

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2456

SPONSOR: Committee on Judiciary and Senator Lynn

SUBJECT: Adoption

DATE: April 16, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill substantially revises the 2001 Florida Adoption Law, with primary changes focusing on areas of birthfather's rights, notice and consent, statute of repose, venue, and adoption fees. Specifically, the bill makes the following major changes:

- Provides legislative findings regarding the interests of the state, the mother, the child, and the adoptive parents as weighed against the interests of an unwed biological father who fails to assert his parental right and responsibility for a child that may be placed for adoption, and the right of privacy that a birth mother and birth father have.
- Creates the Florida Putative Father Registry within the Department of Health, Office of Vital Statistics, for unmarried biological fathers who want to preserve any right to notice and consent regarding his parental right to a child.
- Allows any child to be placed for adoption outside the state or the country.
- Allows for pre-birth execution of an affidavit of nonpaternity.
- Broadening the criteria for abandonment for purposes of terminating parental rights.
- Replaces notice requirements including constructive notice to specified biological fathers with the requirements associated with the Putative Father Registry.
- Deletes the statutory duty of a mother placing a child to identify a potential unmarried biological father.
- Revises a number of statutory timeframes including reducing the statute of repose period from 2 years to 1 year for any challenge to an adoption or termination of parental rights, reducing in half the time period between the date of personal or constructive service and the date of a final hearing, and extending the time period from 7 to 14 days in which make adoption disclosures to birth and prospective adoptive parents, extending from 24 hours to 7 days in which to forward a judgment terminating parental rights from the clerk

of the court to the Department of Children and Family Services, from 24 hours to 7 days, and changing the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement.

- Revises provisions governing statutory forms by changing the forms for consent to adoption, for adoption disclosure and for notice of service of process, and by eliminating the statutory forms for affidavits of nonpaternity and the waiver of venue to conform with changes in the bill in those areas.
- Allows private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.
- Creating provisions specific to stepparent, relative and adult adoptions or excepting them from requirements in other adoptions.
- Revises provisions relating to adoption fees for adoption entities and birth mothers by increasing allowable fees to adoption entities and birth mothers and by expanding prebirth expenses.

This bill substantially amends, the following sections of the Florida Statutes: 63.022, 63.032, 63.039, 63.042, 63.0423, 63.0425, 63.0427, 63.043, 63.052, 63.062, 63.082, 63.085, 63.087, 63.088, 63.089, 63.092, 63.097, 63.102, 63.112, 63.122, 63.125, 63.132, 63.135, 63.142, 63.152, 63.162, 63.167, 63.182, 63.207, 63.212, 63.219, and 63.235. The bill creates ss. 63.053, 63.054, 63.063, 63.064, and 63.213, of the Florida Statutes. Section 63.185, Florida Statutes, is repealed.

II. Present Situation:

In 2001, the Legislature enacted a comprehensive rewrite of Florida's adoption law.¹ See ch. 2001-03, L.O.F. The provisions of the Act became effective October 1, 2001. The 2001 changes followed several years of workgroup studies and legislative proposals in response to highly publicized and controversial court cases relating to termination of parental rights and adoption. Most of the controversies centered on issues relating to the lack of due process including lack of informed consent, inadequate notice, or improper service to the biological and prospective adoptive parents. The cumulative effect of the 2001 Florida Adoption Law was to provide uniformity, continuity, clarification and finality regarding proceedings for termination of parental rights and proceedings for adoption. It streamlined the total adoption process by providing for a uniform bifurcated procedural framework whereby the proceedings for termination of parental rights are completed before the proceedings for the creation of new parental rights may be initiated. It added registered child-caring agencies to the list of entities eligible to handle adoptions. It set forth and enhanced explicit and comprehensive disclosure, consent, notice, service and hearing requirements in termination of parental rights and adoption proceedings.

Since its enactment, the 2001 adoption law has become the center of renewed public and media interest. In particular, the constructive notice provision which is triggered only after an adoption entity is unable to identify or locate a putative father, became the focus of a petition for declaratory judgment challenging the provision's constitutionality. The provision requires publication of sensitive and personal sexual information in those limited cases. The provision implicated issues regarding a woman's right to privacy and the extent of a putative father's responsibility to assert his or her parental rights in a child whose is or becomes the subject of an

¹ The last major rewrite of Florida's adoption law occurred in 1992.

adoption.² See *In re: The Adoption of a Minor Child*, Case No. 2002 --, 15th Judicial Circuit, WPB, Florida. On July 24, 2002, the court held that the provision was unconstitutional based on privacy grounds *as applied solely to* victims of sexual battery who became involved in adoption cases. The declaratory judgment is on appeal. This issue prompted the interest to revisit the 2001 adoption law to address this issue specifically.

III. Effect of Proposed Changes:

The proposed bill is discussed within the context of the present situation under the major topical areas affected by this bill.

Rights of Unmarried Biological Fathers

Other than fathers whose parental rights over a child are established by implication of marriage, by court order or by adoption, unmarried biological father's parental rights are contingent upon the establishment of a substantial relationship with his child.³ A substantial relationship is the existence of a biological link, and the father's commitment to the responsibilities of fatherhood by participating in his child's upbringing. The mere existence of a biological link does not merit constitutional protection.⁴ The Florida Supreme Court has similarly held that the failure of an unwed father to grasp the opportunity to develop a parental relationship by accepting some measure of responsibility for the child can result in a loss of constitutional protections.⁵

Effect of proposed changes: The bill creates s. 63.053, F.S., to set forth three specific legislative findings in support of the proposed legislation as follows:

1. If an *unmarried biological father* fails to take the actions that are available to him to establish a relationship with his child, his parental interest may be lost entirely, or greatly diminished, by his failure to timely comply with the available legal steps to substantiate a parental interest.
2. The interests of the state, the mother, the child, and the adoptive parents outweigh the interests 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 act. 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 complies with the provisions of the act.
3. A birth mother and a birth father has a right of privacy.

