority to make this decision and to negotiate such a transaction is given to the governing board that is selling the hospital. A hospital can be sold or leased to a for-profit or a not-for-profit Florida corporation, if the transaction is in the best interest of the public.

This bill requires that the governing board of a county, district or municipal hospital, prior to completing a proposed sale or lease of the hospital, receive approval from a circuit court, or, if provided for in the hospital charter, by a referendum. The bill:

- Requires certain findings by the hospital governing board;
- Requires public notice by the hospital governing board;
- Provides for certain content for petitions to the court;
- Allows interested parties to participate in the court approval process;
- Requires certain findings by the court; and
- Allows for appeal.

A county, district, or municipal hospital that has not received tax support within the last five years is exempt from the circuit court process requirements established in the bill.

The bill has an indeterminate fiscal impact on the courts. Costs associated with the petition are borne by the hospital board, unless a party contests.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

County, district[1] and municipal hospitals are created pursuant to a special enabling act, rather than a general act.[2] The special act sets out the hospital authority's power to levy taxes to support the maintenance of the hospital, the framework for the governing board and defines the ability to issue bonds.

The process for the sale or lease of a county, district or municipal hospital is established by s. 155.40, F.S. Currently, the authority to make this decision and to negotiate such a transaction is given to the governing board that is selling the hospital.[3] A hospital can be sold or leased to a for-profit or a not-for-profit Florida corporation, and must be in the best interest of the public.[4] The board must publically advertise both the meeting at which the proposed sale or lease will be discussed,[5] and the offer to accept proposals from all interested and qualified purchasers.[6] Any lease, contract or agreement must contain the following terms:

- Articles of incorporation of the corporation are subject to approval of the board.
- Qualification under s. 501(c)(3) of the U.S. Internal Revenue Code for a not-for-profit corporation.
- Orderly transition of the operation and management of the facilities must be provided for.
- On termination of the contract, lease or agreement, that the facility returns to the county, district or municipality.
- Continued treatment of indigent patients pursuant to law.[7]

For the sale or lease to be considered a complete sale of the public agency's interest in the hospital, the purchasing entity must:

- Acquire 100 percent ownership of the hospital enterprise;
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance thereof, regardless of the underlying ownership of the real property;
- Not receive public funding, other than by contract for the payment of medical services provided to patients for which the public agency has responsibility to pay;
- Take control of decision-making or policy-making for the hospital from the public agency seller;
- Not receive substantial investment or loans from the seller;
- Not be created by the public agency seller; and
- Primarily operate for its interests and not those of the public agency seller.[8]

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[1] Hospital districts are created under the statutory authority provided in s. 189.404, F.S., and a special act. As of January 13, 2012, there are 30 hospital districts: 26 are independent and 6 are dependent. Sixteen districts have the authority to levy ad valorem property taxes. Department of Economic Opportunity, Division of Community Development, Special District Information Program, *available at* http://dca.deo.myflorida.com/fhcd/sdip/OfficialListde/_(last visited Jan. 12, 2012.)

[2] Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 per cent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.

[3] Section 155.40(1), F.S.

[4] *Id.*

[5] In accordance with s. 286.0105, F.S.

[6] In accordance with s. 255.0525, F.S.

[7] Specifically, the Florida Health Care Responsibility Act, ss. 154.301-154.316, F.S., and ch. 87-92, L.O.F. S. 155.40(2), F.S.

[8] S. 155.40(8)(a), F.S.

The State courts currently do not have a role in the sale or lease process of a county, district or municipal hospital, unless the transaction is challenged in litigation. The Office of the Attorney General (OAG) reviews the proposed transaction with regard to any anti-competitive issues.[9] The OAG has charitable trust authority to review transactions that would implicate trusts where the public hospital entity was the beneficiary.[10]

In March 2011, the Governor issued Executive Order 11-63, creating the Commission on Review of Taxpayer Funded Hospital Districts (Commission).[11] This Commission was tasked with assessing and making recommendations as to the role of hospital districts, including what was in the public interest as to hospital operation and an effective access model for the economically disadvantaged.[12] Specifically, the Governor requested the following areas be examined:

- Quality of care;
- Cost of care;
- Access to care for the poor;
- Oversight and accountability;
- Physician employment; and
- Changes in ownership and governance.[13]

From May 23 through December 29, 2011, the Commission met 14 times and heard from 20 different individuals and organizations.[14] In a final report delivered on December 30, 2011, the Commission made the following general recommendations:

- Appointees to hospital boards should be qualified and not have conflicts of interest.
- Board members should include health care stakeholders and community members with financial expertise and experience in operating successful, larger enterprises.
- The boards of the district and the hospital should be separate, and both should be subject to appropriate oversight.
- Hospital board members should not be a part of the hospital administrative or management team.
- There should be a transition from hospital districts to indigent health care districts, which would include decoupling district owned hospitals from the district.
- Hospital boards should have flexibility with ad valorem millage rates, within their maximum allowable rate.[15]

Effect of the Proposed Changes

The bill amends s. 155.40, F.S., detailing the process to determine the approval of a sale or lease. The bill requires the governing board of a county, district or municipal hospital to submit a petition for approval of sale or lease to the circuit court, to be approved, prior to the completion of the proposed

[9] The OAG is responsible for enforcing state and federal antitrust laws, and the anti-trust division works to stop violations that harm competition and adversely impact the citizens of Florida. Chapter 542, F.S., provides the OAG with the authority to bring actions against individuals or entities that commit state or federal antitrust violations, including bid-rigging, price-fixing, market or contract allocation, and monopoly-related actions. *See* ch. 542, F.S. However, s. 542.235, F.S., provides additional limitations to suit against local governments, including a limitation on criminal action, and civil and injunctive relief against both the governmental entity and agents when they are acting within the scope of their authority.

[10] The OAG may assert the rights of qualified beneficiaries with respect to charitable trusts pursuant to s. 736.0110(3), F.S., and with respect to the dissolution of not-for-profit corporations pursuant to ss. 617.1420, 617.1430, and 617.2003, F.S. The OAG notes that the review under this authority varies considerably from transaction to transaction and can be very labor intensive. This is especially the case in transactions that involve mergers of competitors within the same market. Email from the OAG on file with House Health & Human Services Quality Subcommittee staff. March 18, 2011.

[11] Fla. Exec. Order No. 11-63 (Mar. 23, 2011). The Executive Order is available at http://www.flgov.com/2011-executive-orders/ (last accessed Jan. 9, 2012.

[12] *Id.*

[13] The Commission's report is available at http://ahca.myflorida.com/mchq/FCTFH/fctfh.shtml (last accessed Jan. 5, 2012).

[14] *Id.*

[15] *Id.*

sale or lease of a hospital. However, if a hospital's charter provides that a referendum is required to change ownership, the governing board shall hold such a referendum instead of seeking approval from the circuit court.

The bill amends s. 155.40(4), F.S., requiring the hospital governing board to determine that operating the hospital is no longer in the public's interest and to ascertain whether there are any interested and qualified purchasers or lessees. The bill adds that the sale or lease must be for "fair market value," which is defined as the "price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction."[16] If the board determines that a sale or lease is for less than fair market value, it must provide a written explanation as to why this is in the public interest.

The governing board is required to determine, in writing, the basis for choosing a particular proposal. The factors to be considered must include:

- A determination that the proposed transaction represents fair market value, or if not why the transaction is in the best interests of the public;
- A determination of whether there will be a reduction or elimination of ad valorem or other taxes used to support the hospital; and
- A determination that the quality of care will not be affected, especially in relation to the indigent, uninsured and underinsured.

In addition, information and documentation relevant to the board's determination must accompany the findings. Such information includes, but is not limited to the following:

- The details of the facilities and all parties to the transaction;
- A description of the terms of all proposed agreements;
- An estimate of the total value associated with the proposed agreement, including available valuations from the last three years of the hospital's assets;
- Any available financial or economic analysis prepared by experts that the board retained; and
- Copies of all other proposals and bids received.

The bill requires the hospital board to file this information with the court not later than 120 days before the anticipated closing for the proposed transaction. Notice must be published in one or more newspapers of general circulation in the county where the majority of the hospital's assets are located. The notice must provide a mechanism for public comment about the proposed transaction to the board, for up to 20 days after the date of publication. If a statement of opposition is received, the governing board or proposed purchaser or lessee has 10 days to respond in writing.

The bill provides that no sooner than 30 days after the publication of notice, a petition for approval must be filed in the circuit court in which the majority of the hospital's assets are located. The bill directs the court to issue an order that would require all interested parties to appear at a specified date and time and show why the petition should not be granted. The order is to be published at least once a week for two consecutive weeks in one or more major newspapers, not less than 20 days prior to the hearing. Unless the petition is contested, the hospital board bears the expense.

The bill provides that any interested party may become a party to the action. An interested party is defined as a bidder, any taxpayer from the county, district, or municipality in which the majority of the hospital's physical assets are located; or the governing board of the hospital. The circuit court must hold a hearing to determine all questions of law and fact, rendering a final judgment that either approves or denies a proposed transaction.

[16] An arm's length transaction is negotiated by unrelated parties, each acting in his or her self interest; the basis for a fair market value determination. It is a transaction in good faith in the ordinary course of business by parties with independent interests. This is the standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction. Black's Law Dictionary (8th Ed. 2006).

The bill provides that the court must determine that the transaction:

- Is permitted by law;
- Does not discriminate against a potential purchaser or lessee on the basis of being a for-profit or not-for-profit Florida corporation;
- Complied with the public notice provisions;
- Was made with the exercise of due diligence by the board;
- Disclosed conflicts of interest relating to the members of the governing board and the experts retained by the parties to the transaction;
- Reflects that the seller or lessor will receive fair market value for the assets, including an explanation of why the public interest is served by the proposed transaction;
- Makes an enforceable commitment to the continuation of quality care for all residents, and especially, the indigent, uninsured and underinsured; and
- Will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

The bill provides that any party to the action has the right to seek judicial review in the appellate district where it was filed, and will be governed by the Florida Rules of Appellate Procedure. Any interested party seeking review must file an appeal within 30 days of the final judgment. The standard of review for the appellate court is that the decision is not arbitrary, capricious, or not in compliance with s. 155.40, F.S.

The bill provides that any sale or lease completed before June 30, 2012, is not subject to the requirements of these provisions. Additionally, any lease that contained, on June 30, 2012, an option to renew or extend that lease upon its expiration date is not subject to these provisions upon any renewal or extension on or after June 30, 2012.

Additionally, a county, district, or municipal hospital that has not received tax support within the last five years is exempt from the circuit court process approval requirements. Tax support is defined as receiving ad valorem or other tax revenues directly from a county, district, or municipal taxing authority to a hospital without a corresponding exchange of goods or services five years prior to the effective date of a proposed lease or sale. However, exempt hospitals are required to comply with the public notice provisions of the bill by publishing the details of the transaction prior to closing and receiving public comment. The following public hospitals are identified by the Agency for Health Care Administration (AHCA) as hospitals that have not received tax support in the last five years:

- Lee Memorial Hospital (Lee County).
- Bay Medical Center (Bay County).
- Parrish Medical Center (Brevard County).
- Health Central (Orange County).
- Ed Fraser Memorial Hospital (Baker County).
- Jackson County Hospital (Jackson County).
- Doctors Memorial Hospital (Holmes County).
- Munroe Regional (Marion County).[17]

The bill does not alter the OAG's duty in relation to charitable trusts, and the transaction must still be reviewed for anti-competitive issues pursuant to ch. 542, F.S., and s. 736.0110(3), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 155.40, F.S., relating to sale or lease of county, district or municipal hospitals; effect of sale.

Section 2 amends s. 395.3036, F.S., relating to confidentiality of records of meetings of corporations that lease public hospitals or other public health care facilities.

[17] Agency for Health Care Administration, email to House Community & Military Affairs Subcommittee staff, April 4, 2011, on file with Health and Human Services Quality Subcommittee staff.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill has an indeterminate fiscal impact on state courts to review proposed transactions for the sale or lease of a county, municipal or district hospital. However, the bill provides for the ability to assess costs to either the hospital board or a contesting party.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Prospective purchasers or lessees may be required to pay costs if they oppose the proposed transaction. The sale or lease of a hospital could be delayed by this oversight process. However, more interested parties should be able to participate in the process of selling or leasing a public hospital creating more competition.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to 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:

   Article 5, s. 2 of the Florida Constitution provides that:

   > The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review. . .

   On Lines 235-238, the bill provides that:

   > All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of final judgment.

While this provision in the bill reflects the current rule of appellate procedure, in the future, the court could change the time in which to file a notice of appeal. As a result, this provision of the bill is superfluous but, in the future, could be found unconstitutional.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Several terms and standards in the bill could subject the statute to judicial interpretation. These include: a "fairness evaluation," and non-discriminatory decision making.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2012, the Health and Human Services Quality Subcommittee adopted a strike-all amendment to HB 711. The amendment:

- Requires a circuit court review of the transaction or a referendum if the hospital charter requires a referendum for such a transaction.
- Requires the circuit court to determine whether the transaction complies with the law.
- Defines and provides an exemption for non-tax supported public hospitals from the circuit court process, but not from the notice provisions of the bill.
- Requires public benefit be considered by the hospital board in a determination of fair market value.
- Allows taxpayers to petition the court as an interested party.

This bill was reported favorably as a Committee Substitute.

On January 18, 2012, the Community & Military Affairs Subcommittee adopted 2 amendments to CS/HB 711:

- The CS/HB 711 required a fairness evaluation by an independent expert. Amendment 1 deletes this requirement.
- The CS/HB 711 required the court to determine that the transaction reflects that the seller or lessor will receive fair market value for the assets, including an explanation of how the public interest will be served by the proposed transaction. Amendment 2 amends this provision to provide that the court must determine that the transaction reflects that the seller or lessor *documented receipt* of fair market value for the assets, including an explanation of *why* the public interest is served by the proposed transaction.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute as passed by the Community & Military Affairs Subcommittee.

A bill to be entitled

An act relating to the sale or lease of a county, district, or municipal hospital; amending s. 155.40, F.S.; requiring approval from a circuit court for the sale or lease of a county, district, or municipal hospital unless certain exemption or referendum approval applies; requiring the hospital governing board to determine by certain public advertisements whether there are qualified purchasers or lessees before the sale or lease of such hospital; defining the term "fair market value"; requiring the board to state in writing specified criteria forming the basis of its acceptance of a proposal for sale or lease of the hospital; providing for publication of notice; authorizing submission of written statements of opposition to a proposed transaction, and written responses thereto, to the hospital governing board within a certain timeframe; requiring the board to file a petition for approval with the circuit court and receive approval before any transaction is finalized; providing an exception; specifying information to be included in such petition; providing for the circuit court to issue an order requiring all interested parties to appear before the court under certain circumstances; defining the term "interested party"; granting the circuit court jurisdiction to approve sales or leases of county, district, or municipal hospitals based on specified criteria;

providing for a party to seek judicial review; requiring the court to enter a final judgment; requiring the board to pay costs associated with the petition for approval unless a party contests the action; providing an exemption for certain sale or lease transactions completed before a specified date; providing an exemption for county, district, or municipal hospitals that receive no tax support; defining the term "tax support"; amending s. 395.3036, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (4) of section 155.40, Florida Statutes, are amended, present subsections (5) through (8) are renumbered as subsections (15) through (18), respectively, and new subsections (5) through (14) are added to that section, to read:

155.40 Sale or lease of county, district, or municipal hospital; effect of sale.—

(1) In order that citizens and residents of the state may receive quality health care, any county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, shall have the authority to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida

corporation for the purpose of operating and managing such hospital and any or all of its facilities of whatsoever kind and nature. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of such county, district, or municipal hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public and must state the basis of such finding. The sale or lease of such hospital is subject to approval by a circuit court unless otherwise exempt under subsection (14) or, for any such hospital that is required by its statutory charter to seek approval by referendum for any action that would result in the termination of the direct control of the hospital by its governing board, approval by such referendum. ~~If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph (4)(a) or paragraph (4)(b).~~

(4) In the event the governing board of a county, district, or municipal hospital determines that it is no longer in the public interest to own or operate such hospital and elects to consider a sale or lease to a third party, the governing board shall first determine whether there are any qualified purchasers or lessees. In the process of evaluating any potential purchasers or lessees ~~elects to sell or lease the hospital~~, the board shall:

(a) ~~Negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation and~~ Publicly advertise the meeting at which the proposed sale or lease will

be considered by the governing board of the hospital in accordance with ss. ~~s.~~ 286.0105 and 286.011; or

(b) Publicly advertise the offer to accept proposals in accordance with s. 255.0525 and receive proposals from all interested and qualified purchasers and lessees.

Any sale or lease must be for fair market value, and any sale or lease must comply with all applicable state and federal antitrust laws. For the purposes of this section, the term "fair market value" means the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction, which includes any benefit that the public would receive in connection with the sale or lease.

(5) A determination by a governing board to accept a proposal for sale or lease must state, in writing, the findings and basis for supporting the determination.

(a) The governing board shall develop findings and bases to support the determination of a balanced consideration of factors including, but not limited to, the following:

1. Whether the proposal represents fair market value, which includes an explanation of how the public interest will be served by the proposed transaction.

2. Whether the proposal will result in a reduction or elimination of ad valorem or other tax revenues to support the hospital.

3. Whether the proposal includes an enforceable commitment that existing programs and services and quality health care will continue to be provided to all residents of the affected

community, particularly to the indigent, the uninsured, and the underinsured.

4. Whether the proposal is otherwise in compliance with subsections (6) and (7).

(b) The findings shall be accompanied by all information and documents relevant to the governing board's determination, including, but not limited to:

1. The name and address of each party to the transaction.

2. The location of the hospital and all related facilities.

3. A description of the terms of all proposed agreements.

4. A copy of the proposed sale or lease agreement and any related agreements, including, but not limited to, leases, management contracts, service contracts, and memoranda of understanding.

5. The estimated total value associated with the proposed agreement and the proposed acquisition price and other consideration.

6. Any valuations of the hospital's assets prepared in the 3 years immediately before the proposed transaction date.

7. Any financial or economic analysis and report from any expert or consultant retained by the governing board.

8. Copies of all other proposals and bids the governing board may have received or considered in compliance with procedures required under subsection (4).

(6) Not later than 120 days before the anticipated closing date of the proposed transaction, the governing board shall publish a notice of the proposed transaction in one or more

newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice shall include the names of the parties involved, the means by which persons may submit written comments about the proposed transaction to the governing board, and the means by which persons may obtain copies of the findings and documents required under subsection (5).

(7) Within 20 days after the date of publication of public notice, any interested person may submit to the governing board a detailed written statement of opposition to the transaction. When a written statement of opposition to the transaction has been submitted, the governing board or the proposed purchaser or lessee may submit a written response to the interested party within 10 days after the written statement of opposition due date.

(8) A governing board of a county, district, or municipal hospital may not enter into a sale or lease of a hospital facility without first receiving approval from a circuit court or, for any such hospital that is required by its statutory charter to seek approval by referendum for any action that would result in the termination of the direct control of the hospital by its governing board, approval by such referendum.

(a) The governing board shall file a petition for approval in a circuit court seeking approval of the proposed transaction not sooner than 30 days after publication of notice of the proposed transaction.

(b) Any such petition for approval filed by the governing board shall include all findings and documents required under

subsection (5) and certification by the governing board of compliance with all requirements of this section.

(c) Circuit courts shall have jurisdiction to approve the sale or lease of a county, district, or municipal hospital. A petition for approval shall be filed in the circuit in which the majority of the physical assets of the hospital are located.

(9) Upon the filing of a petition for approval, the court shall issue an order requiring all interested parties to appear at a designated time and place within the circuit where the petition is filed and show why the petition should or should not be granted. For purposes of this section, the term "interested party" means any party submitting a proposal for sale or lease of the county, district, or municipal hospital; any taxpayer from the county, district, or municipality in which the majority of the physical assets of the hospital are located; or the governing board.

(a) Before the date set for the hearing, the clerk shall publish a copy of the order in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located at least once each week for 2 consecutive weeks, commencing with the first publication, which shall not be less than 20 days before the date set for the hearing. By this publication, all interested parties are made parties defendant to the action and the court has jurisdiction of them to the same extent as if they were named as defendants in the petition and personally served with process.

