

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/HB 7111, 1st Eng.

INTRODUCER: Judiciary Committee; Health and Human Services Committee; and Representative Brodeur and others

SUBJECT: Conscience Protection for Actions of Private Child-Placing Agencies

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

I. Summary:

House Bill 7111 establishes a conscience protection provision for private child-placing agencies. The bill amends s. 409.175, F.S., to allow private child-placing agencies and family foster homes affiliated with the agencies, to object to performing, assisting in, recommending, consenting to, or participating in the placement of a child if the placement violates the agency's written religious or moral convictions or policies.

The bill also protects the licensure, grants, contracts, and ability to participate in government programs for those agencies that object to performing adoption services required for the placement of a child or to facilitate the licensure of a family foster home if that placement or licensure violates the agency's written religious or moral convictions or policies.

The bill preempts to the state the subject matter of the conscience protection provisions and declares void any enactments that contravene this subject matter.

II. Present Situation:

Conscience Protection Laws

A conscience protection law guarantees that a person will not be forced to participate in a practice or procedure that is personally objectionable to his or her conscience. Conscience protection laws have previously been enacted by states in the areas of healthcare and education and are now being implemented in adoption services.

Healthcare Laws

Conscience protection laws grant health care providers the ability to refuse to perform services related to abortion, sterilization, and more recently contraception, if those services are contrary to

the provider's religious beliefs.¹ In 1973, the Church² Amendment became the first conscience clause enacted into law.³ It was passed in response to the United States Supreme Court's decision in *Roe v. Wade*⁴ and stated that public officials may not require individuals or entities who receive public funds to perform medical procedures, or make facilities available for procedures, that are "contrary to [the individual or entity's] religious beliefs or moral convictions."⁵

Many states then followed the federal lead and enacted conscience protection legislation regarding abortion. Section 390.0111(8), F.S., grants conscience protection for hospitals, physicians, or any person who refuses to participate in the termination of a pregnancy in Florida.⁶ In addition to other states' statutes, federal statutes provide abortion conscience protections for health care providers.⁷

Similarly, 17 states have conscience protection statutes for individual providers related to sterilization, and 10 states have conscience protection statutes for individual providers related to contraception.⁸ Florida does not have specific conscience protection for sterilization but has conscience protection for physicians or other persons for refusing to furnish contraception.⁹

Education

Conscience protection laws have also emerged in education. In 2011, Missouri amended its Constitution to include, "no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs."¹⁰ Although most states do not amend their constitutions, "the vast majority of states have adopted legislation allowing parents to opt their children out of educational curriculum that they contend conflicts with their religious beliefs."¹¹ In 2013, New Hampshire enacted a broad statutory provision allowing any parent to opt out of specific curricula based on any "objectionable" reason.¹²

¹ See generally, Erin Whitcomb, *A Most Fundamental Freedom of Choice: An International Review of Conscientious Objection to Elective Abortion*, 24 ST. JOHN'S J. LEGAL COMMENT. 771, 783-90 (2010); Catherine Grealis, *Religion in the Pharmacy: A Balanced Approach to Pharmacists' Right to Refuse to Provide Plan B*, 97 GEO. L.J. 1715, 1718-20 (2009); and Kimberly A. Parr, *Beyond Politics: A Social and Cultural History of Federal Healthcare Conscience Protections*, 35 AM. J.L. & MED. 620, 620-23 (2009).

² Sen. Frank Church (R-ID).

³ 42 U.S.C. § 300a-7.

⁴ 410 U.S. 113 (1973).

⁵ 42 U.S.C. § 300a-7(b).

⁶ Section 390.0111(8), F.S.

