

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 Health Policy

BILL: CS/SB 832

INTRODUCER: Health Policy Committee and Senator Rader

SUBJECT: Adoption Records

DATE: April 10, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 832 changes the title of the bill to an act relating to adoption records and authorizes the disclosure of specified information from adoption records upon written authorization or court order.

The bill has an effective date of July 1, 2019.

II. Present Situation:

Vital Statistics

Vital statistics consists of official records of birth, death, fetal death, marriage, and dissolution of marriage. Official collection of Florida’s birth and death records started in 1917. Annual reporting of vital statistics began in 1919. Florida became a nationally recognized death registration jurisdiction in 1919 and a nationally recognized birth registration jurisdiction in 1924. Marriage and dissolution records have been filed with Florida’s BVS since June 1927.¹

¹ Department of Health, *Florida Vital Statistics Annual Report* (June 2018), p. vii, available at <http://www.flpublichealth.com/VSBOOK/pdf/2017/vscomp.pdf> (last visited April 2, 2019).

The BVS is responsible for the uniform registration, compilation, storage, and preservation of all vital records in the state.² The BVS maintains more than 22-½ million vital records. In addition to the state office, which operates under the direction of the state registrar, district offices operate under the direction of local registrars. The BVS issues more than 2.8 million certified copies annually. A centralized database allows all 67 counties to issue:

- Birth certifications, 1,860 to present; and
- Death and fetal death certifications, 2,009 to present.³

Birth Registration

A certificate for each live birth that occurs in this state must be filed within 5 days after the birth. The certificate may be filed with the local registrar of the district in which the birth occurred or submitted electronically to the state registrar. Responsibility for filing the certificate is assigned to various persons, depending upon the location in which the birth occurs. For example, if the birth occurs in a hospital, birth center, or other health care facility, or in route thereto, the person in charge of the facility is responsible for filing the certificate. The health care practitioner in attendance is responsible for providing the facility with the information required for the birth certificate. If the birth occurs outside a facility and a physician, certified nurse midwife, midwife, or a public health nurse was in attendance, then that person must file the certificate.⁴

Adoptee Birth Certificates in Florida

Florida Adoption Records Law

Florida enacted the state's first adoption law in 1885. No new birth certificate was issued with an adoption, but the adoption was done through a court proceeding and the court file was a matter of public record.⁵ In 1939, Florida law first authorized the issuance of a new birth certificate in cases of adoption and legitimacy.⁶ The original birth certificate was sealed, but adoptees had the right to obtain the original birth certificate upon request to the registrar.⁷ In 1943, Florida repealed and replaced its 1885 adoption laws.⁸ The new laws did not make any records or files confidential, and original birth certificates continued to be available to adoptees upon request.⁹

In 1947, the Legislature amended Florida's adoption laws to make court "records, papers, and files" of adoptions of minors confidential and accessible only by court order.¹⁰ In 1949, the Legislature modified the vital public records law to provide access to original birth certificates in cases of illegitimacy or unknown parentage if the applicant was of legal age.¹¹

² Section 382.003, F.S. The statutes refer to an Office of Vital Statistics under the direction of the State Registrar; however, the DOH has established this responsibility at the bureau level under the Public Health Statistics and Performance Management Division. See the Department's Organizational chart available at <http://www.floridahealth.gov/about-the-department-of-health/documents/orgchart.pdf> (last visited April 2, 2019).

³ Department of Health, *Senate Bill 832 Analysis* (February 7, 2019) (on file with the Senate Committee on Health Policy).

⁴ Section 382.013, F.S.

⁵ Chapter 3594, No. 39, Laws of Fla. (1885); ss. 1536 – 1541, F.S. (Revised 1892).

⁶ Chapter 19063, s. 2, Laws of Fla (1939).

⁷ Id.

⁸ Chapter 21759, s. 20, Laws of Fla. (1939).

⁹ Chapter 21759, ss. 1- 20, Laws of Fla. (1943).

¹⁰ Sections 72.01-72.39 (Suppl. 1947).

¹¹ Chapter 25372, s.18, Laws of Fla. (1949).

In 1967, the Legislature enacted s. 119.07, F.S., Florida's Sunshine Records Law, which required every public records custodian to permit the public records in his or her control to be inspected and copied, unless exempt by law to be confidential.¹² In 1976, Betty Patricia Mullarkey successfully sued the Department of Health and Rehabilitative Services after the department refused to provide her with her original birth certificate.¹³

In 1977, the Legislature enacted legislation that required a court order for an adoptee to request and obtain an original birth certificate. The law; however, did not actually repeal prior language from the 1939 vital records law, which entitled the adoptee to obtain the record upon request. Rather, the new law made the request for original birth certificates subject to review by the court in adoption proceedings.¹⁴ In 1987, the Legislature deleted the original 1939 statutory language that gave adoptees unrestricted access to their original birth certificates upon request in ch. 63, F.S., to require the adoptee to obtain a court order under s. 63.162, F.S., to obtain birth records.^{15,16}

Section 382.015(1)(a), F.S., requires the court clerk in adoption, paternal status, or paternity cases to, within 30 days of final disposition, forward to the BVS a certified copy of the court order, including sufficient information to identify the original birth certificate and to enable the preparation of a new birth certificate. Upon receipt, the BVS must prepare and file a new birth certificate, absent an objection by the court, the adoptive parents, or the adult adoptee. The new certificate must have the same file number as the original birth certificate. The names and identifying information of the adoptive parents are to be entered on the new certificate without any reference to the parents being adoptive. All other information will remain the same, including the date of registration and filing.¹⁷

Once a new birth certificate is prepared, the DOH must substitute the new birth certificate for the original certificate on file. All copies of the original birth certificate in the custody of a local registrar must be forwarded to the state registrar. Thereafter, when a certified copy of the birth certificate is issued, it must be a copy of the new birth certificate, except when a court order requires issuance of a certified copy of the original birth certificate. In adoptions, change in paternity, affirmation of parental status, undetermined parentage, or court-ordered substitution, the DOH must place the original birth certificate, and all papers pertaining to it, under seal, and the seal must not be breached except by court order or as otherwise provided by law.¹⁸

Section 382.025, F.S., provides that all birth records of this state are confidential and exempt from disclosure pursuant to s. 119.07(1), F.S., except birth records over 100 years old that are not

¹² Chapter 67-125, s.7, Laws of Fla. (1967).