(b) Any interested party may become a party to the action by moving against or pleading to the petition at or before the

time set for the hearing. At the hearing, the court shall determine all questions of law and fact and make such orders as will enable it to properly consider and determine the action and render a final judgment with the least possible delay.

(10) Upon conclusion of all hearings and proceedings, and upon consideration of all evidence presented, the court shall render a final judgment as to whether the governing board complied with the process provided in this section. In reaching its final judgment, the court shall determine whether:

(a) The proposed transaction is permitted by law.

(b) The governing board reviewed all proposals.

(c) The governing board publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with ss. 286.0105 and 286.011.

(d) The governing board publicly advertised the offer to accept proposals in compliance with s. 255.0525.

(e) The governing board did not act arbitrarily and capriciously in making the determination to sell or lease the hospital assets, selecting the proposed purchaser or lessee, and negotiating the terms of the sale or lease.

(f) Any conflict of interest was disclosed, including, but not limited to, conflicts of interest relating to members of the governing board and experts retained by the parties to the transaction.

(g) The seller or lessor documented receipt of fair market value for the assets, which includes an explanation of why the public interest is served by the proposed transaction.

(h) The governing board incorporated a provision in the sale or lease requiring the acquiring entity to continue to provide existing programs and services and quality health care to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.

(i) The proposed transaction will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

(11) Any party to the action has the right to seek judicial review in the appellate district where the petition for approval was filed.

(a) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of final judgment.

(b) In such judicial review, the reviewing court shall affirm the judgment of the circuit court, unless the decision is arbitrary, capricious, or not in compliance with this section.

(12) All costs shall be paid by the governing board, except when an interested party contests the action, in which case the court may assign costs to the parties at its discretion.

(13) Any sale or lease completed before June 30, 2012, is not subject to the requirements of this section. Any lease that contained, on June 30, 2012, an option to renew or extend that lease upon its expiration is not subject to this section upon renewal or extension on or after June 30, 2012.

(14) A county, district, or municipal hospital that has not received any tax support is exempt from the requirements of subsections (8)-(12). For the purposes of this section, the term "tax support" means ad valorem or other tax revenues paid directly from a county, district, or municipal taxing authority to a hospital without a corresponding exchange of goods or services within the 5 years before the effective date of a proposed lease or sale.

Section 2. Section 395.3036, Florida Statutes, is amended to read:

395.3036 Confidentiality of records and meetings of corporations that lease public hospitals or other public health care facilities.—The records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and the meetings of the governing board of a private corporation are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution when the public lessor complies with the public finance accountability provisions of s. 155.40(15) ~~155.40(5)~~ with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of the five following criteria:

(1) The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility.

(2) The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.

(3) Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decisionmaking process of the public lessor.

(4) The lease agreement does not expressly require the lessee to comply with ~~the requirements of~~ ss. 119.07(1) and 286.011.

(5) The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 839 Abortion
SPONSOR(S): Davis and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	9 Y, 5 N	Mathieson	Schoolfield
2) Civil Justice Subcommittee		Caridad DC	Bond YFB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates the "Pain-Capable Unborn Child Protection Act," to:

- Require a physician to make a determination of postfertilization age of a fetus before performing an abortion.
- Prohibit an abortion 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 mother.
- Require a physician that performs abortions to report information relating to the abortion to the Department of Health (DOH).
- Require DOH to provide a public report containing all of the information reported from an abortion provider.
- Establish criminal and administrative penalties for violating the provisions of this bill relating to the improper performance of an abortion.
- Require DOH to adopt rules to implement the provisions of the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Fetal Pain

In 2010, the Department of Health (DOH) reported there were 214,519 live births in the state of Florida.[1] In the same year, the Agency for Health Care Administration (AHCA) reported there were a total of 79,908 terminations performed in the state.[2] 73,883 of the terminations 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 subject of ongoing research and debate. Some studies suggest that by 20-24 weeks, a fetus may have the physical structures to be capable of feeling pain.[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]

In contrast, 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, studies have found that the

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[1] Email from AHCA on file with Health and Human Services Committee staff, Nov. 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 Giannakoulopoulos 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, *Anesthesia 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); Giannakoulopoulos 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; Giannakoulopoulos 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).
[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,

fetus lacks the anatomical architecture necessary to subjectively experience pain – essentially recognize the stimuli as painful.[10] On the other hand, there is research to suggest a functioning cortex is not necessary to experience pain.[11] In a 2005 review of the evidence, the American Medical Association concluded that:

> [P]ain 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]

Anesthesia 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 anesthesia is used.[15]

The "Pain-Capable Unborn Child Protection Act" is model legislation that prohibits abortion after 20 weeks post-fertilization age based on the scientific evidence mentioned above. This has been passed by Alabama, Idaho, Kansas, Nebraska and Oklahoma.[16] In addition, 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]

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 *Roe v. Wade*, the United States Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion.[18] The Court held that states could not closely regulate abortions during the first trimester of pregnancy. With respect to the second trimester, the Court held that states could only enact regulations aimed at protecting the mother's health, not the fetus's life. Therefore, no ban on abortions was permitted during the second trimester. Only at the beginning of the third trimester of pregnancy did the state's interest in the life of the fetus become compelling so as to allow it to prohibit abortions. Even then, the Court required states to permit abortion in circumstances necessary to preserve the health or life of the mother.[19]

The current approach is laid out in *Planned Parenthood v. Casey*.[20] Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than the third trimester, the United States Supreme Court rejected the trimester framework and, instead, limited 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*, 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:

> The 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

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[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, "[t]he fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect." *Id.* at 183. *See also, U.S. v. Vuitich*, 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:

> That 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]

Even more recently, in *Gonzales v. Carhart*,[30] 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."[31]

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, "[t]he Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty."[32]

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."[33]

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

> [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

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[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] 550 U.S. 124 (2007).
[31] *Id.* at 163.
[32] *Id.* (*Citations Omitted*).
[33] *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).

time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.[34]

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.[35]

In *Womancare of Orlando v. Agwunobi,*[36] an almost identical medical emergency exception to that in the *Casey* case was upheld when Florida's parental notification statute was challenged.[37] 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."

Limits on Abortion

Florida law prohibits abortions in the third trimester[38] of pregnancy unless the abortion is performed as a medical necessity.[39] Current law provides that if an abortion is performed during viability,[40] the person 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.[41] 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.[42]

Current law provides no express cause of action related to abortion, except for partial birth abortions.[43]

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.

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[34] *Id.* at 1193-94.
[35] *Id.* at 1194.
[36] 448 F.Supp.2d 1293, 1301 (N.D. Fla. 2005).
[37] 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.
[38] In Florida, the third trimester is defined as the weeks of pregnancy after the 24th week (weeks 25-birth).[38] 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 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 there is a medical emergency.
[39] Section 390.0111(1), F.S.
[40] 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.
[41] 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.
[42] S.ection 390.0111(4), F.S.
[43] F.S. 390.0111(11), F.S.

- 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.[44]

The patient must acknowledge in writing that this information has been provided to her before she gives informed consent for an abortion.[45] This information is not required to be provided if the abortion is being performed because of a medical emergency.[46] The method of determining the probable gestational age as required above, is specified in law as an ultrasound.[47] 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.[48] Physicians who fail to inform the patient of the provisions described above are subject to disciplinary action.[49]

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.[50] The agency is required to keep this information in a central location from which statistical data can be drawn.[51] 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.[52] The reports are confidential and exempt from public records requirements.[53] Fines may be imposed for violations of the reporting requirements.[54] 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 the following legislative findings:

- 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 post-fertilization 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.

The bill defines the following terms:

- Attempt to perform or induce an abortion.
- Fertilization.

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[44] Section 390.0111(3)(a), F.S.
[45] Section 390.0111(3)3., F.S.
[46] Section 390.0111(3)(a), F.S.
[47] Sections 390.0111(3)(a)1.b.(I)-(IV), F.S.
[48] Section 390.018, F.S.
[49] 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.
[50] Section 390.0112 (1), F.S.
[51] *Id.*
[52] Section 390.0112(2), F.S.
[53] Section 390.0112(3), F.S.
[54] Section 390.0112(4), F.S.

- Medical Emergency.
- Postfertilization age.
- Probable postfertilization age of the unborn child.
- Reasonable medical judgment.
- Unborn child or fetus.

Limit on Abortion

The bill prohibits a physician from performing or attempting[55] to perform an abortion unless the physician has first determined whether the probable post fertilization age of the fetus is 20 or more weeks. An exception is provided if, in reasonable medical judgment,[56] a medical emergency[57] exists. In making the determination, the physician must make any inquiries of the pregnant woman and perform any medical examinations of the woman that a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in determining postfertilization age.

The bill provides that a physician may not perform an abortion when the physician, or another physician upon whose determination that physician relies, has determined that the probability post fertilization age of the woman's unborn child is 20 or more weeks. This is so, unless the woman has a condition that so complicates her medical condition an abortion is necessary to avert the woman's death or serious physical impairment. Such condition may not be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that would result in her death or serious physical impairment.

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 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.[58] 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 or attempted in violation of the bill's prohibition against termination and for the father of the unborn child who was aborted, against the person who performed the abortion in an intentional or a reckless violation of the bill's provisions. The party 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 the aforementioned 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

[55] 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."

[56] 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."

[57] 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."

[58] 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. Sections 775.082, 775.083, 775.084, F.S.

bill provides that an injunction granted under these circumstances will prevent the violator from performing or attempting to perform any more abortions in this state.

The bill provides that the prevailing party must be awarded attorney's fees. However, 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 provides that, if the woman upon whom the termination was performed or attempted does not give her consent for disclosure of her identity, a court must determine whether the woman's identity must be kept anonymous from the public. It must do so regardless of whether the proceeding is civil or criminal. If the court determines that the woman should remain anonymous, it 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 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 upon 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, must do so under a pseudonym. The bill specifies 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 regarding every abortion performed must be reported to DOH on a schedule and in accordance with forms and rules adopted by DOH:

- If a determination of probable postfertilization age[59] was required to be made, the probable postfertilization age, and the method and basis of the determination.
- 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 with 30 days 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, more than one 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. A physician that fails to comply with these

[59] 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.

requirements is also subject to disciplinary action under ss. 458.331 or 459.015, F.S. Intentional or reckless falsification of any of the required reports is a second degree misdemeanor.[60]

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:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

[60] A second degree misdemeanor is punishable by a fine not exceeding $500 or imprisonment not exceeding 60 days. Sections 775.082 and 775.083, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Health may experience a recurring increase in workload associated with additional complaints, investigations and possible imposition of administrative discipline for health care practitioners due to non-compliance. However, according to the department, current resources are adequate to absorb such increase.[61]

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:

Right to Privacy

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.,*[62] the issue of regulating abortions in consideration of fetal pain has not been before the Florida Supreme Court or the United States Supreme Court.

Public Records

Article I, s. 24(a) of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature 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 not be 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.[63] This bill may create two public records exceptions:

- The bill provides that if the woman upon whom the termination was performed or attempted files a civil action regarding the abortion and does not give her consent for disclosure of her identity, a court must determine whether her identity must be kept anonymous from the public. If the court determines that the woman should remain anonymous, it must issue orders to seal the court records. It is possible, however, that this may comply with existing exemptions in Rule 2.420 of the Florida Rules of Judicial Administration.

- The bill also provides that a physician performing an abortion must report certain information related to each abortion to the Department of Health. The bill does not require personal identifying information in such reports, but does require the department to redact personal identifying information that may be in such reports before dissemination. This will not be a

[61] Department of Health Bill Analysis, Economic Statement and Fiscal Note on HB 839 (Jan. 13, 2012).
[62] 551 So.2d 1186 (1989).
[63] Article 1, s. 24(c), Fla. Const.

concern if the department, in rulemaking, prohibits physicians from including personal identifying information in such reports.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to abortion; providing a short title; providing legislative findings; amending s. 390.011, F.S.; providing definitions; amending s. 390.0111, F.S.; requiring a physician performing or inducing an abortion to first make a determination of the probable postfertilization age of the unborn child; providing an exception; providing for disciplinary action against noncompliant physicians; prohibiting an abortion if the probable postfertilization age of the woman's unborn child is 20 or more weeks; providing an exception; providing recordkeeping and reporting requirements for physicians; providing for rulemaking; requiring an annual report by the Department of Health; providing financial penalties for late reports; providing for civil actions to require reporting; providing for disciplinary action against noncompliant physicians; providing criminal penalties for intentional or reckless falsification of a report; providing criminal penalties for any person who intentionally or recklessly performs or attempts to perform an abortion in violation of specified provisions; providing that a penalty may not be assessed against a woman involved in such an abortion or attempt; providing for civil actions by certain persons for intentional or reckless violations; providing for actions for injunctive relief by certain persons for intentional violations; providing for

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

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

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

Section 2. The Legislature finds that:

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

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

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

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

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

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

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

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

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

(a) A hospital; or

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

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

(4) "Attempt to perform or induce an abortion" means 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.

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

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

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

(8) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function. A condition is not a medical emergency if it is 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.

(9) ~~(6)~~ "Partial-birth abortion" means 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.

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

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

(12) "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.

(13) "Reasonable medical judgment" means 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.

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

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

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

390.0111 Termination of pregnancies.—

(1) PAIN-CAPABLE UNBORN CHILD PROTECTION.—

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

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

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

(b) A person may not perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is 20 or more weeks unless, in reasonable medical judgment she has a condition that so complicates 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. Such a condition may not be deemed to exist if it is 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. With respect to this exception, the physician shall terminate the pregnancy in the manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. Such greater risk may not be deemed to

exist if it is 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.

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

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

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

3. If the probable postfertilization age was determined to be 20 or more weeks, the basis of 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 of the determination that it was necessary to preserve the life of an unborn child.

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

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

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

(e) Any physician who fails to submit a report under paragraph (c) by the end of 30 days after the due date shall be subject to a late fee of $500 for each additional 30-day period or portion of a 30-day period the report is overdue. Any physician required to report in accordance with this subsection who has not submitted a report, or has submitted only an incomplete report, more than 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 court order or be subject to civil contempt. Failure by any physician to conform to any requirement of this subsection constitutes grounds for disciplinary action under s. 458.331 or s. 459.015. Intentional

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851 Natural Guardians
SPONSOR(S): Schwartz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 990

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad DC	Bond NB
2) Judiciary Committee			

SUMMARY ANALYSIS

Under current law, the mother and father of a child are the natural guardians of their child. Natural guardians have substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed $15,000.

This bill conforms terminology used in the law regarding natural guardians to terminology used in other laws regarding parents and children. Specifically, the bill changes the terms "mother and father" to "parents" and changes "child custody" to "parental responsibility."

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 744, F.S., governs issues related to natural guardians. A mother and father, together, are natural guardians of their own children and of their adopted children, during minority.[1] If the marriage between the parents dissolves, guardianship belongs to the parent to whom "custody" was awarded. If the parents are given "joint custody," then both continue as natural guardians. The statute gives natural guardians substantial authority to act on the behalf of their minor child in various matters, such as managing assets, transferring real or personal property, and settling of disputes when — in the aggregate — those matters do not exceed $15,000.[2]

Chapter 61, F.S., governs issues arising from dissolution of marriage such as parental responsibility and child support. Over the years, revisions to the family law statute have resulted in a change in philosophy and terminology. For instance, the legislature revised the statute to shift away from an award of "custody" to a presumption of "shared parental responsibility."[3] Chapter 61 also defines and refers to "parents" throughout the chapter; while s. 744.301, F.S., currently uses the phrase "mother and father." As a result, s. 744.301, F.S., does not reflect current statutory terminology as defined and used in family law.

The bill replaces the terms "custody" with "parental responsibility" and "mother and father" with "parents." As a result, the bill merely clarifies current law to provide that if parents are granted shared parental responsibility, both may serve as natural guardians; and if a court grants sole parental responsibility to one parent, the natural guardianship belongs to the parent to whom sole parental responsibility was awarded.

B. SECTION DIRECTORY:

Section 1 amends 744.301, F.S., relating to natural guardians.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

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[1] Section 744.301, F.S.
[2] *Id.*
[3] Section 61.13(1)(c)2, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to 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 bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to natural guardians; amending s. 744.301, F.S.; revising terminology relating to natural guardians; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 744.301, Florida Statutes, are amended to read:

744.301 Natural guardians.—

(1) The parents ~~mother and father~~ jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted or, if the parents have been granted shared parental responsibility ~~custody of the child is awarded. If the parents are given joint custody~~, then both continue as natural guardians. If the marriage is dissolved and neither parent ~~the father nor the mother~~ is given parental responsibility for ~~custody of~~ the child, neither may ~~shall~~ act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) Except as otherwise provided in this chapter, natural

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

guardians are authorized, on behalf of any of their minor children, without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed $15,000, to:

(a) Settle and consummate a settlement of any claim or cause of action accruing to the child ~~any of their minor children~~ for damages to the person or property of the child ~~any of said minor children~~;

(b) Collect, receive, manage, and dispose of the proceeds of any such settlement;

(c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the child ~~minor~~ is a beneficiary, participant, or owner~~,~~

~~without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed $15,000~~.

Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1013 Residential Construction Warranties
SPONSOR(S): Artiles
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond MB
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

There is a common law implied warranty of fitness and merchantability related to the purchase of improved real estate purchased from the builder. This common law implied warranty applies to buildings and other improvements which are affixed to the real property, as opposed to fixtures that can be removed from the real property without damage to the premises.

A recent DCA court decision expanded the common law implied warranty of fitness and merchantability to off-site improvements, such as roads and drainage areas within a subdivision. The DCA opinion is contrary to a previous Florida Supreme Court opinion. This bill provides that the implied warranty of fitness and merchantability or habitability does not include off-site improvements.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In general, in an exchange between a buyer and a seller, the seller conveys to the buyer with either an express or an implied warranty of fitness and merchantability.[1] Florida has adopted the Uniform Commercial Code (UCC), which provides an implied warranty of merchantability for the sale of goods.[2] However, the UCC does not apply to the sale of real property, and furthermore, it does not apply to affixed buildings upon real property.[3]

Florida courts have created a common law implied warranty of fitness and merchantability for the purchase of real estate.[4] For the warranty to apply, there must be privity between the builder and the first purchaser.[5] This common law implied warranty applies to realty, which is to say affixed to the real property, as opposed to fixtures that can be removed from the real property without damage to the premises.[6] For example, a window unit air conditioner is a fixture, while a central air system is realty.[7] In another case, a court decided that a seawall abutting a lot is not covered by the implied warranty.[8]

Florida courts have previously ruled that an implied warranty only applies to first purchasers of real estate in Florida and is extended only to the construction of a home or other improvements immediately supporting the residence.[9] That decision was understood to be the law until recently, when a conflicting decision in the 5th DCA held that roads and drainage ditches of a subdivision were within the scope of the common law implied warranty of fitness and merchantability.[10] The latter decision significantly extended the doctrine far beyond what the Supreme Court had previously allowed and directly conflicted with the prior DCA decision, which followed the Supreme Court's reasoning. The 5th DCA case noted, "We also reject the Developer's argument that extending the implied warranties is a matter for the legislature. In the absence of a legislative pronouncement, we are free to apply common law, and this is a case of application of common law warranties."[11]

Effects of Proposed Changes

This bill creates s. 553.835, F.S. within the Florida Building Codes Act. This bill contains a Legislative finding that courts have reached different conclusions concerning the scope and extent of the common law doctrine of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home. The bill proclaims the Legislature's intent to affirm the limits to the doctrine of implied warranty of fitness and merchantability or habitability associated with the construction of a new home.