⁷ 42 U.S.C. § 2996f(b)(8) (prohibiting federal funds from being used in litigation to procure nontherapeutic abortion or to compel any individual to perform an abortion contrary to the religious beliefs or moral convictions of such individual or institution); 20 U.S.C. § 1688 (providing neutrality with respect to abortion in Title IX); 42 U.S.C. § 238n (prohibiting discrimination by the Federal Government against any health care entity that does not provide, train in, or refer for abortions); 42 U.S.C. § 1395w-22(j)(3)(B) (providing conscience protection for providers who accept Medicare); 42 U.S.C. § 1396u-2(b)(3) (providing conscience protection for providers who accept Medicaid); and *Patient Protection and Affordable Care Act*, Pub. L. No. 111-148, 124 Stat 119 (2010) (allowing qualified health plans under the Patient Protection and Affordable Care Act to choose whether to cover abortions).

⁸ GUTTMACHER INSTITUTE, *Refusing to Provide Health Services*.

⁹ Section 381.0051(5), F.S.

¹⁰ MO. CONST. Article 1 s. 5.

¹¹ Claire Marshall, *The Spread of Conscience Clause Legislation*, 39 HUMAN RIGHTS MAGAZINE No. 2 (2013), available at http://www.americanbar.org/publications/human_rights_magazine_home/2013_vol_39/january_2013_no_2_religious_freedom/the_spread_of_conscience_clause_legislation.html.

¹² N.H. Rev. Stat. Ann. § 186:11.

Adoption Services

At least four states, North Dakota, Virginia, Arkansas, and New Mexico,¹³ have enacted varying degrees of conscience protection laws for adoption services: The North Dakota¹⁴ and Virginia¹⁵ adoption services conscience protection laws protect private child-placing agencies from:

- Being required to perform any duties related to the placement of a child for adoption if the proposed placement would violate the agency's written religious or moral convictions or policies.
- Being denied initial licensure, revocation of licensure, or failure to renew licensure based on the agency's objection to performing the duties required to place a child for adoption in violation of the agency's written religious or moral convictions or policies.
- Denial of grants, contracts, or participation in government programs based on the agency's objection to performing the duties required to place a child for adoption in violation of the agency's written religious or moral convictions or policies.

North Dakota's statute states that the agency's refusal to perform the duties required to place a child for adoption does not constitute a determination that the proposed adoption is not in the best interest of the child.¹⁶ The Virginia statute is silent as to a best interest determination and states that the refusal to perform the duties required to place a child for adoption is limited to the extent allowed by federal law and does not form a basis of any claim for damages.¹⁷ As far as can be determined at this time, neither law has been challenged on constitutional grounds.

The Arkansas statute¹⁸ provides that if the health, safety, and welfare of children in an agency's care are not endangered, the board may not promulgate or enforce any rule that has the effect of

- Interfering with the religious teaching or instruction offered by a child welfare agency;
- Infringing upon the religious beliefs of the holder or holders of a child welfare agency license; or
- Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services.

The New Mexico statute¹⁹ is much more concisely written and provides:

The regulations shall not proscribe or interfere with the religious beliefs or religious training of child placement agencies and foster homes, except when the beliefs or training endanger the child's health or safety.

¹³ The North Dakota statute was enacted in 2003, Virginia in 2012, Arkansas in 1997, and New Mexico in 1991.

¹⁴ N.D. Cent. Code ss. 50-12-03 and 50-12-07.1.

¹⁵ Va. Code Ann. s 63.2-1709.3.

¹⁶ N.D. Cent. Code s. 50-12-07.1.

¹⁷ Va. Code Ann. s. 63.2-1709.3(D).

¹⁸ Ark. Code Ann. s. 9-28-405.

¹⁹ N.M. Stat. Ann. s. 40-7A-4.

Religious Organizations

In 2006, Catholic Charities of Boston stopped providing adoption services based on a conflict between church teaching and state law.²⁰ As in Florida, to participate in adoption placements in Massachusetts, whether or not the agency receives state funding, the child-placing agencies must be licensed.²¹ However, Massachusetts law prohibits discrimination based on sexual orientation.²² Catholic Charities explained in a press release that “[i]n spite of much effort and analysis, Catholic Charities of Boston finds that it cannot reconcile the teaching of the Church, which guides our work, and the statutes and regulation of the Commonwealth.”²³ The previous year, Catholic Charities had been responsible for over a third of all Boston area private adoptions.²⁴ Catholic Charities of San Francisco stopped providing adoption services for the same reasons that same year²⁵ and similar events occurred in Illinois in 2011.²⁶