¹³ See *Dep't of Health and Rehabilitative Services v. Mullarkey*, 340 So.2d 123 (Fla 1st DCA 1976).

¹⁴ Chapter 77-446, s. 3, Laws of Fla (1977). This law went into effect June 30, 1977, and is not retroactive.

¹⁵ Chapter 87-387, s. 13, Laws of Fla. (1987).

¹⁶ Section 63.162, F.S., requires that all hearings held in adoption matters be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, counsel, persons who have not consented to the release of information.

¹⁷ Section 382.015 (1)(a), F.S.

¹⁸ Section 382.015(4), F.S.

under seal pursuant to court order. This includes certified copies of an original birth certificate, a new or amended certificate, or affidavits¹⁹.

The BVS may only release copies of birth records upon receipt of a request and payment of the fee,²⁰ and only:

- To the registrant, if he or she is of legal age, is a certified homeless, or is a minor who has had the disabilities of non-age removed under s. 743.01 or s. 743.015, F.S.;
- To the registrant's parent or guardian or other legal representative;
- Upon receipt of the registrant's death certificate, to the registrant's spouse, child, grandchild, or adult sibling, or legal representative of any of these persons;
- To any person if the birth record is over 100 years old and not under seal;
- To law enforcement agencies for official purposes;
- To any agency of the state or the United States for official purposes upon approval of the DOH; or
- Upon court order.²¹

Section 63.162(2), F.S., provides that all papers and records pertaining to an adoption, including the original birth certificate, are confidential and subject to inspection only upon order of the court. A person may not disclose from adoption records the name or identity of a birth parent, an adoptive parent, or an adoptee, unless:

- The birth parent authorizes the release of his or her name in writing;
- The adult adoptee authorizes the release of his or her name in writing or, if the adoptee is a minor, written consent to disclose the adoptee's name from an adoptive parent;
- The adoptive parent authorizes the release of his or her name in writing; or
- Upon court order for good cause.²²

In determining whether good cause exists, s. 63.162(4)(d), F.S., requires the court give primary consideration to the best interests of the adoptee but must also give due consideration to the interests of the adoptive and birth parents. Factors to be considered in determining whether good cause exists include, but are not limited to:

- The reason the information is sought;
- The existence of means available to obtain the desired information without disclosing the identity of the birth parents, such as by having the court, a person appointed by the court, the DOH, or the licensed child-placing agency contact the birth parents and request specific information;
- The desires of the adoptee, the adoptive parents, and the birth parents, to the extent known;
- The age, maturity, judgment, and expressed needs of the adoptee; and
- The recommendation of the DOH, licensed child-placing agency, or professional who prepared the preliminary study and home investigation, or the DOH if no study was prepared, concerning the advisability of disclosure.²³

¹⁹ Section 382.025, F.S.

²⁰ See s. 382.0255, F.S.

²¹ Section 382.025, F.S.

²² Section 63.162(4), F.S.

²³ Section 63.162(4)(d), F.S.

III. Effect of Proposed Changes:

CS/SB 832 amends s. 63.162, F.S., to provide that certain information pertaining to an adoption may be disclosed without a court order, including:

- The name and identity of the birth parent if he or she authorizes in writing the disclosure of his or her name;
- The name and identity of the adoptee if he or she is 18 years of age or older and authorizes in writing the disclosure of his or her name; and
- The name and identity of the adoptive parent if he or she authorizes in writing the disclosure of his or her name.

The bill allows the name and identity of the persons referenced above to be disclosed from adoption records upon court order if the court finds good cause, even if such a person has not authorized the disclosure.

The bill has effective date of July 1, 2019.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The bill authorizes the disclosure of the “name and identity” of an adoptee, birth parent, or adoptive parent upon written authorization of the disclosure of his or her “name.” In this way, the bill authorizes the release of information about a person (identity) that the person has not authorized to be released. The bill does not define the term “identity,” does not draw a distinction between “name” and “identity,” and does not indicate what information the term “identity” encompasses.

VIII. **Statutes Affected:**

This bill substantially amends section 382.05 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on April 8, 2019

The committee substitute:

- Removes the underlying bill’s creation of a new subsection of s. 385.015, F.S.;
- Removes the underlying bill’s references to the Florida Adoption Reunion Registry;
- Removes references to a “noncertified copy of an original birth certificate,” which was the underlying bill’s instrument for conveying the information in question under the bill;
- Provides that certain information pertaining to an adoption may be disclosed without a court order, including:
 - The name and identity of the birth parent if the birth parent authorizes the disclosure of his or her name in writing;
 - The name and identity of the adoptee if he or she is 18 years of age or older and authorizes the disclosure of his or her name in writing;
 - The name and identity of the adoptive parent if he or she authorizes the disclosure of his or her name in writing; and
- Provides that the name and identity of the persons referenced above may be disclosed from adoption records upon court order if the court finds good cause, even if the person has not authorized the disclosure.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