The bill defines "off-site improvement" as the street, road, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, or that is located on or under the lot but that does not immediately and directly support the habitability of the home itself. The bill also defines "habitability" as the condition of a home in which inhabitants can

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[1] *See, e.g.*, s. 672.301, F.S., *et. seq, the Florida Uniform Commercial Code regarding general obligation and construction of contract.*
[2] Section 672.314, F.S.
[3] Section 672.105, F.S., defines "goods" as all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale. . ."
[4] *Gable v. Silver*, 258 So.2d 11 (Fla. 4th DCA 1972).
[5] *Strathmore Riverside Villas Condominium Ass'n, Inc. v. Paver Development Corp.*, 369 So.2d 971 (Fla. 2d DCA 1979).
[6] *Id.* at 14.
[7] *Id.*
[8] *Conklin v. Hurley*, 428 So.2d 654 (Fla. 1983).
[9] *Port Sewall Harbor & Tennis Club Owners Ass'n v. First Fed. S. & L. Ass'n.*, 463 So.2d 530, 531 (Fla. 4th DCA 1985).
[10] *Lakeview Reserve Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902, 908 (Fla. 5th DCA 2010).
[11] *Id.* at 909. The Supreme Court has jurisdiction due to a certified circuit conflict and heard oral arguments on December 6th, 2011, to resolve the issue, however, a decision has not yet been released.

live free of structural defects that will likely cause significant harm to the health or safety of inhabitants. The bill does not define fitness and merchantability.

The bill provides that there is no cause of action in law or equity for a person based upon the doctrine of implied warranty of fitness and merchantability or habitability for off-site improvements, except as otherwise provided by law.

The bill contains a severability clause.

The bill provides an effective date of July 1, 2012, and applies retroactively to all cases accruing before, pending on, or filed after the effective date.

B. SECTION DIRECTORY:

Section 1 creates s. 553.835, F.S., relating to implied warranties.

Section 2 provides a severability clause.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to 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 takes effect on July 1, 2012 and contains a provision applying the bill to all cases accruing before, pending on, or filed after that date. The provision appears to be intended to apply the bill retroactively.

   To determine whether a statute should be retroactively applied, courts apply two interrelated inquiries. First, courts determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If so, then courts determine whether retroactive application is constitutionally permissible.[12]

   The bill clearly intends to apply retroactively, so only the second inquiry need be considered. A retrospective provision is not necessarily invalid. It is only invalid in those cases wherein vested rights are adversely affected or destroyed. Generally, due process considerations prevent the state from retroactively abolishing vested rights.[13]

   A statute does not operate retrospectively merely because it is applied in a case arising from conduct prior to the statute's enactment. Rather, the court looks to whether the new provision attaches new legal consequences to events completed before its enactment. Retroactive application of a civil statute is generally unconstitutional is the statute impairs vested rights, creates new obligations, or imposes new penalties.[14]

   In one case, the Florida Supreme Court struck down a law that applied bad faith penalties against insurers retroactively because the penalty would have been over $200,000 higher if they had applied the statute retroactively.[15] In another case, the Supreme Court upheld a statute enacted soon after a controversy as to the interpretation of the original law, reasoning that the legislature was not making a substantive change, but rather clarifying the original intent of the law.[16] A statute barring a suit against a governmental employee, intended to apply retroactively, was struck down under the due process clause in art. I, s. 9 of the Florida Constitution because the plaintiff's right to sue had become vested "since the suit was filed long before the statute was amended."[17] However, a retroactive statute was upheld because the class subject to the statute was on fair notice that a statutory provision for curing a violation was not a vested right, but rather a matter of legislative grace that could be withdrawn by subsequent legislative action.[18]

   A key distinction is whether a right is vested. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law.[19] It must be an immediate, fixed right of present or future enjoyment.[20]

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[12] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999).
[13] *Id. at 503.*
[14] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).
[15] *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995).
[16] *Lowry v. Parole and Probation Com'n*, 473 So.2d 1248 (Fla. 1985).
[17] *Bryant v. School Bd. Of Duval County, Fla.*, 399 So.2d 417 (Fla. 1st DCA 1981).
[18] *R.A.M.* at 1217.
[19] *Id.* at 1218.
[20] *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

Once a cause of action has accrued, the right to pursue that cause of action is generally considered a vested right and a statute that becomes effective subsequently may not be applied to eliminate or curtail the cause of action. Likewise, it is impermissible for a statute to be applied to prevent the enforcement of a judgment obtained before the effective date of the statute.[21]

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not appear to affect any warranties affecting condominiums or cooperatives as the Legislature has already provided a statutory implied warranty of fitness and merchantability in ss. 718.203 and 719.203, F.S., respectively.

It is unclear if the bill accomplishes its stated goal of rejecting the decision that included roads and drainage and potentially other off-site improvements within the scope of the common law implied warranty. The language of the bill includes "except as otherwise provided by law," which could arguably include any and all common law, including the common law as recently created by the 5th DCA.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[21] *American Optical Corp. v. Spiewak*, 73 So.3d 120 at126 (Fla. 2011).

A bill to be entitled

An act relating to residential construction warranties; creating s. 553.835, F.S.; providing legislative findings; providing legislative intent to affirm the limitations to the doctrine of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home; providing definitions; prohibiting a cause of action in law or equity based upon the doctrine of implied warranty of fitness and merchantability or habitability for off-site improvements, except as otherwise provided by law; providing for applicability of the act; providing for severability; providing an effective date.

WHEREAS, the Legislature recognizes and agrees with the limitations on the applicability of the doctrine of implied warranty of fitness and merchantability or habitability for a new home as established in the seminal cases of *Gable v. Silver,* 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dism, 264 So.2d 418 (Fla. 1972); *Conklin v. Hurley,* 428 So.2d 654 (Fla. 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v. First Fed. S. & L. Ass'n.,* 463 So.2d 530 (Fla. 4th DCA 1985), and does not wish to expand any prospective rights, responsibilities, or liabilities resulting from these decisions, and

WHEREAS, the recent decision by the Fifth District Court of Appeal rendered in October of 2010, in *Lakeview Reserve*

Homeowners et. al. v. Maronda Homes, Inc., et. al., 48 So.3d 902 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty of fitness and merchantability or habitability for a new home to the construction of roads, drainage systems, retention ponds, and underground pipes, which the court described as essential services, supporting a new home, and

WHEREAS, the Florida Legislature finds, as a matter of public policy, that the *Maronda* case goes beyond the fundamental protections that are necessary for a purchaser of a new home and that form the basis for imposing an implied warranty of fitness and merchantability or habitability for a new home, and creates uncertainty in the state's fragile real estate and construction industry, and

WHEREAS, it is the intent of the Legislature to reject the decision by the Fifth District Court of Appeal in the *Maronda* case insofar as it expands the doctrine of implied warranty and fitness and merchantability or habitability for a new home to include essential services as defined by the court, NOW THEREFORE,

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

Section 1. Section 553.835, Florida Statutes, is created to read:

553.835 Implied warranties.—

(1) The Legislature finds that the courts have reached different conclusions concerning the scope and extent of the common law doctrine of implied warranty of fitness and

merchantability or habitability for improvements immediately supporting the structure of a new home, which creates uncertainty in the state's fragile real estate and construction industry.

(2) It is the intent of the Legislature to affirm the limitations to the doctrine of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home.

(3) As used in this section, the term:

(a) "Habitability" means the condition of a home in which inhabitants can live free of structural defects that will likely cause significant harm to the health or safety of inhabitants.

(b) "Off-site improvement" means the street, road, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, or that is located on or under the lot but that does not immediately and directly support the habitability of the home itself.

(4) There is no cause of action in law or equity available to a person based upon the doctrine of implied warranty of fitness and merchantability or habitability for off-site improvements, except as otherwise provided by law.

Section 2. If any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 3. This act shall take effect July 1, 2012, and applies to all cases accruing before, pending on, or filed after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1077 Service Animals
SPONSOR(S): Health & Human Services Access Subcommittee; Kriseman and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee		Cary JMC	Bond MB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Current law regarding the rights and benefits of a physical disability to individuals generally does not apply to a psychological or neurological disability.

This bill is the "Dawson and David Caras Act." The bill:

- Amends the definition of "individual with a disability" and "physically disabled" to include an individual who has a psychological or neurological disability. The expanded definitions are not limited to laws related to service animals, and therefore would expand the state's disability anti-discrimination laws.
- Expands the definition of "service animal" to include an animal whose tasks 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.
- Provides 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.
- Provides 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 has the same rights, privileges and liabilities as a person with a disability as it relates to a service animal.
- Creates a new second-degree misdemeanor for any person who knowingly and fraudulently represents themselves as a service animal trainer.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 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. The ADA provides that persons with disabilities may not be discriminated against when applying for a job, and that public services and transportation must accommodate such individuals.[1]

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. 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.[2]

Effective March 15, 2011, the federal Department of Justice (DOJ) offered definitions relating to nondiscrimination on the basis of disability by public accommodations and in commercial facilities. According to DOJ's definitions, a service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. . ." Other species of animals are specifically excluded from the definition of service animals. Furthermore, according to DOJ, the "provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."[3]

Fair Housing Act

The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. The Fair Housing Act includes private housing, housing that receives Federal financial assistance, and state and local government housing. 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.[4]

The U.S. Department of Housing and Urban Development (HUD) investigates complaints of violations against the Fair Housing Act, including discrimination in housing.[5] If a person is convicted of violating the Fair Housing Act, that person may be required to do the following:

- Compensate the victim for actual damages, including humiliation, pain and suffering;
- Provide injunctive or other equitable relief;
- 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.
- Pay reasonable attorney's fees and costs.[6]

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[1] 42 U.S.C. 12101, et. seq.
[2] *Id.*
[3] 28 C.F.R. s. 36.104
[4] 42 U.S.C. s. 3601, et. seq.
[5] 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 27, 2012).
[6] *Id.*

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.[7] Most service animals are dogs,[8] however, monkeys,[9] miniature horses,[10] and other animals are also used for this function. Prior to an animal being used by an individual with a disability, the animal generally 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.[11] Similar courses are also available for miniature horse trainers[12] and monkey trainers.[13]

Effects of the Bill

The creates the "Dawson and David Caras Act". David Caras is a puppy raiser/trainer for Southeastern Guide Dogs. Dawson was the name of the dog he was training when they ran into difficulties related to housing accommodations. They live in St. Petersburg.

The bill amends s. 413.08(1)(b), to include in the definitions of "individual with a disability" and "physically disabled" a person who has a psychological or neurological disability. This enables individuals with psychological or neurological disabilities to be considered disabled for the purpose of all of s. 413.08, F.S., thus enabling these individuals to full and equal advantages of public accommodations, employment and housing accommodations. That is, the expanded definition affects more than just service animals.

The bill creates s. 413.08(1)(c), F.S., to define an "owner" as a person who owns a service animal or who is authorized by the owner to use a service animal.

The bill amends s. 413.08(1)(e), F.S., to expand the definition of a "service animal" to include that an animal may be used by an individual who has low vision or who is suffering with a psychiatric or neurological disability to prevent or interrupt impulsive and destructive behaviors.

The bill amends s. 413.08(2), F.S., 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 include schools, are required to allow an individual with a disability to be accompanied by a service animal.[14]

Current Florida law does not require a public accommodation, defined as a place to which the general public is invited, including modes of transportation, to provide care, food or a special location for the service animal to relieve itself. The bill amends s. 413.08(3)(d), to provide that if federal law, rule or agency requires a public accommodation to provide such services, it 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 amends s. 413.08(3)(e), to provide that a public accommodation may exclude or remove an animal from the premises if the animal fails to remain under the control of the handler or if the animal's behavior is inappropriate. The bill specifies that inappropriate behavior includes, but is not limited to, growling, excessive barking, or biting.

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[7] Americans with Disabilities Brief, Service Animals, April 2002. http://www.ada.gov/svcanimb.htm (last visited January 27, 2012).
[8] International Association of Assistance Dog Partners. http://www.iaadp.org/A-dogWorld.html (last visited January 27, 2012).
[9] Helping Hands, Monkey Helpers for the Disabled. http://www.monkeyhelpers.org//index.html (last visited January 27, 2012).
[10] The Guide Horse Foundation. http://www.guidehorse.org/ (last visited January 27, 2012).
[11] American Behavior College. http://www.animalbehaviorcollege.com/curriculum.asp (last visited January 27, 2012).
[12] The Guide Horse Foundation. http://www.guidehorse.org/ (last visited January 27, 2012).
[13] Helping Hands, Monkey Helpers for the Disabled. http://www.monkeyhelpers.org//index.html (last visited January 27, 2012).
[14] 42 U.S.C. 12101

The bill amends s. 413.08(4), F.S., to provide 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 ss. 775.082, or s. 775.083, F.S. A second-degree misdemeanor is punishable by up a term of imprisonment not exceeding 60 days and/or a maximum fine of $500, plus court costs.

The bill amends s. 413.08(6), F.S., to provide that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations.

The bill amends s. 413.08(6)(b), F.S., to provide that a trainer of a service animal 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 amends s. 413.08(8), F.S., to provide 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 creates s. 413.08(9), F.S., to provide 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 ss. 775.082, and 775.083, F.S. A second-degree misdemeanor is punishable by up a term of imprisonment not exceeding 60 days and/or a maximum fine of $500, plus court costs.

B. SECTION DIRECTORY:

Section 1 names the act as the "Dawson and David Caras Act".

Section 2 amends s. 413.08, F.S. relating to rights of an individual with a disability, use of service animal, and discrimination in public employment or housing accommodations.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to 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:

Article III, s. 6 of the Florida Constitution provides that the subject of every law "shall be briefly expressed in the title." This bill appears to amend the law in a manner that is broader than the title suggests. This bill applies to individuals with a disability and is not specific to service animals.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a definition for "trainer" of a service animal. This could potentially allow anyone to claim to be a trainer entitled to the benefits of this legislation.

The bill amends the definition for "individual with a disability" and "physically disabled" to include individuals with psychological or neurological disabilities. This change in definition allows an individual with a psychological or neurological disability to have full and equal advantages of public accommodations, employment and housing accommodations as currently defined in s. 413.08, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012 the Health and Human Services Access Subcommittee adopted two amendments to House Bill 1077. The amendments do the following:

- Cite the act as the "Dawson and David Caras Act."
- Amend the definition of "individual with a disability" to include an individual who has a psychological or neurological disability.
- Amend the definition of "physically disabled" to include an individual who has a psychological or neurological disability.
- Retain current law relating to the definition of a "service animal".
- Provide that a public accommodation may remove an animal from the premises if the animal fails to remain under the control of the handler or if the animal's behavior is inappropriate, including, but not limited to, growling, excessive barking or biting.
- Remove provisions that require a trainer to be training an animal from an accredited school.
- Remove provisions that would require a trainer to have available on himself or herself inspection credentials from an accredited school in which they were training an animal for.
- Remove provisions requiring that a service animal is wearing appropriate apparel that identifies the animal with an accredited school for which the service animal is being trained.

The bill was reportedly favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

A bill to be entitled

An act relating to service animals; providing a short title; 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. This act may be cited as the "Dawson and David Caras Act."

Section 2. 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 or who has a psychological or neurological disability. As used in this paragraph, the term:

1. "Hard of hearing" means an individual who has suffered a permanent hearing impairment that is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

2. "Physically disabled" means any person who has a physical, psychological, or neurological disability ~~impairment~~ that substantially limits one or more major life activities.

(c) "Owner" means a person who owns a service animal or who is authorized by the owner to use a service animal.

(d) ~~(c)~~ "Public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(e) ~~(d)~~ "Service animal" means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired, has low vision, or is blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, helping a person with a psychological or neurological disability by

preventing or interrupting impulsive or destructive behaviors, or performing other specialized ~~special~~ tasks. A service animal is not a pet.

(2) An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. This section does not require any person, firm, business, or corporation, or any agent thereof, to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled. If an individual with a disability or a person who trains service animals is a student at a private or public school in the state, that person has the right to be accompanied by a service animal subject to the conditions established under this section.

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may ask if an animal is a service animal or what tasks the animal has been trained to perform in order to determine the difference between a service animal and a pet.

(b) A public accommodation may not impose a deposit or surcharge on an individual with a disability as a precondition to permitting a service animal to accompany the individual with a disability, even if a deposit is routinely required for pets.

(c) An individual with a disability is liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets.

(d) The care or supervision of a service animal is the responsibility of the individual owner. A public accommodation is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement unless required by any federal agency, federal law, or federal regulation. In those instances, if a public accommodation has a secured area, the public accommodation must provide a special location for the service animal to relieve itself within that secured area.

(e) A public accommodation may exclude or remove any animal from the premises, including a service animal, if the animal fails to remain under the control of the handler or if the animal's behavior is inappropriate, including, but not limited to, growling, excessive barking, or biting, or poses a direct threat to the health and safety of others. Allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. If a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual with a disability the option of continuing access to the public accommodation without having the service animal on the premises.

(4) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to~~,~~ or enjoyment of~~,~~ a public accommodation;

interferes with the renting, leasing, or purchasing of housing accommodations; or otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) It is the policy of this state that an individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

(6) An individual with a disability who is accompanied by a service animal is entitled to full and equal advantages, facilities, and privileges in all housing accommodations and is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(a) This section does not require any person renting, leasing, or otherwise providing real property for compensation to modify her or his property in any way or provide a higher degree of care for an individual with a disability than for a person who is not disabled.

(b) An individual with a disability who has a service

animal, ~~or~~ who obtains a service animal, or who is the trainer of a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such a person may not be required to pay extra compensation for the service animal. However, such a person is liable for any damage done to the premises or to another person on the premises by such an animal. A housing accommodation may request proof of compliance with vaccination requirements.

(7) An employer covered under subsection (5) who discriminates against an individual with a disability in employment, unless it is shown that the particular disability prevents the satisfactory performance of the work involved, or any person, firm, or corporation, or the agent of any person, firm, or corporation, providing housing accommodations as provided in subsection (6) who discriminates against an individual with a disability, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Any person who trains ~~trainer of~~ a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public and housing accommodations ~~facilities~~ and the same liability for damage as is provided for a person ~~those persons~~ described in subsection (3) accompanied by service animals.

(9) A person who knowingly and fraudulently represents herself or himself, through her or his conduct or verbal or written notice, as the owner or trainer of a service animal commits a misdemeanor of the second degree, punishable as

provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 Effects of Crimes
SPONSOR(S): Steinberg
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Equitable distribution is the division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for fair, but not necessarily equal, allocation of property between spouses. With respect to alimony, Florida law provides factors a court must consider in awarding alimony, such as the duration of the marriage.

Probate is the process for marshalling the assets of a deceased person, paying debts, and distributing property to heirs. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. The bill:

- Provides that a person convicted of an enumerated offense (i.e. first degree or second degree murder, manslaughter, DUI manslaughter, BUI manslaughter, aggravated assault, or a substantially similar offense under the laws of another jurisdiction) may not receive alimony if the crime was committed at any time during the marriage and the crime results in death or creates a substantial risk of death or serious injury of a family member of the other spouse.
- Provides that a spouse convicted of an attempt or conspiracy to commit murder of his or her spouse may not receive alimony from such spouse.
- Provides a list of actions by a parent which will cause such parent to lose his or her right to the intestate succession in any part of the child's estate and all right to administer the estate of the child (i.e. abuse, abandonment, neglect, sexual abuse).
- Provides that if the parent is disqualified from taking a distributive share in the decedent's estate, the decedent's estate must be distributed as though the parent had predeceased the decedent.
- Provides that a sibling of the half blood of the decedent whose parent is disqualified may not take a distributive share in the decedent's estate.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Equitable Distribution and Alimony

Chapter 61, F.S., governs issues relating to dissolution of marriage, such as the equitable distribution of assets and alimony. "Equitable distribution is the division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for fair, but not necessarily equal, allocation of property between spouses."[1] The bill provides that if a spouse is convicted of an offense involving attempt or conspiracy to murder the other party, a court may not make an equitable distribution of property to such spouse.

Under current law, a court may grant one or a combination of four types of alimony: bridge-the-gap, rehabilitative, durational, or permanent.[2] Section 61.05(2), F.S., sets out factors a court must consider in awarding alimony, such as the duration of the marriage.

The bill provides a list of criminal offenses and conditions which preclude a spouse from receiving alimony. Specifically, a person convicted of first degree or second degree murder, manslaughter, DUI manslaughter, BUI manslaughter, aggravated assault, or a substantially similar offense under the laws of another jurisdiction may not receive alimony if the crime was committed at any time during the marriage and the crime results in death or creates a substantial risk of death or serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ of a family member of a divorcing party. The bill defines family member, for purposes of the section, as a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister. The family member can be related to the individual by blood, marriage or adoption to qualify under the section.