Private adoption service agencies in Florida currently place children in homes that conform to their written religious beliefs and moral convictions. For example, Florida Baptist Children’s Homes states that they are “committed to providing forever, Christian families for children placed in our care, and . . . helping families answer God’s call to adopt.”²⁷ Additionally, the Jewish Adoption and Family Care Options states that they were created “to ensure that Jewish children who were being removed from their home due to abuse or neglect . . . would at least be able to take with them the one piece of their identity that comes from their connection with their Jewish heritage.”²⁸

Adoptions

Adoption is a process established by statute in which the legal rights and duties between a child and the birth or legal parents are terminated and replaced by similar rights and duties between the child and the adoptive parents. Adoption services are performed by all community-based lead agencies throughout the state²⁹ as well as private child-placing agencies. All child-placing agencies must be licensed by the Department of Children and Families (DCF), and include any person, corporation, or agency, public or private, other than a parent or legal guardian, that places or arranges for placement of a child in an adoptive home.^{30,31} As of December 2014, Florida has 82 licensed private child-placing agencies that perform both public and private

²⁰ *Catholic Charities pulls out of adoptions*, THE WASHINGTON TIMES (March 17, 2006), <http://www.washingtontimes.com/news/2006/mar/14/20060314-010603-3657r/>.

²¹ Mass. Gen. Laws Ann. ch. 15D, § 8.

²² Mass. Gen. Laws Ann. ch. 151B, § 4.

²³ J. Bryan Hehir & Jeffrey Kaneb, *Statement of Catholic Charities, Archdiocese of Boston, On Adoption Programs*, ARCHDIOCESE OF BOSTON NEWS/EVENTS (March 10, 2006), http://www.bostoncatholic.org/uploadedFiles/News_releases_2006_statement060310-2.pdf.

²⁴ Colleen Theresa Rutledge, *Caught in the Crossfire: How Catholic Charities of Boston Was Victim to the Clash Between Gay Rights and Religious Freedom*, 15 DUKE J. GENDER L. & POL’Y 297, 298 (2008).

²⁵ Cicero A. Estrella, *Catholic Charities scaling back its role in adoption services*, SFGATE (August 3, 2006), <http://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Catholic-Charities-scaling-back-2515267.php>.

²⁶ Laurie Goodstein, *Illinois Catholic Charities close over adoption rule*, THE BOSTON GLOBE (December 29, 2011), <http://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html>.

²⁷ FLORIDA BAPTIST CHILDREN’S HOMES, <https://www.fbhomes.org/our-care/adoption/> (last viewed March 27, 2015).

²⁸ JAFCO, *Preserving our Jewish Heritage*, <https://www.jafco.org/who-we-are/preserving-our-jewish-heritage/> (last visited March 27, 2015).

²⁹ Section 409.986(1), F.S.

³⁰ Section 409.175, F.S.

³¹ Rule 65C-15, F.A.C.

adoptions.³² Licensure of these agencies requires compliance with personnel requirements, written policies, financial reports, purpose statements, intake procedures, and record keeping.³³

Child Welfare System Adoptions

In Florida, DCF provides child welfare services.³⁴ Statute requires child welfare services, including adoption services, to be delivered through community-based care (CBC) lead agencies contracted by DCF.³⁵ For example, CBCs provide pre- and post-adoption services such as information and referral services, support groups, adoption-related libraries, case management and training.³⁶

During Fiscal Year 2013, 3,415 adoptions of children within the child welfare system were finalized in Florida. Over the last 6 federal fiscal years, the number of finalized adoptions has ranged from 2,945 to 3,870 annually.³⁷

The vast majority of children adopted in FY 2013 were adopted by either relatives (49.83%) or foster parents (24.8%). Non-relative parents comprised 24 percent of adoptions.³⁸

As of April 1, 2015, 849 children are awaiting adoption in Florida with no identified home.³⁹