The bill also provides that a spouse convicted of an attempt or conspiracy to commit murder of his or her spouse may not receive alimony from such spouse.

Intestate Succession

Chapter 732, F.S., is Florida's Probate Code. Probate is the process for marshalling the assets of a deceased person, paying debts, and distributing the remaining property to heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. Intestate statutes are drafted to reflect the presumed intent of the deceased.

Under current law, if a decedent is survived by only a spouse, the surviving spouse is entitled to the entire intestate estate.[3] If there is no surviving spouse and the decedent is survived by a descendant, the descendant is entitled to the entire estate. If there is no descendant, the estate is divided equally between the decedent's father and mother.[4]

The bill provides a list of actions by a parent which will cause such parent to lose his or her right to intestate succession in any part of the child's estate and all right to administer the estate of the child. Said actions include a parent who commits the following acts against his or her minor child:

- Abuse, abandonment, or neglect pursuant to s. 39.01, F.S.;
- A violation of s. 827.03, F.S. (relating to abuse); or

[1] Black's Law Dictionary (9th ed. 2009), equitable distribution.
[2] Section 610.8(1), F.S.
[3] Section 732.102, F.S.
[4] Section 732.103, F.S.

- Sexual abuse as defined in s. 39.01, F.S.

If the parent is disqualified from taking a distributive share in the decedent's estate under this section, the decedent's estate must be distributed as though the parent had predeceased the decedent.

The bill also provides that a sibling of the half blood[5] of the decedent whose parent is disqualified may not take a distributive share in the decedent's estate.

B. SECTION DIRECTORY:

Section 1 amends s. 61.075, F.S., relating to equitable distribution of marital assets.

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 creates s. 732.8025, F.S., relating to parental offenses against a minor child.

Section 4 provides for an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

[5] "The relationship existing between persons having the same father or mother, but not both parents in common." Black's Law Dictionary (the d. 2009), blood.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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 bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not require a conviction of an enumerated crime before barring equitable distribution, alimony or intestate devise. In addition, it is unclear from the bill whether disinheritance occurs if the child is a minor at the time of death or whether the child has to have been a minor at the time the abuse occurred.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to effects of crimes; amending s. 61.075, F.S.; providing that a court may not make an equitable distribution of property in a dissolution of marriage to a party convicted of certain offenses concerning the other party; amending s. 61.08, F.S.; prohibiting persons convicted of specified crimes after a marriage from receiving alimony; creating s. 732.8025, F.S.; providing that a parent who commits specified offenses against a minor child shall lose all right to the intestate succession in the child's estate and all right to administer the estate; providing for distribution of that share of the estate; providing an effective date.

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

Section 1. Subsection (12) is added to section 61.075, Florida Statutes, to read:

61.075 Equitable distribution of marital assets and liabilities.—

(12) The court may not make an equitable distribution of property to a party convicted of an offense involving an attempt or conspiracy to murder the other party.

Section 2. Subsection (1) of section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

(1)(a) In a proceeding for dissolution of marriage, the

court may grant alimony to either party, which alimony may be bridge-the-gap, rehabilitative, durational, or permanent in nature or any combination of these forms of alimony.

(b) In any award of alimony, the court may order periodic payments or payments in lump sum or both.

(c) The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

(d)1. A person convicted, as defined in s. 944.606, of first degree or second degree murder in violation of s. 782.04, manslaughter in violation of s. 782.07, DUI manslaughter in violation of s. 316.193(3)(c)3., BUI manslaughter in violation of s. 327.35(3)(c)3., aggravated assault in violation of s. 784.021, or a substantially similar offense under the laws of another jurisdiction may not receive alimony if:

a. The crime results in death or creates a substantial risk of death or serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ, of a family member of a divorcing party. For purposes of this sub-subparagraph, the term "family member" means a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption; and

b. The crime was committed after the marriage.

2. A person convicted of an attempt or conspiracy to commit murder may not receive alimony from the person who was

the intended victim of the attempt or conspiracy.

(e) In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.

Section 3. Section 732.8025, Florida Statutes, is created to read:

732.8025 Parental offenses against minor child; effect on child's estate.—

(1) A parent who abused, abandoned, or neglected the minor child as defined in s. 39.01, committed a violation of s. 827.03 against the child, or sexually abused the minor child as defined in s. 39.01 shall lose all right to the intestate succession in any part of the child's estate and all right to administer the estate of the child.

(2) If a parent is disqualified from taking a distributive share in the decedent's estate under this section, the decedent's estate shall be distributed as though the parent had predeceased the decedent.

(3) A sibling of the half blood of the decedent whose parent is disqualified may not take a distributive share in the decedent's estate.

Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1163 Adoption
SPONSOR(S): Health & Human Services Access Subcommittee; Adkins and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 1 N, As CS	Poche	Schoolfield
2) Civil Justice Subcommittee		Caridad DC	Bond MB
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1163 significantly revises current law relating to adoption. The bill:

- Clarifies the duties and obligations of adoption entities prior to and after taking custody of a surrendered newborn;
- Requires a newborn who tests positive for illicit or prescription drugs or alcohol to be placed with an adoption entity for the purposes of Florida's "Safe Haven" law for surrendered newborns;
- Prohibits the Department of Children and Families from taking custody of a surrendered newborn who tests positive for drugs or alcohol and has no other signs of abuse, 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;
- Adds guidelines to be considered by the court when approving a legal or other fee associated with an adoption in excess of $5,000;
- Places restrictions on advertisements offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of advertising restrictions;
- Provides that a person who knowingly publishes or assists in the publishing of an advertisement in violation of the bill's provisions commits a second degree misdemeanor and is subject to a fine of up to $150 per day for each day the violation continues;
- 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;
- Provides that a person who commits adoption deception commits a second degree misdemeanor if the amount of money received was $300 or less and a person who commits adoption deception with receipt of money totaling more than $300 commits a third degree felony; and
- Clarifies the rights and obligations of a volunteer mother involved in a preplanned adoption agreement.

The bill does not appear to have a fiscal impact on state or local government.

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:

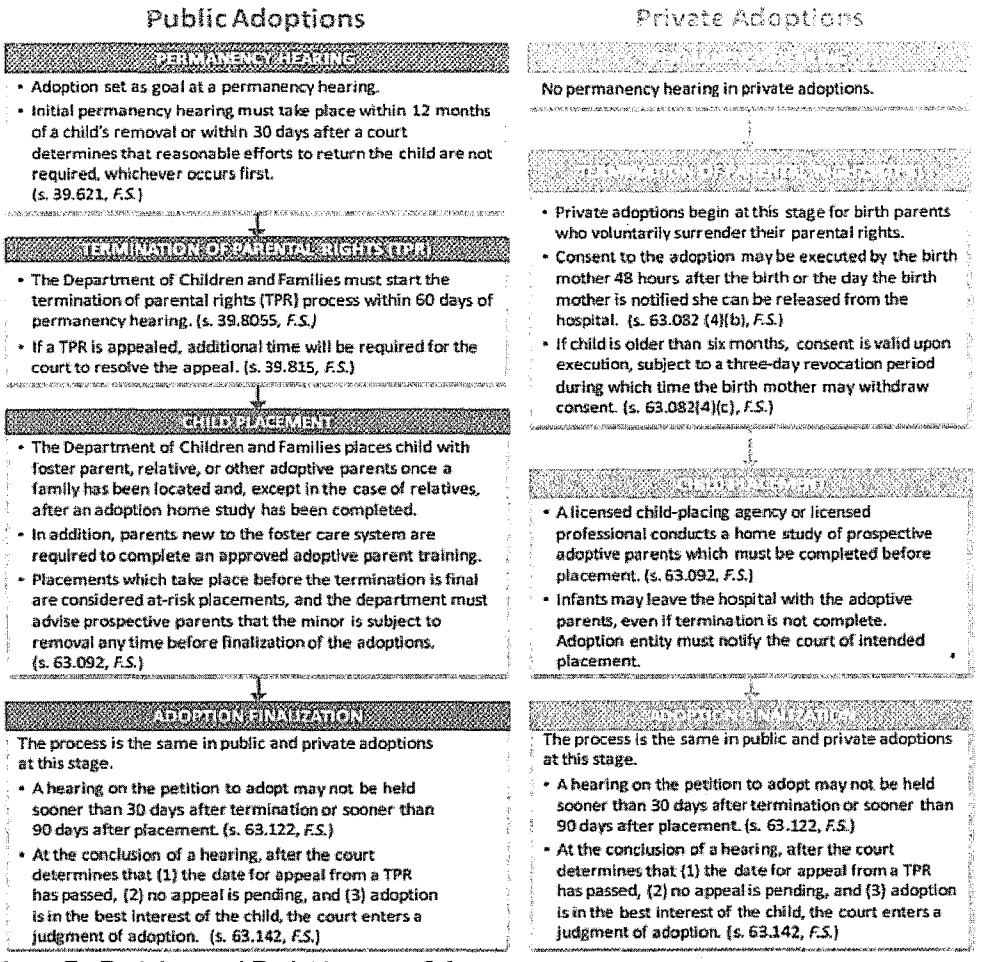
- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202;
- Child-caring agencies registered under s. 409.176;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children 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] Section 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] Section 63.022(1)(a), F.S.
[4] Section 63.022(2), F.S.
[5] Section 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 privates 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]

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[6] Section 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 (last accessed Jan. 28, 2012) (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, F.S.;
- Permanent placement with a fit and willing relative under s. 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.[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 entity[19] 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]

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[12] *Id.* at page 55.
[13] *Id.* at page 56.
[14] Section 39.621(1), F.S.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Section 39.621(2), F.S.
[19] Section 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] Section 63.022(5), F.S.
[21] Section 63.082(6)(b), F.S.
[22] *Id.*
[23] Section 63.082(6)(c), F.S.
[24] Section 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:

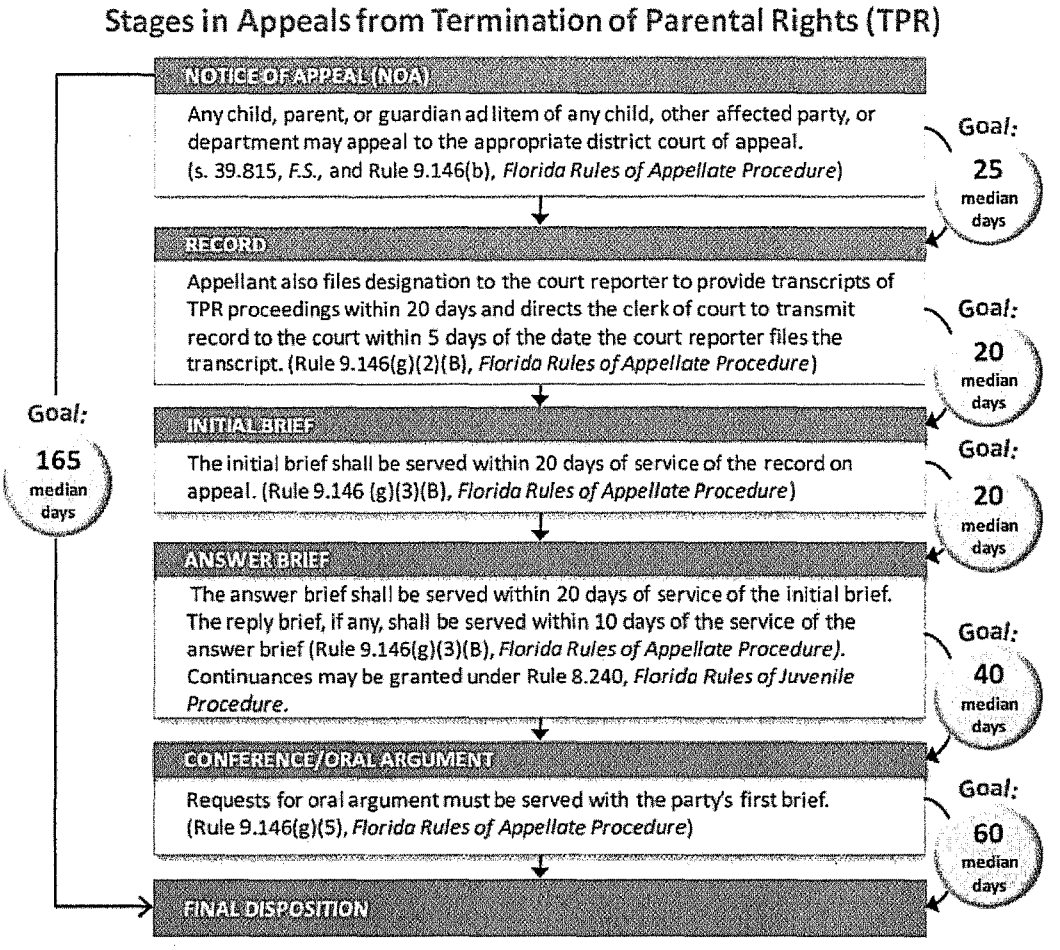
- Suitable permanent relative custody arrangements;
- The ability of the birth parent(s) to provide for the material needs of the child;
- The ability of the birth parent(s) to care for the child's health, safety, and well-being upon the child's return home;
- The present and future needs of the child; 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 his or her 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 waited 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] Section 63.082(6)(c), F.S.
[26] *See* Part IX, Chapter 39, F.S.
[27] Section 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.



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]

[32] Section 39.503(5), F.S.
[33] Section 39.503(6), F.S.
[34] Section 39.502(8), F.S.
[35] Section 39.502(9), F.S.

Prospective Adoptive Parents

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.

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[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 Jan. 19, 2012).
[39] Rule 65C-16.007(1), F.A.C.
[40] Rule 65C-16.007(2), F.S.
[41] Section 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.*

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 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 pursuant to 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 the statute 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.

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[46] Section 63.125(1), F.S.
[47] Section 63.125(2), F.S.
[48] Section 63.125(3), F.S.
[49] Section 63.125(5), F.S.
[50] Ch. 2000-188, L.O.F.
[51] Section 383.50(1), F.S.
[52] Section 383.50(3), F.S.
[53] Section 383.50(8), F.S.
[54] Section 383.50(7), F.S.
[55] Section 63.0423(3), F.S.
[56] Section 63.0423(2), F.S.
[57] Section 63.0423(6) and (7), F.S.
[58] Section 63.0423(7), F.S.
[59] Section 383.50(5), F.S.
[60] Section 383.50(2), F.S.

Effect of Proposed Changes

The bill amends many provisions of chapter 63, F.S., relating to adoption.

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 the definition of abandoned to mean a parent or person having legal custody who makes little or no provision for support of the child or who 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 1

The bill updates Legislative intent to reflect contents of the bill.

Section 2

The bill provides clarifications to the definitions of "abandoned" and "parent."

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., if a search of the Registry was previously completed and documentation of the search is contained in the proceeding case file. 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 entity[62] 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".

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[61] Section 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] Section 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.

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 specifies 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 or alcohol, but shows no other signs of abuse or neglect, shall be placed with an adoption entity pursuant to s. 383.50, F.S.,[63] and s. 63.0423, F.S., which outlines procedures for handling surrendered newborns. The bill further provides that if DCF is contacted regarding a surrendered newborn under this section of law, the department may only provide instruction on contacting an adoption entity to take custody of the child. DCF may not take custody of 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 alcohol, in the private adoption process to allow for 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 of the bill does not prevent DCF from conducting its investigatory duties.

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.

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. 63.0427, 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

[63] Section 383.50, F.S., is Florida's "safe haven" law for newborns.

- 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 requires the mediation to be conducted pursuant to the provisions of s. 61.183, F.S., which, in part, requires the mediation to be conducted by a mediator certified by the Florida Supreme Court. The bill also requires the petitioner for dissolution of the contact agreement to 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 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 with 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 does 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 allows 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 bill allows for the father's rights and obligations to be

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

modified or altered if the judgment terminating parental rights is voided due to the fact that, at the time the petition was filed, the father relied on false information provided a person 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 provides 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 an 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 13

The bill makes a grammatical change in term from "interest" to "interests".

Section 14

Current law states that the notice and consent provisions of ch. 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.

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 provides 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 17

The bill provides a cross-reference to a newly created paragraph.

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 permanent custody decisions between competing parties at the time the petition for termination of parental rights is dismissed. 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 requires 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 19

Current law requires a copy of a completed home study be given to the intended adoptive parents who were the subject of the home study. The bill requires that the home study be signed by the person or entity that completed the home study. The bill also makes a minor change in language usage that does not have a substantive affect on the law.

Section 20

The bill amends s. 63.097, F.S., regarding fees associated with adoptions. Current law requires that the court approve all legal or other fees that exceed $5,000 in connection with an adoption. The bill provides guidelines for judges to consider when determining the reasonableness of a fee. The guidelines are taken from Rule 4-1.5 of the Rules Regulating Professional Conduct established by The Florida Bar, the regulating authority for attorneys in the state. The guidelines to be used are:

- The time and labor required, the novelty and difficulty of the question involved, and the skill required to perform the legal service properly;
- The likelihood, if apparent to the client, that the acceptance of the particular case will preclude the attorney from accepting other employment;
- The fee customarily charged in the community for similar legal services;
- The amount involved in the case, the responsibility involved in the representation of the claimant, and the result obtained;
- The time limitations imposed by the case or the client and any additional or special time demands made of the attorney by the client;
- The expertise, reputation, diligence, and ability of the attorney performing the service and the skill, expertise, and efficiency of effort in the actual provision of the legal service; and
- Whether the fee is fixed or contingent on the recovery or outcome of the case.

Section 21

Current law allows only the clerk of court to transmit to the state registrar of vital statistics a certificate containing information necessary for issuance of new birth record within 30 days of entry of judgment of adoption. The bill allows the adoption entity involved in the adoption to also transmit the certificate to the state registrar.

Section 22

Current law allows an adult adoptee to petition the court to appoint an intermediary or licensed child-placing agency to contact a birth parent who has not registered with the adoption registry pursuant to s. 63.165, F.S., and advise them of the availability of same. The bill allows a birth parent to go through the same process to contact an adult adoptee and advise both the adult adoptee and the birth parent that the one or both parties is seeking to contact the other and of the availability of an intermediary or agency to facilitate contact.

Section 23

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 24

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 of 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[65] 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.[66] The bill makes adoption deception with receipt of money totaling more than $300 a third degree felony.[67] 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 25

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 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.

[65] The maximum penalty for a second degree misdemeanor is a fine not exceeding $500 and a term of imprisonment not exceeding 60 days.

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

[67] 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. Sections 775.082, 775.083, 775.084, F.S.

Section 26

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.

Section 27

The bill amends s. 63.2325, F.S., to make technical changes, replacing the term "revocation" with "invalidation" and replacing the term "withdrawal of" with "revocation". The changes are made to make the statute internally consistent.

Section 28

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

General

The bill deletes several references to a "licensed child-placing agency" throughout ch. 63, F.S., and replaces it with "adoption entity". The bill adds the term "licensed child-placing agency" to the definition of "adoption entity" for purposes of chapter 63, F.S. The definition of "adoption entity" is consistent across chapter 39, F.S., and chapter 63, F.S., by adding "licensed child-placing agency" to the definition. 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. 63.097, F.S., relating to fees.

Section 21 amends s. 63.152, F.S., relating to application for new birth record.

Section 22 amends s. 63.162, F.S., relating to hearings and records in adoption proceedings.

Section 23 amends s. 63.167, F.S., relating to state adoption information center.

Section 24 amends s. 63.212, F.S., relating to prohibited acts; penalties for violation.

Section 25 amends s. 63.213, F.S., relating to preplanned adoption agreement.

Section 26 amends s. 63.222, F.S., relating to effect on prior adoption proceedings.

Section 27 amends s. 63.2325, F.S., relating to conditions for revocation of a consent to adoption or affidavit of nonpaternity.

Section 28 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

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 ch. 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:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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:

The bill prohibits adoption entities located outside Florida from advertising or offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of advertising restrictions.

The United States Supreme Court describes the Commerce Clause as follows:

> The Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy. Under the Articles of Confederation, state taxes and duties hindered and suppressed interstate commerce; the Framers intended the Commerce Clause as a cure for these structural ills. It is in this light that we have interpreted the negative implication of the Commerce Clause.

Quill Corp. v. North Dakota, 504 U.S. 298, 312 (1992) (internal citations omitted).

Dormant commerce clause analysis is a part of Commerce Clause analysis. The dormant commerce clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of

commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce. [68]

Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally." *Maine v. Taylor*, 477 U.S. 131, 138 (1986). Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se," *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001), while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits," *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

State regulations may burden interstate commerce "when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods." *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208-09 (2d Cir.2003) (citations omitted).

"A state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989).

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:

Lines 321-330 of the bill make an exception for newborn infants who test positive for illegal drugs, alcohol or other substance abuse. However, this exception is not made in s. 383.50, F.S, related to surrendered newborn infants, which is referenced in this section of the bill. This could be clarified by deleting the reference to s. 383.50, F.S., or by amending s. 383.50, F.S., to agree with changes to the bill. In addition, the exception for newborns who test positive for drugs, alcohol, or other substances in lines 321-330 seems to conflict with the definition of "harm" to a child's health found in s. 39.01(32)(g), F.S.

Lines 397-402 of the bill require the requisite period of residence of a child with a grandparent to be 6 continuous months of the 24 months immediately preceding the filing of a petition for termination of parental rights in order for the grandparent to be entitled to notice of the hearing on the petition. The bill does not define the term "continuous". This could create an issue for interpretation by the courts, on a case-by-case basis, as to what constitutes "continuous" residence. The courts will be required to determine if "de minimus" absences from the home by the child or the grandparent violate the continuous requirement.

Lines 1612-1614 of the bill include the intent of the birth mother not to offer up a child for adoption as a proof of an 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 decides not to give the child up for adoption.

[68] The Commerce Clause also allows Congress to specifically leave regulation of an area to the states, even if the effect of leaving such regulation to the states leads to burdensome and conflicting regulation. The most notable example of this is regulation of the insurance industry.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Health and Human Services Access Subcommittee adopted a strike-all amendment and an amendment to the strike-all amendment for House Bill 1163. The amendment to the strike-all amendment added guidelines to s. 63.097, F.S., to aid judges in determining a reasonable fee in an adoption case where the amount of the fee exceeds $5,000. The guidelines mirror the guidelines found in Rule 4-1.5 of the Rules of Professional Conduct established by The Florida Bar. The strike-all amendment made the following changes to the bill:

- Clarified that a search of the Florida Putative Father Registry is not required in dependency proceedings under chapter 39, F.S., if a search was previously completed and documentation of the search is contained in the proceeding case file;
- Added "Florida licensed child-placing agency" to the definition of "adoption entity" in s. 63.032(3), F.S.;
- Clarified that DCF may not take custody of a newborn infant who tests positive for illicit or narcotic prescription drugs or alcohol, absent any other signs of abuse or neglect, unless efforts fail to locate an adoption entity to take custody of the infant;
- Changed the term "adoption entity" back to "person" regarding the category of individuals or entities that the court may consider for providing false information to a birth parent, in conjunction with a petition for termination for parental rights, which prevented the birth parent from making known his or her desire to assume parental responsibility for the child or from exercising his or her parental rights;
- Required a mediation, ordered by the court to resolve any disputes associated with a contact agreement, to be conducted pursuant to the provisions of s. 61.183, F.S., including that the mediation be conducted by a mediator certified by the Florida Supreme Court and requiring the petitioner seeking to dissolve the contact agreement to pay for the mediation;
- Added guidelines to s. 63.097, F.S., to assist the court in determining reasonable legal and other fees, in connection with an adoption, which exceed $5,000;
- Confirmed that a father's rights, which are determined at the time the petition for termination for parental rights is filed and cannot be modified or altered by subsequent acts, are restored if a judgment terminating parental rights is voided based on a finding that false information was given to the father which prevented him from making known his desire to assume parental responsibility for the child or from exercising his parental rights; and
- Made other technical changes, including a renumbering of subsections.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute as passed in the Health and Human Services Access Subcommittee.

A bill to be entitled

An act relating to adoption; amending s. 63.022, F.S.; revising legislative intent to delete reference to reporting requirements for placements of minors and exceptions; amending s. 63.032, F.S.; revising definitions; amending s. 63.037, F.S.; exempting adoption proceedings initiated under chapter 39, F.S., from a requirement for a search of the Florida Putative Father Registry; amending s. 63.039, F.S.; providing that all adoptions of minor children require the use of an adoption entity that will assume the responsibilities provided in specified provisions; providing an exception; amending s. 63.042, F.S.; revising terminology relating to who may adopt; amending s. 63.0423, F.S.; revising terminology relating to surrendered infants; providing that an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of an adoption entity; providing that if the Department of Children and Family Services is contacted regarding a surrendered infant who does not appear to have been the victim of actual or suspected child abuse or neglect, it shall provide instruction to contact an adoption entity and may not take custody of the infant; providing an exception; revising provisions relating to scientific testing to determine the paternity or maternity of a

minor; amending s. 63.0425, F.S.; requiring that a child's residence be continuous for a specified period in order to entitle the grandparent to notice of certain proceedings; amending s. 63.0427, F.S.; prohibiting a court from increasing contact between an adopted child and siblings, birth parents, or other relatives without the consent of the adoptive parent or parents; providing for agreements for contact between a child to be adopted and the birth parent, other relative, or previous foster parent of the child; amending s. 63.052, F.S.; deleting a requirement that a minor be permanently committed to an adoption entity in order for the entity to be guardian of the person of the minor; limiting the circumstances in which an intermediary may remove a child; providing that an intermediary does not become responsible for a minor child's medical bills that were incurred before taking physical custody of the child; providing additional placement options for a minor surrendered to an adoption entity for subsequent adoption when a suitable prospective adoptive home is not available; amending s. 63.053, F.S.; requiring that an unmarried biological father strictly comply with specified provisions in order to protect his interests; amending s. 63.054, F.S.; authorizing submission of an alternative document to the Office of Vital Statistics by the petitioner in each proceeding for termination of parental rights; providing that by

filing a claim of paternity form the registrant expressly consents to paying for DNA testing; requiring that an alternative address designated by a registrant be a physical address; providing that the filing of a claim of paternity with the Florida Putative Father Registry does not relieve a person from compliance with specified requirements; amending s. 63.062, F.S.; revising requirements for when a minor's father must be served prior to termination of parental rights; requiring that an unmarried biological father comply with specified requirements in order for his consent to be required for adoption; revising such requirements; providing that the mere fact that a father expresses a desire to fulfill his responsibilities towards his child which is unsupported by acts evidencing this intent does not meet the requirements; providing for the sufficiency of an affidavit of nonpaternity; providing an exception to a condition to a petition to adopt an adult; amending s. 63.063, F.S.; conforming terminology; amending s. 63.082, F.S.; revising language concerning applicability of notice and consent provisions in cases in which the child is conceived as a result of a violation of criminal law; providing that a criminal conviction is not required for the court to find that the child was conceived as a result of a violation of criminal law; requiring an affidavit of diligent search to be filed whenever a

person who is required to consent is unavailable because the person cannot be located; providing that in an adoption of a stepchild or a relative, a certified copy of the death certificate of the person whose consent is required may be attached to the petition for adoption if a separate petition for termination of parental rights is not being filed; authorizing the execution of an affidavit of nonpaternity before the birth of a minor in preplanned adoptions; revising language of a consent to adoption; providing that a home study provided by the adoption entity shall be deemed to be sufficient except in certain circumstances; providing for a hearing if an adoption entity moves to intervene in a dependency case; revising language concerning seeking to revoke consent to an adoption of a child older than 6 months of age; providing that if the consent of one parent is set aside or revoked, any other consents executed by the other parent or a third party whose consent is required for the adoption of the child may not be used by the parent who consent was revoked or set aside to terminate or diminish the rights of the other parent or third party; amending s. 63.085, F.S.; revising language of an adoption disclosure statement; requiring that a copy of a waiver by prospective adoptive parents of receipt of certain records must be filed with the court; amending s. 63.087, F.S.; specifying that a failure to personally appear at a

proceeding to terminate parental rights constitutes grounds for termination; amending s. 63.088, F.S.; providing that in a termination of parental rights proceeding if a required inquiry that identifies a father who has been adjudicated by a court as the father of the minor child before the date a petition for termination of parental rights is filed the inquiry must terminate at that point; amending s. 63.089, F.S.; specifying that it is a failure to personally appear that provides grounds for termination of parental rights in certain circumstances; revising provisions relating to dismissal of petitions to terminate parental rights; providing that contact between a parent seeking relief from a judgment terminating parental rights and a child may be awarded only in certain circumstances; providing for placement of a child in the event that a court grants relief from a judgment terminating parental rights and no new pleading is filed to terminate parental rights; amending s. 63.092, F.S.; requiring that a signed copy of the home study must be provided to the intended adoptive parents who were the subject of the study; amending s. 63.097, F.S.; providing guidelines for a court considering a reasonable attorney fee associated with adoption services; amending s. 63.152, F.S.; authorizing an adoption entity to transmit a certified statement of the entry of a judgment of adoption to the state

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

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

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

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

63.022 Legislative intent.—

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

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

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

~~adult, and stepparent adoptions.~~

Section 2. Subsections (1), (3), (12), (17), and (19) of section 63.032, Florida Statutes, are amended to read:

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

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

(3) "Adoption entity" means the department, an agency, a child-caring agency registered under s. 409.176, an intermediary, a Florida-licensed child-placing agency, or a child-placing agency licensed in another state which is qualified by the department to place children in the State of Florida.

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

relationship to the child has been legally terminated or an alleged or prospective parent.

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

(19) "Unmarried biological father" means 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 and who, before the filing of a petition to terminate parental rights, has not been adjudicated by a court of competent jurisdiction to be the legal father of the child or has not filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

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

63.037 Proceedings applicable to cases resulting from a termination of parental rights under chapter 39.—A case in which a minor becomes available for adoption after the parental rights of each parent have been terminated by a judgment entered pursuant to chapter 39 shall be governed by s. 39.812 and this chapter. Adoption proceedings initiated under chapter 39 are exempt from the following provisions of this chapter: requirement for search of the Florida Putative Father Registry provided in s. 63.054(7), if a search was previously completed and documentation of the search is contained in the case file; disclosure requirements for the adoption entity provided in s. 63.085(1); general provisions governing termination of parental rights pending adoption provided in s. 63.087; notice and service provisions governing termination of parental rights

pending adoption provided in s. 63.088; and procedures for terminating parental rights pending adoption provided in s. 63.089.

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

63.039 Duty of adoption entity to prospective adoptive parents; sanctions.—

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

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

63.042 Who may be adopted; who may adopt.—

(2) The following persons may adopt:

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

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

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

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

63.0423 Procedures with respect to surrendered infants.—

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

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

(3) The adoption entity ~~licensed child-placing agency~~ that

takes physical custody of the surrendered infant shall, within 24 hours thereafter, request assistance from law enforcement officials to investigate and determine, through the Missing Children Information Clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resources, whether the surrendered infant is a missing child.

(4) The parent who surrenders the infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the adoption entity may ~~licensed child-placing agency shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of an adoption entity. If the department is contacted regarding an infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact an adoption entity and may not take custody of the infant unless reasonable efforts to contact an adoption entity to accept the infant have not been successful.

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

(a) The court may order scientific testing to determine

maternity or paternity at the expense of the parent claiming parental rights.

(b) The court shall appoint a guardian ad litem for the surrendered infant and order whatever investigation, home evaluation, and psychological evaluation are necessary to determine what is in the best interests ~~interest~~ of the surrendered infant.

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

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

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

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

terminating parental rights.

(b) No later than 30 days after the filing of a motion under this subsection, the court shall conduct a preliminary hearing to determine what contact, if any, will be permitted between a ~~birth~~ parent and the child pending resolution of the motion. Such contact may be allowed only if it is requested by a parent who has appeared at the hearing and the court determines that it is in the best interests ~~interest~~ of the child. If the court orders contact between a ~~birth~~ parent and the child, the order must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

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

(d) Within 45 days after the preliminary hearing, the court shall conduct a final hearing on the motion to set aside

the judgment and shall enter its written order as expeditiously as possible thereafter.

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

63.0425 Grandparent's right to notice.—

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

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

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

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

(a) Any orders of the court pursuant to s. 39.811(7).

(b) Recommendations of the department, the foster parents

if other than the adoptive parents, and the guardian ad litem.

(c) Statements of the prospective adoptive parents.

(d) Any other information deemed relevant and material by the court.

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

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

(3) Prospective adoptive parents may enter into an agreement for contact between the child to be adopted and the birth parent, other relative, or previous foster parent of the child to be adopted. Such contact may include visits, written correspondence, telephone contact, exchange of photographs, or other similar types of contact. The agreement is enforceable by the court only if:

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

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

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

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

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

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

(6) In order to terminate the agreement for contact, the adoptive parent must file a notice of intent to terminate the contact agreement with the court that initially approved the contact agreement, and provide a copy of the notice to the

adoption entity that placed the child, if any, and to the birth parent, other relative, or foster parent of the child who is a party to the agreement, outlining the reasons for termination of the agreement.

(7) If appropriate under the circumstances of the case, the court may order the parties to participate in mediation to attempt to resolve the issues with the contact agreement. The mediation shall be conducted pursuant to s. 61.183. The petitioner shall be responsible for payment for the services of the mediator.

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

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

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

63.052 Guardians designated; proof of commitment.—

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

(2) For minors who have been voluntarily surrendered to an

intermediary through an execution of a consent to adoption, the intermediary shall be responsible for the minor until the time a court orders preliminary approval of placement of the minor in the prospective adoptive home, after which time the prospective adoptive parents shall become guardians pending finalization of adoption, subject to the intermediary's right and responsibility to remove the child from the prospective adoptive home if the removal is deemed by the intermediary to be in the best interests ~~interest~~ of the child. The intermediary may not remove the child without a court order unless the child is in danger of imminent harm. The intermediary does not become responsible for the minor child's medical bills that were incurred before taking physical custody of the child after the execution of adoption consents. Prior to the court's entry of an order granting preliminary approval of the placement, the intermediary shall have the responsibility and authority to provide for the needs and welfare of the minor. A ~~No~~ minor may not ~~shall~~ be placed in a prospective adoptive home until that home has received a favorable preliminary home study, as provided in s. 63.092, completed and approved within 1 year before such placement in the prospective home. The provisions of s. 627.6578 shall remain in effect notwithstanding the guardianship provisions in this section.

(3) If a minor is surrendered to an adoption entity for subsequent adoption and a suitable prospective adoptive home is not available pursuant to s. 63.092 at the time the minor is surrendered to the adoption entity, the minor must be placed in a licensed foster care home, ~~or~~ with a person or family that has

received a favorable preliminary home study pursuant to subsection (2), or with a relative until ~~such~~ a suitable prospective adoptive home is available.

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

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

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

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

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

Section 11. Subsections (1), (2), (4), and (13) of section 63.054, Florida Statutes, are amended to read:

63.054 Actions required by an unmarried biological father to establish parental rights; Florida Putative Father Registry.—

(1) In order to preserve the right to notice and consent to an adoption under this chapter, an unmarried biological father must, as the "registrant," file a notarized claim of paternity form with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health which includes confirmation of his willingness and intent to support the child for whom paternity is claimed in accordance with state law. The claim of paternity may be filed at any time before the child's birth, but may not be filed after the date a petition is filed for termination of parental rights. In each proceeding for termination of parental rights, the petitioner must submit to the Office of Vital Statistics a copy of the petition for termination of parental rights or a document executed by the clerk of the court showing the style of the case, the names of the persons whose rights are sought to be terminated, and the date and time of the filing of the petition. The Office of Vital Statistics may not record a claim of paternity after the date a petition for termination of parental rights is filed. The failure of an unmarried biological father to file a claim of paternity with the registry before the date a petition for termination of parental rights is filed also bars him from filing a paternity claim under chapter 742.

(a) An unmarried biological father is excepted from the time limitations for filing a claim of paternity with the registry or for filing a paternity claim under chapter 742, if:

1. The mother identifies him to the adoption entity as a potential biological father by the date she executes a consent for adoption; and

2. He is served with a notice of intended adoption plan pursuant to s. 63.062(3) and the 30-day mandatory response date is later than the date the petition for termination of parental rights is filed with the court.

(b) If an unmarried biological father falls within the exception provided by paragraph (a), the petitioner shall also submit to the Office of Vital Statistics a copy of the notice of intended adoption plan and proof of service of the notice on the potential biological father.

(c) An unmarried biological father who falls within the exception provided by paragraph (a) may not file a claim of paternity with the registry or a paternity claim under chapter 742 after the 30-day mandatory response date to the notice of intended adoption plan has expired. The Office of Vital Statistics may not record a claim of paternity 30 days after service of the notice of intended adoption plan.

(2) By filing a claim of paternity form with the Office of Vital Statistics, the registrant expressly consents to submit to and pay for DNA testing upon the request of any party, the registrant, or the adoption entity with respect to the child referenced in the claim of paternity.

(4) Upon initial registration, or at any time thereafter, the registrant may designate a physical ~~an~~ address other than his residential address for sending any communication regarding his registration. Similarly, upon initial registration, or at any time thereafter, the registrant may designate, in writing, an agent or representative to receive any communication on his behalf and receive service of process. The agent or

representative must file an acceptance of the designation, in writing, in order to receive notice or service of process. The failure of the designated representative or agent of the registrant to deliver or otherwise notify the registrant of receipt of correspondence from the Florida Putative Father Registry is at the registrant's own risk and may ~~shall~~ not serve as a valid defense based upon lack of notice.

(13) The filing of a claim of paternity with the Florida Putative Father Registry does not excuse or waive the obligation of a petitioner to comply with the requirements of s. 63.088(4) for conducting a diligent search and required inquiry with respect to the identity of an unmarried biological father or legal father which are set forth in this chapter.

Section 12. Paragraph (b) of subsection (1), subsections (2), (3), and (4), and paragraph (a) of subsection (8) of section 63.062, Florida Statutes, are amended to read:

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.—

(1) Unless supported by one or more of the grounds enumerated under s. 63.089(3), a petition to terminate parental rights pending adoption may be granted only if written consent has been executed as provided in s. 63.082 after the birth of the minor or notice has been served under s. 63.088 to:

(b) The father of the minor, if:

1. The minor was conceived or born while the father was married to the mother;

2. The minor is his child by adoption;

3. The minor has been adjudicated by the court to be his

child before ~~by~~ the date a petition ~~is filed~~ for termination of parental rights is filed;

4. He has filed an affidavit of paternity pursuant to s. 382.013(2)(c) or he is listed on the child's birth certificate before ~~by~~ the date a petition ~~is filed~~ for termination of parental rights is filed; or

5. In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor, has filed such acknowledgment with the Office of Vital Statistics of the Department of Health within the required timeframes, and has complied with the requirements of subsection (2).

The status of the father shall be determined at the time of the filing of the petition to terminate parental rights and may not be modified, except as otherwise provided in s. 63.0423(9)(a), for purposes of his obligations and rights under this chapter by acts occurring after the filing of the petition to terminate parental rights.

(2) In accordance with subsection (1), the consent of an unmarried biological father shall be necessary only if the unmarried biological father has complied with the requirements of this subsection.

(a)1. With regard to a child who is placed with adoptive parents more than 6 months after the child's birth, an unmarried biological father must have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment

to the responsibilities of parenthood by providing reasonable and regular financial support to the child in accordance with the unmarried biological father's ability, if not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

a. Regularly visited the child at least monthly, when physically and financially able to do so and when not prevented from doing so by the birth mother or the person or authorized agency having lawful custody of the child; or

b. Maintained regular communication with the child or with the person or agency having the care or custody of the child, when physically or financially unable to visit the child or when not prevented from doing so by the birth mother or person or authorized agency having lawful custody of the child.