Private Adoptions

Private adoptions are adoptions that occur outside of the child welfare system. Licensed child-placing agencies act as intermediaries between natural and potential adoptive parents providing adoption services. These services include home studies, counseling, education, legal services, and post-placement services.⁴⁰ These adoptions are arranged by licensed child-placing agencies and require judicial action but are not otherwise tracked by the state.⁴¹

Foster Care

Before children are adopted, many of them enter the foster care system. Foster care is “made up of individuals or families who have requested to be able to take dependent children in to their home.”⁴² There are more than 4,200 licensed foster homes in Florida caring for nearly 8,000

³² Email from Gina Sisk, Legislative Affairs, Department of Children and Families, April 16, 2015 (on file with the Senate Committee on Judiciary).

³³ Rule 65C-15, F.A.C.

³⁴ Section 20.19(4)(a)3., F.S.

³⁵ Section 409.986(1), F.S.

³⁶ Explore Adoption, *Frequently Asked Questions*, <http://www.adoptflorida.org/docs/faqs.pdf> (last visited March 30, 2015).

³⁷ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES, *Adoption of Children with Public Child Welfare Agency Involvement by State: FY 2004 - FY 2013*, <http://www.acf.hhs.gov/programs/cb/resource/adoptions-with-agency-involvement-by-state-fy2004-fy2013> (last visited March 27, 2015).

³⁸ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES, *Prior Relationship of Adoptive Parent(s) to Child: 10/1/2012 - 9/30/2013*, <http://www.acf.hhs.gov/programs/cb/resource/prior-relation-2013> (last visited March 30, 2015).

³⁹ E-mail from Gina Sisk, Legislative Affairs, Department of Children and Families, April 16, 2015 (on file with the Senate Committee on Judiciary.)

⁴⁰ The Florida Bar, *Adoptions in Florida Pamphlet*,

<http://www.floridabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/40018bdf1f308fe985256b2f006c5c11?OpenDocument#WHAT%20IS%20ADOPTION%3F> (last visited Mar. 30, 2015). [hereinafter *Adoptions in Florida Pamphlet*]

⁴¹ *Id.*

⁴² Fostering Florida’s Future, *Fostering Definitions*, <http://www.fosteringflorida.com/fosteringdefinitions.shtml> (last visited April 2, 2015).

children.⁴³ A number of the licensed foster homes are private, religious affiliated organizations. For example, Florida Baptist Children's Home served over six hundred children in foster care, often keeping siblings together instead of being divided into different foster homes.⁴⁴ Likewise, the Jewish Adoption and Family Care Options is a nonprofit that receives foster care children through the state foster care system, court system, or by the birth parents and provides the children with licensed foster parents who meet their requirements.⁴⁵ These organizations provide case management services for the children and a stable and safe environment.

III. Effect of Proposed Changes:

This bill creates a conscience protection provision in s. 409.175, F.S., for private child-placing agencies. The conscience protection provision addresses licensure, contracts, and liability of private child-placing agencies and family foster homes⁴⁶ or residential child-caring agencies⁴⁷ affiliated with private child-placing agencies.

Specifically, the bill relieves any private child-placing agency from the requirement that it must participate in the placement of a child or facilitate any licensing of a family foster home which would violate the agency's written religious or moral convictions or policies.

The bill creates licensure protection by barring the Department of Children and Families from denying or revoking a license because a private child-placing agency refuses to participate in a placement or facilitate in a licensure of a family foster home against the agency's written religious or moral convictions or policies. This licensure protection extends to any family foster homes or residential child-caring agencies affiliated with the private child-placing agency.

The bill provides private contract protection by barring the state, local government, or community-based care lead agency from denying any grant, contract, or participation in a government program because of a private child-placing agency's refusal to participate in a placement or facilitate in the licensure of a family foster home against the agency's written religious or moral convictions or policies. This contract protection extends to any family foster homes or residential child-caring agencies affiliated with the private child-placing agency.

⁴³ Fostering Florida's Future, *2012 Achievements*, <http://www.fosteringflorida.com/docs/FosteringFloridasFuture-2012report.pdf> (last visited April 2, 2015).