~~2. The mere fact that an unmarried biological father expresses a desire to fulfill his responsibilities towards his child which is unsupported by acts evidencing this intent does not preclude a finding by the court that the unmarried biological father failed to comply with the requirements of this subsection.~~

2.~~3.~~ An unmarried biological father who openly lived with the child for at least 6 months within the 1-year period following the birth of the child and immediately preceding placement of the child with adoptive parents and who openly held himself out to be the father of the child during that period shall be deemed to have developed a substantial relationship with the child and to have otherwise met the requirements of this paragraph.

(b) With regard to a child who is ~~younger than~~ 6 months of age or younger at the time the child is placed with the adoptive parents, an unmarried biological father must have demonstrated a full commitment to his parental responsibility by having performed all of the following acts prior to the time the mother executes her consent for adoption:

1. Filed a notarized claim of paternity form with the Florida Putative Father Registry within the Office of Vital Statistics of the Department of Health, which form shall be maintained in the confidential registry established for that purpose and shall be considered filed when the notice is entered in the registry of notices from unmarried biological fathers.

2. Upon service of a notice of an intended adoption plan or a petition for termination of parental rights pending adoption, executed and filed an affidavit in that proceeding stating that he is personally fully able and willing to take responsibility for the child, setting forth his plans for care of the child, and agreeing to a court order of child support and a contribution to the payment of living and medical expenses incurred for the mother's pregnancy and the child's birth in accordance with his ability to pay.

3. If he had knowledge of the pregnancy, paid a fair and reasonable amount of the living and medical expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability and when not prevented from doing so by the birth mother or person or authorized agency having lawful custody of the child. The responsibility of the unmarried biological father to provide financial assistance to

the birth mother during her pregnancy and to the child after birth is not abated because support is being provided to the birth mother or child by the adoption entity, a prospective adoptive parent, or a third party, nor does it serve as a basis to excuse the birth father's failure to provide support.

(c) The mere fact that a father expresses a desire to fulfill his responsibilities towards his child which is unsupported by acts evidencing this intent does not meet the requirements of this section.

(d) ~~(c)~~ The petitioner shall file with the court a certificate from the Office of Vital Statistics stating that a diligent search has been made of the Florida Putative Father Registry of notices from unmarried biological fathers described in subparagraph (b)1. and that no filing has been found pertaining to the father of the child in question or, if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to the entry of a final judgment of termination of parental rights.

(e) ~~(d)~~ An unmarried biological father who does not comply with each of the conditions provided in this subsection is deemed to have waived and surrendered any rights in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

(3) Pursuant to chapter 48, an adoption entity shall serve a notice of intended adoption plan upon any known and locatable unmarried biological father who is identified to the adoption

entity by the mother by the date she signs her consent for adoption if the child is 6 months of age or less at the time the consent is executed ~~or who is identified by a diligent search of the Florida Putative Father Registry, or upon an entity whose consent is required~~. Service of the notice of intended adoption plan is not required ~~mandatory~~ when the unmarried biological father signs a consent for adoption or an affidavit of nonpaternity or when the child is more than 6 months of age at the time of the execution of the consent by the mother. The notice may be served at any time before the child's birth or before placing the child in the adoptive home. The recipient of the notice may waive service of process by executing a waiver and acknowledging receipt of the plan. The notice of intended adoption plan must specifically state that if the unmarried biological father desires to contest the adoption plan he must, within 30 days after service, file with the court a verified response that contains a pledge of commitment to the child in substantial compliance with subparagraph (2)(b)2. and a claim of paternity form with the Office of Vital Statistics, and must provide the adoption entity with a copy of the verified response filed with the court and the claim of paternity form filed with the Office of Vital Statistics. The notice must also include instructions for submitting a claim of paternity form to the Office of Vital Statistics and the address to which the claim must be sent. If the party served with the notice of intended adoption plan is an entity whose consent is required, the notice must specifically state that the entity must file, within 30 days after service, a verified response setting forth a legal

basis for contesting the intended adoption plan, specifically addressing the best interests ~~interest~~ of the child.

(a) If the unmarried biological father or entity whose consent is required fails to timely and properly file a verified response with the court and, in the case of an unmarried biological father, a claim of paternity form with the Office of Vital Statistics, the court shall enter a default judgment against the ~~any~~ unmarried biological father or entity and the consent of that unmarried biological father or entity shall no longer be required under this chapter and shall be deemed to have waived any claim of rights to the child. To avoid an entry of a default judgment, within 30 days after receipt of service of the notice of intended adoption plan:

1. The unmarried biological father must:

a. File a claim of paternity with the Florida Putative Father Registry maintained by the Office of Vital Statistics;

b. File a verified response with the court which contains a pledge of commitment to the child in substantial compliance with subparagraph (2)(b)2.; and

c. Provide support for the birth mother and the child.

2. The entity whose consent is required must file a verified response setting forth a legal basis for contesting the intended adoption plan, specifically addressing the best interests ~~interest~~ of the child.

(b) If the mother identifies a potential unmarried biological father within the timeframes required by the statute, whose location is unknown, the adoption entity shall conduct a diligent search pursuant to s. 63.088. If, upon completion of a

diligent search, the potential unmarried biological father's location remains unknown and a search of the Florida Putative Father Registry fails to reveal a match, the adoption entity shall request in the petition for termination of parental rights pending adoption that the court declare the diligent search to be in compliance with s. 63.088, that the adoption entity has no further obligation to provide notice to the potential unmarried biological father, and that the potential unmarried biological father's consent to the adoption is not required.

(4) Any person whose consent is required under paragraph (1)(b), or any other man, may execute an irrevocable affidavit of nonpaternity in lieu of a consent under this section and by doing so waives notice to all court proceedings after the date of execution. An affidavit of nonpaternity must be executed as provided in s. 63.082. The affidavit of nonpaternity may be executed prior to the birth of the child. The person executing the affidavit must receive disclosure under s. 63.085 prior to signing the affidavit. For purposes of this chapter, an affidavit of nonpaternity is sufficient if it contains a specific denial of parental obligations and does not need to deny the existence of a biological relationship.

(8) A petition to adopt an adult may be granted if:

(a) Written consent to adoption has been executed by the adult and the adult's spouse, if any, unless the spouse's consent is waived by the court for good cause.

Section 13. Subsection (2) of section 63.063, Florida Statutes, is amended to read:

63.063 Responsibility of parents for actions; fraud or

misrepresentation; contesting termination of parental rights and adoption.—

(2) Any person injured by a fraudulent representation or action in connection with an adoption may pursue civil or criminal penalties as provided by law. A fraudulent representation is not a defense to compliance with the requirements of this chapter and is not a basis for dismissing a petition for termination of parental rights or a petition for adoption, for vacating an adoption decree, or for granting custody to the offended party. Custody and adoption determinations must be based on the best interests ~~interest~~ of the child in accordance with s. 61.13.

Section 14. Paragraph (d) of subsection (1), paragraphs (c) and (d) of subsection (3), paragraphs (a), (d), and (e) of subsection (4), and subsections (6) and (7) of section 63.082, Florida Statutes, are amended to read:

63.082 Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation ~~withdrawal~~ of consent.—

(1)

(d) The notice and consent provisions of this chapter as they relate to the father ~~birth~~ of a child ~~or to legal fathers~~ do not apply in cases in which the child is conceived as a result of a violation of the criminal laws of this or another state or country, including, but not limited to, sexual battery, unlawful sexual activity with certain minors under s. 794.05, lewd acts perpetrated upon a minor, or incest. A criminal conviction is not required for the court to find that the child

was conceived as a result of a violation of the criminal laws of this state or another state or country.

(3)

(c) If any person who is required to consent is unavailable because the person cannot be located, an ~~the petition to terminate parental rights pending adoption must be accompanied by the~~ affidavit of diligent search required under s. 63.088 shall be filed.

(d) If any person who is required to consent is unavailable because the person is deceased, the petition to terminate parental rights pending adoption must be accompanied by a certified copy of the death certificate. In an adoption of a stepchild or a relative, the certified copy of the death certificate of the person whose consent is required may ~~must~~ be attached to the petition for adoption if a separate petition for termination of parental rights is not being filed.

(4)(a) An affidavit of nonpaternity may be executed before the birth of the minor; however, the consent to an adoption may ~~shall~~ not be executed before the birth of the minor except in a preplanned adoption pursuant to s. 63.213.

(d) The consent to adoption or the affidavit of nonpaternity must be signed in the presence of two witnesses and be acknowledged before a notary public who is not signing as one of the witnesses. The notary public must legibly note on the consent or the affidavit the date and time of execution. The witnesses' names must be typed or printed underneath their signatures. The witnesses' home or business addresses must be included. The person who signs the consent or the affidavit has

the right to have at least one of the witnesses be an individual who does not have an employment, professional, or personal relationship with the adoption entity or the prospective adoptive parents. The adoption entity must give reasonable advance notice to the person signing the consent or affidavit of the right to select a witness of his or her own choosing. The person who signs the consent or affidavit must acknowledge in writing on the consent or affidavit that such notice was given and indicate the witness, if any, who was selected by the person signing the consent or affidavit. The adoption entity must include its name, address, and telephone number on the consent to adoption or affidavit of nonpaternity.

(e) A consent to adoption being executed by the birth parent must be in at least 12-point boldfaced type and shall contain the following recitation of rights ~~in substantially the following form~~:

CONSENT TO ADOPTION

YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR WITNESSES YOU SELECTED, IF ANY.

YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS

CONSENT:

1. CONSULT WITH AN ATTORNEY;

2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE LEGALLY PROHIBITED;

3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE CHILD;

4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY PROHIBITED; AND

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
2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD OR DURESS.

This statement of rights is not required for the adoption of a relative, an adult, a stepchild, or a child older than 6 months of age. A consent form for the adoption of a child older than 6 months of age at the time of the execution of consent must contain a statement outlining the revocation rights provided in paragraph (c).

(6)(a) If a parent executes a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents and the minor child is in the custody of the department, but parental rights have not yet been terminated, the adoption consent is valid, binding, and enforceable by the court.

(b) Upon execution of the consent of the parent, the adoption entity shall be permitted to ~~may~~ intervene in the dependency case as a party in interest and must provide the court that acquired ~~having~~ jurisdiction over the minor, pursuant to the shelter or dependency petition filed by the department, a

copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement. The preliminary home study must be maintained with strictest confidentiality within the dependency court file and the department's file. A preliminary home study must be provided to the court in all cases in which an adoption entity has intervened pursuant to this section. Unless the court has concerns regarding the qualifications of the home study provider, or concerns that the home study may not be adequate to determine the best interests of the child, the home study provided by the adoption entity shall be deemed to be sufficient and no additional home study needs to be performed by the department.

(c) If an adoption entity files a motion to intervene in the dependency case in accordance with this chapter, the dependency court shall promptly grant a hearing to determine whether the adoption entity has filed the required documents to be permitted to intervene and whether a change of placement of the child is appropriate.

(d) ~~(c)~~ Upon a determination by the court that the prospective adoptive parents are properly qualified to adopt the minor child and that the adoption appears to be in the best interests ~~interest~~ of the minor child, the court shall immediately order the transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption.

(e) ~~(d)~~ In determining whether the best interests ~~interest~~ of the child are ~~is~~ served by transferring the custody of the minor child to the prospective adoptive parent selected by the parent, the court shall consider the rights of the parent to determine an appropriate placement for the child, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships, if possible.

(7) If a person is seeking to revoke ~~withdraw~~ consent for a child older than 6 months of age ~~who has been placed with prospective adoptive parents~~:

(a) The person seeking to revoke ~~withdraw~~ consent must, in accordance with paragraph (4)(c), notify the adoption entity in writing by certified mail, return receipt requested, within 3 business days after execution of the consent. As used in this subsection, the term "business day" means any day on which the United States Postal Service accepts certified mail for delivery.

(b) Upon receiving timely written notice from a person whose consent to adoption is required of that person's desire to revoke ~~withdraw~~ consent, the adoption entity must contact the prospective adoptive parent to arrange a time certain for the adoption entity to regain physical custody of the minor, unless, upon a motion for emergency hearing by the adoption entity, the court determines in written findings that placement of the minor with the person who had legal or physical custody of the child immediately before the child was placed for adoption may endanger the minor or that the person who desires to revoke

~~withdraw~~ consent is not required to consent to the adoption, has been determined to have abandoned the child, or is otherwise subject to a determination that the person's consent is waived under this chapter.

(c) If the court finds that the placement may endanger the minor, the court shall enter an order continuing the placement of the minor with the prospective adoptive parents pending further proceedings if they desire continued placement. If the prospective adoptive parents do not desire continued placement, the order must include, but need not be limited to, a determination of whether temporary placement in foster care, with the person who had legal or physical custody of the child immediately before placing the child for adoption, or with a relative is in the best interests ~~interest~~ of the child and whether an investigation by the department is recommended.

(d) If the person revoking ~~withdrawing~~ consent claims to be the father of the minor but has not been established to be the father by marriage, court order, or scientific testing, the court may order scientific paternity testing and reserve ruling on removal of the minor until the results of such testing have been filed with the court.

(e) The adoption entity must return the minor within 3 business days after timely and proper notification of the revocation ~~withdrawal~~ of consent or after the court determines that revocation ~~withdrawal~~ is timely and in accordance with the requirements of this chapter ~~valid and binding~~ upon consideration of an emergency motion, as filed pursuant to paragraph (b), to the physical custody of the person revoking

~~withdrawing~~ consent or the person directed by the court. If the person seeking to revoke ~~withdraw~~ consent claims to be the father of the minor but has not been established to be the father by marriage, court order, or scientific testing, the adoption entity may return the minor to the care and custody of the mother, if she desires such placement and she is not otherwise prohibited by law from having custody of the child.

(f) Following the revocation period ~~for withdrawal of consent~~ described in paragraph (a)~~, or the placement of the child with the prospective adoptive parents, whichever occurs later~~, consent may be set aside ~~withdrawn~~ only when the court finds that the consent was obtained by fraud or duress.

(g) An affidavit of nonpaternity may be set aside ~~withdrawn~~ only if the court finds that the affidavit was obtained by fraud or duress.

(h) If the consent of one parent is set aside or revoked in accordance with this chapter, any other consents executed by the other parent or a third party whose consent is required for the adoption of the child may not be used by the parent who consent was revoked or set aside to terminate or diminish the rights of the other parent or third party whose consent was required for the adoption of the child.

Section 15. Subsection (1) and paragraph (a) of subsection (2) of section 63.085, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

63.085 Disclosure by adoption entity.—

(1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE

ADOPTIVE PARENTS.—Within 14 days after a person seeking to adopt a minor or a person seeking to place a minor for adoption contacts an adoption entity in person or provides the adoption entity with a mailing address, the entity must provide a written disclosure statement to that person if the entity agrees or continues to work with the person. The adoption entity shall also provide the written disclosure to the parent who did not initiate contact with the adoption entity within 14 days after that parent is identified and located. For purposes of providing the written disclosure, a person is considered to be seeking to place a minor for adoption if that person has sought information or advice from the adoption entity regarding the option of adoptive placement. The written disclosure statement must be in substantially the following form:

ADOPTION DISCLOSURE

THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING ADOPTION UNDER FLORIDA LAW:

1. The name, address, and telephone number of the adoption entity providing this disclosure is:

Name:

Address:

Telephone Number:

2. The adoption entity does not provide legal representation or advice to parents or anyone signing a consent

for adoption or affidavit of nonpaternity, and parents have the right to consult with an attorney of their own choosing to advise them.

3. With the exception of an adoption by a stepparent or relative, a child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study, including criminal and child abuse clearances.

4. A valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child, or the day the birth mother is notified, in writing, that she is fit for discharge from the licensed hospital or birth center. Any man may sign a valid consent for adoption at any time after the birth of the child.

5. A consent for adoption signed before the child attains the age of 6 months is binding and irrevocable from the moment it is signed unless it can be proven in court that the consent was obtained by fraud or duress. A consent for adoption signed after the child attains the age of 6 months is valid from the moment it is signed; however, it may be revoked up to 3 <u>business</u> days after it was signed.

6. A consent for adoption is not valid if the signature of the person who signed the consent was obtained by fraud or duress.

7. An unmarried biological father must act immediately in order to protect his parental rights. Section 63.062, Florida Statutes, prescribes that any father seeking to establish his right to consent to the adoption of his child must file a claim

of paternity with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health by the date a petition to terminate parental rights is filed with the court, or within 30 days after receiving service of a Notice of Intended Adoption Plan. If he receives a Notice of Intended Adoption Plan, he must file a claim of paternity with the Florida Putative Father Registry, file a parenting plan with the court, and provide financial support to the mother or child within 30 days following service. An unmarried biological father's failure to timely respond to a Notice of Intended Adoption Plan constitutes an irrevocable legal waiver of any and all rights that the father may have to the child. A claim of paternity registration form for the Florida Putative Father Registry may be obtained from any local office of the Department of Health, Office of Vital Statistics, the Department of Children and Families, the Internet websites for these agencies, and the offices of the clerks of the Florida circuit courts. The claim of paternity form must be submitted to the Office of Vital Statistics, Attention: Adoption Unit, P.O. Box 210, Jacksonville, FL 32231.

8. There are alternatives to adoption, including foster care, relative care, and parenting the child. There may be services and sources of financial assistance in the community available to parents if they choose to parent the child.

9. A parent has the right to have a witness of his or her choice, who is unconnected with the adoption entity or the adoptive parents, to be present and witness the signing of the consent or affidavit of nonpaternity.

10. A parent 14 years of age or younger must have a parent, legal guardian, or court-appointed guardian ad litem to assist and advise the parent as to the adoption plan and to witness consent.

11. A parent has a right to receive supportive counseling from a counselor, social worker, physician, clergy, or attorney.

12. The payment of living or medical expenses by the prospective adoptive parents before the birth of the child does not, in any way, obligate the parent to sign the consent for adoption.

(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 documenting all medical treatment and care since the child's birth and before placement.

4. All mental health, psychological, and psychiatric records, reports, and evaluations concerning the child before placement.

5. The child's educational records, including all records concerning any special education needs of the child before placement.

6. Records documenting all incidents that required the department to provide services to the child, including all orders of adjudication of dependency or termination of parental rights issued pursuant to chapter 39, any case plans drafted to address the child's needs, all protective services investigations identifying the child as a victim, and all guardian ad litem reports filed with the court concerning the child.

7. Written information concerning the availability of adoption subsidies for the child, if applicable.

(c) If the prospective adoptive parents waive the receipt of any of the records described in paragraph (a), a copy of the written notification of the waiver to the adoption entity shall be filed with the court.

Section 16. Subsection (6) of section 63.087, Florida Statutes, is amended to read:

63.087 Proceeding to terminate parental rights pending adoption; general provisions.—

(6) ANSWER AND APPEARANCE REQUIRED.—An answer to the petition or any pleading requiring an answer must be filed in accordance with the Florida Family Law Rules of Procedure. Failure to file a written response to the petition constitutes grounds upon which the court may terminate parental rights. Failure to personally appear at the hearing constitutes grounds upon which the court may terminate parental rights. Any person present at the hearing to terminate parental rights pending adoption whose consent to adoption is required under s. 63.062 must:

(a) Be advised by the court that he or she has a right to ask that the hearing be reset for a later date so that the person may consult with an attorney; and

(b) Be given an opportunity to admit or deny the allegations in the petition.

Section 17. Subsection (4) of section 63.088, Florida Statutes, is amended to read:

63.088 Proceeding to terminate parental rights pending adoption; notice and service; diligent search.—

(4) REQUIRED INQUIRY.—In proceedings initiated under s.

63.087, the court shall conduct an inquiry of the person who is placing the minor for adoption and of any relative or person having legal custody of the minor who is present at the hearing and likely to have the following information regarding the identity of:

(a) Any man to whom the mother of the minor was married at any time when conception of the minor may have occurred or at the time of the birth of the minor;

(b) Any man who has filed an affidavit of paternity pursuant to s. 382.013(2)(c) before the date that a petition for termination of parental rights is filed with the court;

(c) Any man who has adopted the minor;

(d) Any man who has been adjudicated by a court as the father of the minor child before the date a petition for termination of parental rights is filed with the court; and

(e) Any man whom the mother identified to the adoption entity as a potential biological father before the date she signed the consent for adoption.

The information sought under this subsection may be provided to the court in the form of a sworn affidavit by a person having personal knowledge of the facts, addressing each inquiry enumerated in this subsection, except that, if the inquiry identifies a father under paragraph (a), paragraph (b), ~~or~~ paragraph (c), or paragraph (d), the inquiry may not continue further. The inquiry required under this subsection may be conducted before the birth of the minor.

Section 18. Paragraph (d) of subsection (3), paragraph (b)

of subsection (4), and subsections (5) and (7) of section 63.089, Florida Statutes, are amended to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING ADOPTION.—The court may enter a judgment terminating parental rights pending adoption if the court determines by clear and convincing evidence, supported by written findings of fact, that each person whose consent to adoption is required under s. 63.062:

(d) Has been properly served notice of the proceeding in accordance with the requirements of this chapter and has failed to file a written answer or personally appear at the evidentiary hearing resulting in the judgment terminating parental rights pending adoption;

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant

portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best <u>interests</u> ~~interest~~ of the child.

(5) DISMISSAL OF PETITION.—If the court does not find by clear and convincing evidence that parental rights of a parent

should be terminated pending adoption, the court must dismiss the petition and that parent's parental rights that were the subject of such petition shall remain in full force under the law. The order must include written findings in support of the dismissal, including findings as to the criteria in subsection (4) if rejecting a claim of abandonment.

(a) Parental rights may not be terminated based upon a consent that the court finds has been timely revoked ~~withdrawn~~ under s. 63.082 or a consent to adoption or affidavit of nonpaternity that the court finds was obtained by fraud or duress.

(b) The court must enter an order based upon written findings providing for the placement of the minor, but the court may not proceed to determine custody between competing eligible parties. The placement of the child should revert to the parent or guardian who had physical custody of the child at the time of the placement for adoption unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option for the child. The court may not change the placement of a child who has established a bonded relationship with the current caregiver without providing for a reasonable transition plan consistent with the best interests of the child. The court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition. The court may order scientific testing to determine the paternity of the minor only if the court has determined that the consent of the alleged father would be required, unless all

parties agree that such testing is in the best interests of the child. The court may not order scientific testing to determine paternity of an unmarried biological father if the child has a father as described in s. 63.088(4)(a)-(d) whose rights have not been previously terminated ~~at any time during which the court has jurisdiction over the minor~~. Further proceedings, if any, regarding the minor must be brought in a separate custody action under chapter 61, a dependency action under chapter 39, or a paternity action under chapter 742.

(7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

(a) A motion for relief from a judgment terminating parental rights must be filed with the court originally entering the judgment. The motion must be filed within a reasonable time, but not later than 1 year after the entry of the judgment. An unmarried biological father does not have standing to seek relief from a judgment terminating parental rights if the mother did not identify him to the adoption entity before the date she signed a consent for adoption or if he was not located because the mother failed or refused to provide sufficient information to locate him.

(b) No later than 30 days after the filing of a motion under this subsection, the court must conduct a preliminary hearing to determine what contact, if any, shall be permitted between a parent and the child pending resolution of the motion. Such contact shall be considered only if it is requested by a parent who has appeared at the hearing and may not be awarded unless the parent previously established a bonded relationship with the child and the parent has pled a legitimate legal basis

and established a prima facia case for setting aside the judgment terminating parental rights. If the court orders contact between a parent and child, the order must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

(c) At the preliminary hearing, the court, upon the motion of any party or upon its own motion, may order scientific testing to determine the paternity of the minor if the person seeking to set aside the judgment is alleging to be the child's father and that fact has not previously been determined by legitimacy or scientific testing. The court may order visitation with a person for whom scientific testing for paternity has been ordered and who has previously established a bonded relationship with the child.

(d) Unless otherwise agreed between the parties or for good cause shown, the court shall conduct a final hearing on the motion for relief from judgment within 45 days after the filing and enter its written order as expeditiously as possible thereafter.

(e) If the court grants relief from the judgment terminating parental rights and no new pleading is filed to terminate parental rights, the placement of the child should revert to the parent or guardian who had physical custody of the child at the time of the original placement for adoption unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option for the child. The court may not change

the placement of a child who has established a bonded relationship with the current caregiver without providing for a reasonable transition plan consistent with the best interests of the child. The court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition. The court may not direct the placement of a child with a person other than the adoptive parents without first obtaining a favorable home study of that person and any other persons residing in the proposed home and shall take whatever additional steps are necessary and appropriate for the physical and emotional protection of the child.

Section 19. Subsection (3) of section 63.092, Florida Statutes, is amended to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.—

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in

the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed prior to identification of a prospective adoptive minor. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a signed copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

(a) An interview with the intended adoptive parents;

(b) Records checks of the department's central abuse registry and criminal records correspondence checks under s. 39.0138 through the Department of Law Enforcement on the intended adoptive parents;

(c) An assessment of the physical environment of the home;

(d) A determination of the financial security of the intended adoptive parents;

(e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting;

(f) Documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;

(g) Documentation that information on support services available in the community has been provided to the intended adoptive parents; and

(h) A copy of each signed acknowledgment of receipt of disclosure required by s. 63.085.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances in the home. A ~~No~~ minor may not be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 20. Subsection (7) is added to section 63.097, Florida Statutes, to read:

63.097 Fees.—

(7) In determining reasonable attorney fees, courts shall use the following criteria:

(a) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

(b) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other

employment by the attorney.

(c) The fee customarily charged in the locality for similar legal services.

(d) The amount involved in the subject matter of the representation, the responsibility involved in the representation, and the results obtained.

(e) The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client.

(f) The nature and length of the professional relationship with the client.

(g) The experience, reputation, diligence, and ability of the attorney or attorneys performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services.

(h) Whether the fee is fixed or contingent.

Section 21. Section 63.152, Florida Statutes, is amended to read:

63.152 Application for new birth record.—Within 30 days after entry of a judgment of adoption, the clerk of the court or the adoption entity shall transmit a certified statement of the entry to the state registrar of vital statistics on a form provided by the registrar. A new birth record containing the necessary information supplied by the certificate shall be issued by the registrar on application of the adopting parents or the adopted person.

Section 22. Subsection (7) of section 63.162, Florida

Statutes, is amended to read:

63.162 Hearings and records in adoption proceedings; confidential nature.—

(7) The court may, upon petition of an adult adoptee or birth parent, for good cause shown, appoint an intermediary or a licensed child-placing agency to contact a birth parent or adult adoptee, as applicable, who has not registered with the adoption registry pursuant to s. 63.165 and advise both ~~them~~ of the availability of the intermediary or agency and that the birth parent or adult adoptee, as applicable, wishes to establish contact ~~same~~.

Section 23. Paragraph (c) of subsection (2) of section 63.167, Florida Statutes, is amended to read:

63.167 State adoption information center.—

(2) The functions of the state adoption information center shall include:

(c) Operating a toll-free telephone number to provide information and referral services. The state adoption information center shall provide contact information for all adoption entities in the caller's county or, if no adoption entities are located in the caller's county, the number of the nearest adoption entity when contacted for a referral to make an adoption plan and shall rotate the order in which the names of adoption entities are provided to callers.

Section 24. Paragraph (g) of subsection (1) and subsections (2) and (8) of section 63.212, Florida Statutes, are amended to read:

63.212 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person:

(g) Except an adoption entity, to advertise or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and, further, it is unlawful for any person to publish or broadcast any such advertisement or assist an unlicensed person or entity in publishing or broadcasting any such advertisement without including a Florida license number of the agency or attorney placing the advertisement.

1. Only a person who is an attorney licensed to practice law in this state or an adoption entity licensed under the laws of this state may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

a. A child is offered or wanted for adoption; or

b. The person is able to place, locate, or receive a child for adoption.

2. A person who publishes a telephone directory that is distributed in this state:

a. Shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law in this state and licensed adoption entities may legally provide adoption services under state law.

b. May publish an advertisement described in subparagraph 1. in the telephone directory only if the advertisement contains the following:

(I) For an attorney licensed to practice law in this

state, the person's Florida Bar number.

(II) For a child placing agency licensed under the laws of this state, the number on the person's adoption entity license.

(2) Any person who is a birth mother, or a woman who holds herself out to be a birth mother, who is interested in making an adoption plan and who knowingly or intentionally benefits from the payment of adoption-related expenses in connection with that adoption plan commits adoption deception if:

(a) The person knows or should have known that the person is not pregnant at the time the sums were requested or received;

(b) The person accepts living expenses assistance from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses assistance from another prospective adoptive parent or adoption entity at the same time in an effort to adopt the same child; or

(c) The person knowingly makes false representations to induce the payment of living expenses and does not intend to make an adoptive placement. ~~It is unlawful for:~~

~~(a) Any person or adoption entity under this chapter to:~~

~~1. Knowingly provide false information; or~~

~~2. Knowingly withhold material information.~~

~~(b) A parent, with the intent to defraud, to accept benefits related to the same pregnancy from more than one adoption entity without disclosing that fact to each entity.~~

Any person who willfully commits adoption deception ~~violates any provision of this subsection~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if

the sums received by the birth mother or woman holding herself out to be a birth mother do not exceed $300, and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the sums received by the birth mother or woman holding herself out to be a birth mother exceed $300. In addition, the person is liable for damages caused by such acts or omissions, including reasonable attorney ~~attorney's~~ fees and costs incurred by the adoption entity or the prospective adoptive parent. Damages may be awarded through restitution in any related criminal prosecution or by filing a separate civil action.

(8) Unless otherwise indicated, a person who willfully and with criminal intent violates any provision of this section, excluding paragraph (1)(g), commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who willfully and with criminal intent violates paragraph (1)(g) commits a misdemeanor of the second degree, punishable as provided in s. 775.083; and each day of continuing violation shall be considered a separate offense. In addition, any person who knowingly publishes or assists with the publication of any advertisement or other publication which violates the requirements of paragraph (1)(g) commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and may be required to pay a fine of up to $150 per day for each day of continuing violation.

Section 25. Paragraph (b) of subsection (1), paragraphs (a) and (e) of subsection (2), and paragraphs (b), (h), and (i) of subsection (6) of section 63.213, Florida Statutes, are

amended to read:

63.213 Preplanned adoption agreement.—

(1) Individuals may enter into a preplanned adoption arrangement as specified in this section, but such arrangement may not in any way:

(b) Constitute consent of a mother to place her biological child for adoption until 48 hours after the ~~following~~ birth of the child and unless the court making the custody determination or approving the adoption determines that the mother was aware of her right to rescind within the 48-hour period after the ~~following~~ birth of the child but chose not to rescind such consent. The volunteer mother's right to rescind her consent in a preplanned adoption applies only when the child is genetically related to her.

(2) A preplanned adoption agreement must include, but need not be limited to, the following terms:

(a) That the volunteer mother agrees to become pregnant by the fertility technique specified in the agreement, to bear the child, and to terminate any parental rights and responsibilities to the child she might have through a written consent executed at the same time as the preplanned adoption agreement, subject to a right of rescission by the volunteer mother any time within 48 hours after the birth of the child, if the volunteer mother is genetically related to the child.

(e) That the intended father and intended mother acknowledge that they may not receive custody or the parental rights under the agreement if the volunteer mother terminates the agreement or if the volunteer mother rescinds her consent to

place her child for adoption within 48 hours after the birth of the child, if the volunteer mother is genetically related to the child.

(6) As used in this section, the term:

(b) "Child" means the child or children conceived by means of a fertility technique ~~an insemination~~ that is part of a preplanned adoption arrangement.

(h) "Preplanned adoption arrangement" means the arrangement through which the parties enter into an agreement for the volunteer mother to bear the child, for payment by the intended father and intended mother of the expenses allowed by this section, for the intended father and intended mother to assert full parental rights and responsibilities to the child if consent to adoption is not rescinded after birth by a ~~the~~ volunteer mother who is genetically related to the child, and for the volunteer mother to terminate, subject to any ~~a~~ right of rescission, all her parental rights and responsibilities to the child in favor of the intended father and intended mother.

(i) "Volunteer mother" means a female at least 18 years of age who voluntarily agrees, subject to a right of rescission if it is her biological child, that if she should become pregnant pursuant to a preplanned adoption arrangement, she will terminate her parental rights and responsibilities to the child in favor of the intended father and intended mother.

Section 26. Section 63.222, Florida Statutes, is amended to read:

63.222 Effect on prior adoption proceedings.—Any adoption made before July 1, 2012, is ~~the effective date of this act~~

~~shall be~~ valid, and any proceedings pending on that ~~the effective~~ date and any subsequent amendments thereto ~~of this act~~ are not affected thereby unless the amendment is designated as a remedial provision.

Section 27. Section 63.2325, Florida Statutes, is amended to read:

63.2325 Conditions for invalidation ~~revocation~~ of a consent to adoption or affidavit of nonpaternity.—Notwithstanding the requirements of this chapter, a failure to meet any of those requirements does not constitute grounds for invalidation ~~revocation~~ of a consent to adoption or revocation ~~withdrawal of~~ an affidavit of nonpaternity unless the extent and circumstances of such a failure result in a material failure of fundamental fairness in the administration of due process, or the failure constitutes or contributes to fraud or duress in obtaining a consent to adoption or affidavit of nonpaternity.

Section 28. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1209 Application of Foreign Law in Certain Cases
SPONSOR(S): Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad DC	Bond NB
2) Judiciary Committee			

SUMMARY ANALYSIS

Limited to lawsuits relating to dissolution of marriage and those under the Uniform Interstate Family Support Act, the bill:

- Provides that any court, arbitration, tribunal, or administrative agency ruling or decision is void and unenforceable if the entity bases its decision in whole or in part on any foreign law that does not grant the parties the same fundamental liberties, rights and privileges guaranteed by the state and federal constitutions.
- Provides that a severable contract or contractual provision that provides for a choice of law, legal code, or system to govern some or all of the disputes between parties, either in court or in arbitration, is void and unenforceable if the law, legal code, or system chosen includes or incorporates any substantive or procedural law that would not provide the parties the same fundamental liberties, rights, and privileges granted under the State Constitution and the Constitution of the United States.
- If a contractual provision provides for a choice of venue or forum outside the state or territory of the United States and if enforcement of that choice of venue or forum would result in a violation of any right guaranteed by the State Constitution or Constitution of the United States, then the provision must be construed to preserve the constitutional rights of the person against whom enforcement is sought.
- A claim of forum non conveniens must be denied if a court of this state finds that granting the claim violates or would likely lead to a violation of any constitutional right of the nonclaimant in the foreign forum.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Although the majority of civil suits are decided under Florida or federal law, occasionally, a court is required to consider foreign law in reaching a decision. There are various doctrines and laws designed to address such circumstances. For instance, courts in the United States use three guiding doctrines when deciding cases that involve the application or interpretation of foreign laws or decisions: the political question doctrine, the act of state doctrine, and the international comity doctrine.

Political Question Doctrine

Under the political question doctrine, a court may determine that a dispute should be addressed by the political branches of government and that the judicial branch is the inappropriate forum for a decision concerning political matters. The political question doctrine stems from constitutional separation of powers concerns and contemplates the strong legislative and presidential foreign affairs powers.[1]

Act of State Doctrine

The act of state doctrine provides that, out of respect for other states' sovereignty, U.S. courts should not judge the acts of a foreign head of state made within his or her states' sovereign territory. When used in diplomatically sensitive suits, the doctrine stands for the proposition that when the executive branch makes a determination on a matter affecting U.S. foreign relations, it is not for the judiciary to second-guess that branch's expertise by adjudicating what the executive concludes are sensitive claims.[2]

The act of state doctrine applies only to "official" acts of a sovereign.[3] If there is a treaty or written U.S. State Department opinion disfavoring the application of the doctrine, the act of state doctrine may be avoided.[4] In addition, the Federal Arbitration Act expressly provides that enforcement of arbitration agreements shall not be refused on the basis of the act of state doctrine.[5]

The act of state doctrine merely requires that those acts by a sovereign within its own territory must be deemed valid under the sovereign's own law.[6]

International Comity Doctrine[7]

The doctrine of "comity" is based on respect for the sovereignty of other states or countries, and under it, the forum state will generally apply the substantive law of a foreign sovereign to causes of action which arise in that sovereign. "International comity" is the recognition that one nation allows within its territory the legislative, executive, or judicial acts of another nation, having due regard to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.[8]

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[1] Jay M. Zitter, *Construction and Application of Political Question Doctrine by State Courts*, 9 A.L.R. 6th 177 (2005).
[2] O'Donnell, Michael J., *A Turn for the Worse: Foreign Relations, Corporate Human Rights Abuse, and the Courts,* 24 B.C. Third World L.J. 223 (2004), *available at* http://www.michael-odonnell.com/Note.pdf (last accessed Jan. 26, 2012).
[3] *W.S. Kirkpatrick Co. v. Environ. Tectonics Corp. Int'l*, 493 U.S. 400, 406 (1990). Note: Commercial acts by foreign governments are not generally deemed to be "official acts."
[4] Scullion R. Scullion et al., *Proskauer on International Litigation and Arbitration: Ch. 9 Suing Non-U.S. Governmental Entities in U.S. Courts, available at* http://www.proskauerguide.com/litigation/9/XV.
[5] 9 U.S.C. s. 15.
[6] O'Donnell, *supra* note 4.
[7] Information concerning the international comity doctrine was adapted from 44B AM. JUR. 2D *International Law* s. 8 (2011).
[8] *See Allstate Life Insurance, Co. v. Linter Group Ltd.,* 994 F.2d 996, 998-99 (2d Cir. 1993), citing *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

The principle of international comity is an abstention doctrine, which recognizes that there are circumstances under which the application of foreign law may be more appropriate than the application of U.S. law. Thus, under this doctrine, courts sometimes defer to laws or interests of a foreign country and decline to exercise the jurisdiction they otherwise have.

Furthermore, the doctrine allows a court with a legitimate claim to jurisdiction to conclude that another sovereign also has a legitimate claim to jurisdiction under principles of international law and may concede the case to that jurisdiction. The international comity principle provides for recognition of foreign proceedings to the extent that such proceedings are determined to be orderly, fair, and not detrimental to the nation's interests.[9]

The doctrine of comity is used as a guide for the court, in construing a statute, where the issues to be resolved are entangled in international relations. A generally recognized rule of international comity states that an American court will only recognize a final and valid judgment. This doctrine is not obligatory and is not a rule of law, but is a doctrine of practice, convenience, and expediency. However, the doctrine of comity creates a strong presumption in favor of recognizing foreign judicial decrees. A court may deny comity to a foreign legislative, executive, or judicial act if it finds that the extension of comity would be contrary or prejudicial to the interest of the United States, or violates any laws or public policies of the United States.[10]

Florida Law

Uniform Out-of-Country Foreign Money-Judgment Recognition Act

The Uniform Out-of-Country Foreign Money-Judgment Recognition Act (Florida Recognition Act) governs recognition of foreign judgments in Florida.[11] The Supreme Court of Florida has noted that the Florida Recognition Act was adopted to "ensure the recognition abroad of judgments rendered in Florida."[12] Accordingly, the Florida Recognition Act attempts to guarantee the recognition of Florida judgments in foreign countries by providing reciprocity in Florida for judgments rendered abroad.[13] However, even though the Florida Recognition Act presumes that foreign judgments are prima facie enforceable, the Act is also designed to preclude Florida courts from recognizing foreign judgments in certain prescribed cases where the Legislature has determined that enforcement would be unjust or inequitable to domestic defendants.[14]

The Florida Recognition Act delineates three mandatory and eight discretionary circumstances under which a foreign judgment may not be entitled to recognition. In Florida, a foreign judgment is not conclusive if:

- The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
- The foreign court did not have personal jurisdiction over the defendant.
- The foreign court did not have jurisdiction over the subject matter.[15]

A foreign judgment need not be recognized if:

- The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend.