⁴⁴ Florida Baptist Children's Homes & Orphan's Heart, *2013 Annual Report*, <https://www.fbchomes.org/about-us/annual-reports/> (last visited April 2, 2015).

⁴⁵ JAFCO, *Foster Care*, <https://www.jafco.org/what-we-do/foster-care/> (last visited April 2, 2015). These requirements include, but are not limited to, completion of an 8 week training program, two family consultations, adequate space for children, and criminal background clearance.

⁴⁶ Section 409.175(2)(e), F.S., defines "family foster home" as 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 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.

⁴⁷ Section 409.175(2)(j), F.S., defines "residential child-caring agency" as 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, 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 ch. 397.

Under this bill, a private child-placing agency that acts in accordance with its written religious convictions or policies is immune from lawsuits seeking injunctive relief or damages based on those actions.

The bill preempts to the state the conscience protection subject matter of the bill. As such, any provision of law or certain other enumerated enactments, such as local ordinances or rules, which contravene this subject matter or restrict a private child-placing agency's exercise of authority under this bill is void.

The law takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Equal Protection

The equal protection clause of the United States Constitution requires that no state shall deny any person within its jurisdiction "equal protection of the laws."⁴⁸ Furthermore, Florida's equal protection clause states that "no person shall be deprived of any right because of race, religion, national origin, or physical disability."⁴⁹ The bill may raise an equal protection issue where a couple or individual, who is otherwise qualified to adopt, is denied by a private adoption agency for reasons that are protected under the bill.

A court's response to an equal protection claim depends on the classification of people involved. A court will analyze government action that discriminates against people according to race, ethnicity, religion, and national origin with the strictest scrutiny.⁵⁰ In addition to those protected classes, federal and state courts also recognize quasi-suspect

⁴⁸ U.S. CONST. amend XIV, s. 1.

⁴⁹ FLA. CONST. Article I, s. 2.

⁵⁰ Under strict scrutiny, the government must show that a law with discriminatory effect advances a compelling state interest, is narrowly tailored, and is the least restrictive means for advancing that interest. *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

classes.⁵¹ If a claim does not involve a fundamental right, a suspect class, or quasi-suspect class, then a court will analyze with rational basis scrutiny, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate government objective.⁵²

The Supreme Court of the United States has a history of disallowing private discrimination and finding that a state sanctioned private parties' discrimination against a protected class.⁵³ For example, in *Shelley v. Kraemer*, the Supreme Court found that judicial enforcement of racially restrictive covenants in private neighborhoods was sufficient to give rise to state action that promoted discrimination and was in violation of the Fourteenth Amendment.⁵⁴

Additionally, the Florida Civil Rights Act of 1992, codified in ch. 760, F.S., broadly prohibits discrimination against individuals based on their race, color, religion, sex, national origin, age, handicap, or marital status. Due this act, those protected by the law have protected class status. However, at this time, the neither the Legislature nor the courts have extended the act to create a protected class based on a person's sexual orientation.

In recent years, some courts have begun recognizing homosexuals as a quasi-suspect class and applying intermediate scrutiny to find laws with discriminatory effects against homosexuals unconstitutional.⁵⁵ Further, some courts, including a Florida state court, have found that laws prohibiting qualified homosexuals from participating in state-sanctioned activity, like adoption, that qualified heterosexuals can participate in freely are not justifiable even under the deferential rational basis review and are unconstitutional.⁵⁶ However, in 2004, the Eleventh Circuit Court of Appeals held that Florida's law prohibiting homosexuals from adopting did not burden a fundamental right and withstood rational basis scrutiny.⁵⁷ This case remains good law⁵⁸ and established federal precedent that, under Florida law, homosexuals are not a suspect or quasi-suspect class.