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[9] *See Allstate Life Insurance, Co. v. Linter Group Ltd.*, 994 F.2d 996, 999 (2d Cir. 1993), citing *Cunard S.S. Co. v. Salen Reefer Serv. AB*, 773 F.2d 452, 457 (2d Cir. 1985).
[10] *Id.* at 1000.
[11] Sections 55.601-55.607, F.S.
[12] *Nadd v. Le Credit Lyonnais, S.A.*, 804 So. 2d 1226, 1228 (Fla. 2001).
[13] *Id.*
[14] *Id.*
[15] *Id.*

- The judgment was obtained by fraud.
- The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state.
- The judgment conflicts with another final and conclusive order.
- The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.
- In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
- The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state.
- The cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the court sitting in this state before which the matter is brought first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the U.S. Constitution and the Florida Constitution.[16]

Florida Arbitration Act

In Florida, two or more opposing parties involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, in lieu of litigating the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.[17]

A voluntary binding arbitration decision may be appealed in a Florida circuit court and limited to review on the record of whether the decision reaches a result contrary to the U.S. Constitution or the Florida Constitution.[18]

Uniform Child Custody Jurisdiction and Enforcement Act

In 2002, the Legislature enacted the "Uniform Child Custody Jurisdiction and Enforcement Act" (act) to:

- Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.
- Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state that can best decide the case in the interest of the child.
- Discourage the use of the interstate system for continuing controversies over child custody.
- Deter abductions.
- Avoid relitigating the custody decisions of other states in this state.
- Facilitate the enforcement of custody decrees of other states.
- Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.
- Make uniform the law with respect to the subject of the act among the states enacting it.[19]

The act prescribes the circumstances under which a court has jurisdiction, mechanisms for granting temporary emergency jurisdiction, and procedures for the enforcement of out-of-state custody orders, including assistance from state attorneys and law enforcement in locating a child and enforcing an out-of-state decree. It facilitates resolution of interstate custody matters and provides for the custody, residence, visitation, or responsibility of a child.

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[16] *Id.*
[17] Section 44.104(1), F.S.
[18] Section 44.104(10)(c), F.S.
[19] Section 61.502, F.S. *See also*, ch. 2002-65, s. 5, Laws of Fla. Note: This act replaced the Uniform Child Custody Jurisdiction Act (UCCJA), adopted in 1977.

In addition, the act requires a court of this state to treat a foreign country as if it were a state of the U.S. for purposes of applying the provisions of the act. Also, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the act must be recognized and enforced, unless the child custody law of the foreign country violates fundamental principles of human rights.[20]

Effect of Proposed Changes

The bill defines "foreign law, legal code, or system" as any law, legal code, or system of a jurisdiction outside any state or territory of the United States. The bill provides that:

- Any court, tribunal, or administrative agency ruling or decision that bases its decision, in whole or in part, on any law, legal code, or system that does not grant the parties affected by the ruling the same fundamental liberties, rights, and privileges granted under the State Constitution and the Constitution of the United States, violates public policy of the State of Florida and is void and unenforceable.
- Any contract or contractual provision, if severable, that provides for a choice of law, legal code, or system to govern some or all of the disputes between parties, either in court or in arbitration, is void and unenforceable if the law, legal code, or system chosen includes or incorporates any substantive or procedural law that would not provide the parties the same fundamental liberties, rights, and privileges granted under the State Constitution and the Constitution of the United States.
- If a contractual provision provides for a choice of venue or forum outside the state or territory of the United States and if enforcement of that choice of venue or forum would result in a violation of any right guaranteed by the State Constitution or Constitution of the United States, then the provision must be construed to preserve the constitutional rights of the person against whom enforcement is sought.
- A claim of forum non conveniens must be denied if a court of this state finds that granting the claim violates or would likely lead to a violation of any constitutional right of the nonclaimant in the foreign forum.

The aforementioned provisions only apply to actual or foreseeable denials of a natural person's constitutional rights.

The bill allows for an individual to voluntarily restrict his or her fundamental liberties, rights, and privileges guaranteed by the Florida and U.S. constitutions; however, the language of any such contract or other waiver must be strictly construed in favor of preserving an individual's liberties, rights and privileges.

The bill provides that it is not to be construed to:

- Require or authorize a court to adjudicate, or prohibit and religious organization from adjudicating, ecclesiastical matters if such adjudication or prohibition would violate Art. I s. 3, Fla. Const., or the First Amendment of the U.S. Constitution.
- Conflict with any federal treaty or other international agreement to which the United States is a party and such treaty or agreement preempts state law on the matter at issue.

The bill only applies to proceedings brought under chs. 61 and 88, F.S., relating to dissolution of marriage and the Uniform Interstate Family Support Act, respectively. It does not apply to a corporation, partnership, or other form of business association.

The bill contains a severability clause, providing that if any provision of this bill or its application is held invalid, the invalidity does not affect other provisions or applications of the bill.

[20] Section 61.506, F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 45.022, F.S., relating to application of foreign law contrary to public policy in certain cases.

Section 2 provides the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to 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:

Federal Preemption

The doctrine of preemption limits state action in foreign affairs. Article VI of the U.S. Constitution states that the laws and treaties of the U.S. are the "supreme Law of the Land," and, therefore, they preempt state law. A federal court has recently held that, even if a state statute is not preempted by a direct conflict with federal law, preemption could still occur if the state law purported to regulate a "traditional state responsibility," but actually "infringed on a foreign affairs power reserved by the Constitution exclusively to the national government."[21]

[21] *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 964 (9th Cir. 2010).

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"[22] and the action must pose a "great potential for disruption or embarrassment"[23] to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[22] *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).
[23] *Id.* at 435.

A bill to be entitled

An act relating to application of foreign law in certain cases; creating s. 45.022, F.S.; defining the term "foreign law, legal code, or system"; clarifying that the public policies expressed in the act apply to violations of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; providing that the act does not apply to a corporation, partnership, or other form of business association, except when necessary to provide effective relief in proceedings under or relating to chapters 61 and 88, F.S.; specifying the public policy of this state in applying the choice of a foreign law, legal code, or system under certain circumstances in proceedings brought under or relating to chapters 61 and 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; declaring that certain decisions rendered under such laws, codes, or systems are void; declaring that certain choice of venue or forum provisions in a contract are void; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; declaring that claims of forum non conveniens or related claims must be denied

under certain circumstances; providing that the act may not be construed to require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters in violation of specified constitutional provisions or to conflict with any federal treaty or other international agreement to which the United States is a party to a specified extent; providing for severability; providing an effective date.

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

Section 1. Section 45.022, Florida Statutes, is created to read:

45.022 Application of foreign law contrary to public policy in certain cases.—

(1) As used in this section, the term "foreign law, legal code, or system" means any law, legal code, or system of a jurisdiction outside any state or territory of the United States, including, but not limited to, international organizations or tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. The term does not include the common law and statute laws of England as described in s. 2.01 or any laws of the Native American tribes in this state.

(2)(a) This section applies only to actual or foreseeable denials of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United

States Constitution from the application of a foreign law, legal code, or system in proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88.

(b) Except as necessary to provide effective relief in proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88, this section does not apply to a corporation, partnership, or other form of business association.

(3) Any court, arbitration, tribunal, or administrative agency ruling or decision violates the public policy of this state and is void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal code, or system that does not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

(4)(a) A contract or contractual provision, if severable, that provides for the choice of a foreign law, legal code, or system to govern some or all of the disputes between the parties to be adjudicated by a court of law or by an arbitration panel arising from the contract violates the public policy of this state and is void and unenforceable if the foreign law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, which would not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

(b) This subsection does not limit the right of a natural person in this state to voluntarily restrict or limit his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution by contract or specific waiver consistent with constitutional principles, but the language of any such contract or other waiver must be strictly construed in favor of preserving such liberties, rights, and privileges.

(5)(a) If any contractual provision or agreement provides for the choice of venue or forum outside a state or territory of the United States, and if the enforcement or interpretation of the contract or agreement applying that choice of venue or forum provision would result in a violation of any fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution, that contractual provision or agreement shall be interpreted or construed to preserve such liberties, rights, and privileges of the person against whom enforcement is sought.

(b) If a natural person who is subject to personal jurisdiction in this state seeks to maintain litigation, arbitration, agency, or similarly binding proceedings in this state and the courts of this state find that granting a claim of forum non conveniens or a related claim denies or would likely lead to the denial of any fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution of the nonclaimant in the foreign forum with respect to the matter in dispute, it is the public policy of this state that the claim be denied.

(6) This section may not be construed to:

(a) Require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters, including, but not limited to, the election, appointment, calling, discipline, dismissal, removal, or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam, or member of the clergy of the religious organization, or determination or interpretation of the doctrine of the religious organization, if such adjudication or prohibition would violate s. 3, Art. I of the State Constitution or the First Amendment to the United States Constitution; or

(b) Conflict with any federal treaty or other international agreement to which the United States is a party to the extent that such federal treaty or international agreement preempts or is superior to state law on the matter at issue.

(7) If any provision of this section or its application to any natural person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect, and to that end the provisions of this section are severable.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Abortion
SPONSOR(S): Plakon and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	9 Y, 5 N	Mathieson	Schoolfield
2) Civil Justice Subcommittee		Caridad DC	Bond NB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates the "Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act." The bill provides whereas clauses and a statement of legislative intent. In addition, the bill:

- 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 by the married father of the child, or maternal grandparents if the woman is younger than 18 years old.
- Provides that an individual who violates the bill commits a third degree felony punishable by $5,000 or a term of imprisonment not exceeding five years.
- A woman on whom a sex or race selection abortion is performed is not subject to criminal prosecution or civil liability.
- 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 state or local governments.

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 population control measures in China and social customs in India.[1] Critics of the Chinese population control measures suggest they are 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. However, there is currently such legislation 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: 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]

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[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 to suggest sex-selective terminations might occur in the United States, specifically among families that have recently migrated to the U.S.[12]

In Florida, 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.[13]

Effect of Proposed Changes

The bill creates the "Susan B. Anthony[14] and Frederick Douglass[15] 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 the act is to protect unborn children from pre-natal discrimination.

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.

A person who knowingly does any such acts commits a third degree felony punishable by a fine not exceeding $5,000 or a term of imprisonment not exceeding five years.[16]

The bill provides that a physician may not terminate a pregnancy without first completing an affidavit stating the termination is not being performed because of the fetal sex or race, and that the physician has 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 the performance of a sex-selection or race-selection termination.

In addition, the bill creates a civil cause of action 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 by the 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 reasonable attorneys fees 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 damages to include loss of companionship and support.

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[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); *see also,* 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).

[13] *See* ch. 390, F.S.

[14] Susan B. Anthony was a civil rights leader of the women's rights movement to introduce women's suffrage into the United States. *See* Susan B. Anthony House, http://susanbanthonyhouse.org/index.php (last accessed Jan. 28, 2012).

[15] Frederick Douglas was a leader of the abolitionist movement. See Public Broadcasting Station (PBS), http://www.pbs.org/wgbh/aia/part4/4p1539.html (last accessed Jan. 28, 2012).

[16] Sections 775.082, 775.083, 775.084, F.S.

A woman on whom a sex-selection or race-selection termination of pregnancy is performed is not subject to criminal prosecution or civil liability for any violation under the provisions of the bill.

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 creates an unnumbered section of law relating 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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:

In *Roe v. Wade*,[17] the United States Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion. In *Planned Parenthood v. Casey*,[18] the United States Supreme Court rejected the trimester framework and, instead, limited the states' ability to regulate abortion based on the viability of the fetus. The state is limited in its ability to regulate abortion pre-viability. However, a state may regulate or even prohibit abortion post-viability provided that the regulation contains a medical emergency exception based on the mother's health.

United States Supreme Court decisions regarding abortion were based on a constitutional due process analysis. This bill implicates equal protection rights, also a constitutional right. No United States Supreme Court decision has decided whether a constitutional right of equal protection is stronger than, or subordinate to, constitutional due process rights as it relates to abortion prior to viability.

This bill may also implicate Art. I, s. 23 of the Florida Constitution, which provides for an express right to privacy that limits the state's ability to regulate abortions in the first and second trimesters.[19]

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 254 uses the term "knowingly," so the use of "knowing" on line 255 is superfluous.

Lines 279-280 refers to several healthcare professionals. It could be simplified by using the term "healthcare practitioner" as defined by s. 456.001(4), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[17] 410 U.S. 113 (1973).
[18] 505. U.S. 833 (1992).
[19] *In re T.W.*, 551 So.2d 1186 (1989). Note that this decision used the *Roe* trilogy, and was decided before *Casey*. On one hand, the opinion claims that it is independent of *Roe*; on the other hand, 22 years have elapsed and it is unknown whether today's members of the court would stay with the reasoning in *T.W.* in light of more recent United States Supreme Court precedent that is different.

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Tuesday, January 31, 2012 08:00 am

End Date and Time: Tuesday, January 31, 2012 11:30 am

Location: 404 HOB

Duration: 3.50 hrs

Consideration of the following bill(s):

CS/HB 99 Sexual Exploitation by Health & Human Services Access Subcommittee, Fresen, Nuñez
PCS for HB 149 -- Website Notice of Foreclosure Action
PCS for HB 451 -- Fraudulent Transfers
CS/HB 505 Mortgages by Insurance & Banking Subcommittee, Bernard
PCS for HB 701 -- Florida Evidence Code
~~CS/CS/HB 711 Sale or Lease of a County, District, or Municipal Hospital by Community & Military Affairs~~ Subcommittee, Health & Human Services Quality Subcommittee, Hooper
~~HB 839 Abortion by Davis~~
~~HB 851 Natural Guardians by Schwartz~~
HB 1013 Residential Construction Warranties by Artiles
CS/HB 1077 Service Animals by Health & Human Services Access Subcommittee, Kriseman
~~HB 1123 Effects of Crimes by Steinberg~~
~~CS/HB 1163 Adoption by Health & Human Services~~ Access Subcommittee, Adkins
~~HB 1209 Application of Foreign Law in Certain Cases by Metz~~
~~HB 1327 Abortion by Plakon~~
~~PCS for HB 1351 -- Homeless Youth~~

A bill to be entitled

An act relating to abortion; providing a short title; providing findings and intent; amending s. 390.0111, F.S.; requiring a person performing a termination of pregnancy to first sign an affidavit stating that he or she is not performing the termination of pregnancy because of the child's sex or race and has no knowledge that the pregnancy is being terminated because of the child's sex or race; providing criminal penalties; prohibiting performing or inducing a termination of pregnancy knowing that it is sought based on the sex or race of the child or the race of a parent of that child, using force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection or race-selection termination of pregnancy, and soliciting or accepting moneys to finance a sex-selection or race-selection termination of pregnancy; providing criminal penalties; providing for injunctions against specified violations; providing for civil actions by certain persons with respect to certain violations; specifying appropriate relief in such actions; authorizing civil fines of up to a specified amount against physicians and other medical or mental health professionals who knowingly fail to report known violations; providing that a woman on whom a sex-selection or race-selection termination of pregnancy is performed is not subject to criminal prosecution or civil liability for any

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

390.0111 Termination of pregnancies.—

(2) PERFORMANCE BY PHYSICIAN; REQUIRED AFFIDAVIT.—

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

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

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

(6) SEX AND RACE SELECTION.—

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1351 Homeless Youth
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Caridad DC	Bond YFB

SUMMARY ANALYSIS

Federal law defines a "homeless youth" as an individual who lacks a fixed, regular, and adequate nighttime residence. The bill:

- Defines "certified homeless youth" to mean a minor, homeless child or youth as defined under federal law.
- Provides that a certified homeless youth or a minor who has had the disabilities of nonage removed in accordance with statute must be issued a certified copy of his or her birth certificate upon request.
- Creates a provision to provide that an unaccompanied certified homeless youth who is 16 years of age or older may petition the circuit court to have the disabilities of nonage removed under s. 743.015, F.S. Such youth will have court filing fees waived and the court must expedite the proceedings.

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

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] During the 2009-10 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; however, researchers estimate that perhaps 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 a family breakdown or a 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 report that they have been homeless at least one night within two-and-a-half to four years after exiting foster care.[6]

Federal law defines "homeless children and youths" as follows:

> (a) [I]ndividuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and
>
> (b) [I]ncludes—
> (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
> (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]

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[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 Jan. 26, 2012).
[2] *Id.*
[33] 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.*
[7] 42 U.S.C. §11434a.

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 Program funded by U.S. Department of Housing and Urban Development

The Emergency Shelter Program is funded by the Department of Housing and Urban Development and 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 individuals 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 that any youth 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 Program works 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 in the program. [16]

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

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[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 Jan. 26, 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 Jan. 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 Jan. 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 Jan. 20, 2012).
[14] *Id.*
[15] *Id.*
[16] *Id.*
[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 Jan. 20, 2012).

homeless youth 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 services must maintain individual case files on the youth in the program.[21] Such documentation constitutes 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 widowered;[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 widowered, the minor is 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 a parent, guardian, or other legal representative.[27] Therefore, homeless children not of legal age and without a parent, guardian or other legal representative are unable to obtain their birth certificate.

Effect of the Bill

The bill allows a certified homeless youth or a minor who has had the disabilities of nonage removed to obtain his or her birth certificate.

The bill defines "certified homeless youth" as a minor who is a homeless child or youth, including an 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

[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Section 743.01, F.S.
[24] Section 743.015, F.S.
[25] Section 743.01, F.S.
[26] Section 743.015, F.S.
[27] Section 382.025 (1)(a) 1., F.S.

- 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]

In addition, the bill expands instances where the department must provide an individual with a copy of an original, new or amended birth certificate or affidavits thereof. The department must provide such to the registrant if he or she is a certified homeless youth, or is a minor who has had the disabilities of nonage removed under ss. 743.01 or 743.015, F.S.

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 may petition the circuit court to have the disabilities of nonage removed under s. 743.015, F.S. The youth shall qualify as a person not required to prepay costs and fees provided in s. 57.081, F.S. The court must advance the cause on the calendar.

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.

Section 4 amends s. 743.067, F.S., relating to unaccompanied youths.

Section 5 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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:

The 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 bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to homeless youth; amending s. 382.002, F.S.; defining the term "certified homeless youth"; conforming a cross-reference; amending s. 382.0085, F.S.; conforming cross-references; amending s. 382.025, F.S.; providing that a minor who is a certified homeless youth or who has had the disabilities on nonage removed under specified provisions may obtain a certified copy of his or her birth certificate; creating s. 743.067, F.S.; providing that unaccompanied youths who are certified homeless youths 16 years of age or older who apply to a court to have the disabilities of nonage removed shall have court costs waived; requiring a court to advance such cases on the calendar; providing an effective date.

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

Section 1. Subsections (3) through (16) of section 382.002, Florida Statutes, are renumbered as subsections (4) through (17), respectively, a new subsection (3) is added to that section, and present subsections (7) and (8) of that section are amended, to read:

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

(3) "Certified homeless youth" means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a, and who has been

certified as homeless or unaccompanied by:

(a) A school district homeless liaison;

(b) The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee; or

(c) 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.

(8) ~~(7)~~ "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or a fetus as described in subsection (7) ~~(6)~~. In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final disposition; the cremation itself is considered final disposition.

(9) ~~(8)~~ "Funeral director" means a licensed funeral director or direct disposer licensed pursuant to chapter 497 or other person who first assumes custody of or effects the final disposition of a dead body or a fetus as described in subsection (7) ~~(6)~~.

Section 2. Subsection (9) of section 382.0085, Florida Statutes, is amended to read:

382.0085 Stillbirth registration.—

(9) This section or s. 382.002(15) ~~382.002(14)~~ may not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

Section 3. Paragraph (a) of subsection (1) of section 382.025, Florida Statutes, is amended to read:

382.025 Certified copies of vital records; confidentiality; research.—

(1) BIRTH RECORDS.—Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records of this state shall be confidential and are exempt from the provisions of s. 119.07(1).

(a) Certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1) and, upon receipt of a request and payment of the fee prescribed in s. 382.0255, shall be issued only as authorized by the department and in the form prescribed by the department, and only:

1. To the registrant, if the registrant is of legal age, is a certified homeless youth, or is a minor who has had the disabilities of nonage removed under s. 743.01 or s. 743.015;

2. To the registrant's parent or guardian or other legal representative;

3. Upon receipt of the registrant's death certificate, to the registrant's spouse or to the registrant's child, grandchild, or sibling, if of legal age, or to the legal representative of any of such persons;

4. To any person if the birth record is over 100 years old and not under seal pursuant to court order;

5. To a law enforcement agency for official purposes;

6. To any agency of the state or the United States for