⁵¹ BLACK'S LAW DICTIONARY (10th ed. 2014) defines quasi-suspect classification as "[a] statutory classification based on gender or legitimacy, and therefore subject to intermediate scrutiny under equal-protection analysis." BLACK'S defines intermediate scrutiny as "[a] standard lying between the extremes of rational-basis review and strict scrutiny. Under the standard, if a statute contains a quasi-suspect classification (such as gender or legitimacy), the classification must be substantially related to the achievement of an important governmental objective."

⁵² *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

⁵³ *Reitman v. Mulkey*, 387 U.S. 369, 375 (1967) (reasoning that "(t)he instant case presents an undeniably analogous situation' wherein the State had taken affirmative action designed to make private discriminations legally possible."); and *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 717 (1961) (finding that discrimination by a lessee of an agency created by the State was sufficient to find that the there was "discriminatory state action in violation of the Equal Protection Clause of the Fourteenth Amendment.").

⁵⁴ *Shelley v. Kraemer*, 334 U.S. 1, 21 (1948).

⁵⁵ See *Windsor v. U.S.*, 699 F.3d 169 (2d Cir. 2012), *affirmed on other grounds* 133 S.Ct. 2675 (2013); *Golinski v. Office of Personnel Mgmt.*, 824 F.Supp.2d 968 (N.D. Cal. 2012).

⁵⁶ *Florida Dept. of Children and Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fla. 3d DCA 2010); *Bassett v. Snyder*, 2014 WL 5847607 (E.D. Mich. 2014). BLACK'S LAW DICTIONARY (10th ed. 2014) defines the "rational-basis test" as "[t]he criterion for judicial analysis of a statute that does not implicate a fundamental right or a suspect or quasi-suspect classification under the Due Process or Equal Protection Clause, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective. Rational basis is the most deferential of the standards of review that courts use in due-process and equal-protection analysis."

⁵⁷ *Lofton v. Secretary of Dept. of Children and Family Services*, 358 F.3d 804, 818 (11th Cir. 2004).

⁵⁸ The Supreme Court denied certiorari on January 10, 2005. See *Lofton v. Secretary, Florida Dept. of Children and Families*, 543 U.S. 1081 (2005).

Religious Freedom

Article 1, section 3 of the Florida Constitution states,

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. . . No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.⁵⁹

Florida’s Religious Freedom Restoration Act of 1998 (FRFRA), ch. 761, F.S., guarantees that

(1) The government *shall not substantially burden*⁶⁰ *a person’s exercise of religion*, even if the burden results from a rule of general applicability . . .⁶¹

It may be argued that the language of this bill does not create a new right for private adoption agencies⁶² but rather codifies an existing right guaranteed by both the Florida Constitution and the FRFRA—the right to be free from the government compelling them, as religious adherents, to engage in conduct their religion forbids. As the Supreme Court of the United States determined in *Burwell v. Hobby Lobby Stores, Inc.*, the phrase “a person’s” in the federal version of the Religious Freedom Restoration Act “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”⁶³ The provisions of the bill are more specific than FRFRA. Additionally the FRFRA regulates the relationship between government and the people. The bill goes farther by regulating relationships between private parties.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specificity in this bill may provide more certainty to religiously affiliated child-placing agencies that they are authorized to continue operating in accordance with their religious convictions. The wording of Florida’s Religious Freedom Restoration Act is much more general. Similarly, the specificity in the bill may discourage lawsuits against private child-placing agencies that act in accordance with their religious beliefs.

⁵⁹ FLA. CONST. Article I, s. 3.

⁶⁰ In 2004, the Florida Supreme Court held that “*a substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires.*” *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 (Fla. 2004) (emphasis added).

⁶¹ Section 761.03(1), F.S.

⁶² In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768-70 (2014), the Supreme Court of the United States determined that the phrase “a person’s” in the federal version of the Religious Freedom Restoration Act “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” *Id.* at 2768.

⁶³ 134 S.Ct. 2751, 2768-70 (2014).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.175 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by House Judiciary Committee on April 2, 2015:

The Judiciary committee adopted one amendment that extends the conscience protection to private child-placing agencies that refuse to facilitate in the licensure of family foster homes when the licensure would violate the agency's written religious or moral convictions.

B. Amendments:

None.