The term "*unmarried biological father*" is defined as the child's biological father who is not married to the child's mother at the time of conception or birth of the child, and who has not been declared by a court of competent jurisdiction to be the legal father of the child.

² The constructive notice provisions in the 2001 adoption law remained substantively unchanged in prior legislative proposals since it was first proposed in 1997 (See SB 550 (1998)).

³ See *Lehr v. Robertson*, 463 U.S. 248 (1983). In this case, the U.S. Supreme Court held that the state's failure to give a putative father notice of pending adoption proceedings did not deny him due process or equal protection even if the state had notice of his existence and whereabouts since a state-established putative father registry existed through which the putative father could have preserved his right to assert parental rights simply by registering.

⁴ See *Lehr* at 261.

⁵ See *In the Matter of the Adoption of Doe*, 543 So.2d 741, 748 (Fla. 1989).

Notice and Consent

Current law requires execution of written consent or service of notice, to the following categories of persons who may qualify as “fathers,” prior to granting a termination of parental rights petition⁶:

- ‘Legal fathers’: The father of the minor if:
 - i. The minor was conceived or born while the father was married to the mother;
 - ii. The minor is his child by adoption; or
 - iii. The minor has been established by court proceeding to be his child.
- ‘DNA fathers’: **IF** there is no “legal” father as set out above, any man established to be the father by scientific testing that is generally acceptable within the scientific community to show a probability of paternity.
- ‘Other fathers’: **IF** there is no “legal” or “DNA” father as set out above, any man who the mother has reason to believe may be the father of the minor and who:
 - i. Has filed an acknowledgement of paternity with the Office of Vital Statistics of the Department of Health;
 - ii. Has provided, or attempted to provide, the child or the mother during her pregnancy with support in a repetitive, customary manner; or
 - iii. Has been identified by the birth mother as a person she has reason to believe may be the father of the minor in an action to terminate parental rights.
- To any person who is a party in any pending proceeding in which paternity, custody, or termination of parental rights is at issue.
- To any father who has provided, or has attempted to provide, the child or the mother during her pregnancy with support in a repetitive, customary manner, if consent has been obtained from the mother and legal father.

A ‘DNA father’ or ‘other father’ may execute an affidavit of non-paternity in lieu of consent, and by so doing waives notice to all court proceedings.⁷ The affidavit of non-paternity can not be executed prior to the child’s birth.

Notice is important on the front end of the adoption process to ensure that a father’s substantive rights are adjudicated early, and prior to any adoption and/or placement of the child with adoptive parents. In order to ensure notice, the following statutory provisions currently apply:

- A. Personal service is required on all persons whose consent is required, and who have not executed an affidavit of non-paternity.⁸ The court is required to conduct an inquiry of the mother, and any other person likely to have information regarding the identity of any other

⁶ See s. 63.062(1), F.S.

⁷ See s. 63.062(2), F.S.

⁸ See s. 63.088(2), F.S.

person who may be the father. If the inquiry identifies a legal father, the inquiry need not continue further.⁹

- B. IF the inquiry identifies any person whose consent is required, who has not executed a consent or an affidavit of non-paternity, AND the location is unknown, the adoption entity must perform a diligent search.¹⁰
- C. **ONLY IF** the inquiry does not yield the identity or location of a person required to consent, and who has not consented or executed an affidavit of non-paternity, must constructive notice be provided.¹¹

Effects of proposed changes: The bill revises provisions governing notice and consent. The bill creates the Florida Putative Father Registry which is integrated into the revised requirements for consent and notice. Any unmarried biological father who wants to preserve his right to notice and consent regarding an adoption of a child must register with the registry. The claim of paternity may be filed at any time prior to a child's birth, but may not be filed after a petition for termination of parental rights is filed. The registrant expressly consents to submit to DNA testing, and may revoke his consent at any time prior to birth of the child. The registrant is required to notify the Registry of change of address; failure to do so shall not serve as a valid defense based upon lack of notice unless the petitioner has actual or constructive notice of the registrant's address. See the Section entitled "Florida Putative Father Registry" for more details about the Registry.

The bill changes the categories of persons who must either consent or be noticed. Pursuant to the bill, the only persons entitled to notice or consent are the mother, legal fathers, and unmarried biological fathers who have registered and demonstrated their commitment to the responsibilities of fatherhood. The category of legal father includes a person married to the mother at the time of the child's conception or birth, an adoptive father, a person who has executed an affidavit of paternity with the biological mother as provided under chapter 382, F.S.,¹² or a person who has been judicially established to be the father.

The bill deletes notice and consent requirements for DNA fathers and other men who might be fathers. Even if an unmarried biological father has registered, his consent is only

⁹ See s. 63.088(3), F.S.

¹⁰ See s. 63.088(4), F.S. The adoption entity is required to make inquiries of the U.S. Postal Service, the last known employer; regulatory agencies; relatives; telephone listings; law enforcement agencies; highway patrol records; Department of Corrections records; hospitals; records of utility companies; records of the Armed Forces; records of the tax assessor and collector; Internet databank locator services; and medical providers.

¹¹ See s. 63.088(5), F.S. The notice is required to contain a physical description, including approximate age, race, and height and weight of the mother and of any person the mother reasonably believes may be the father; and any date and city in which conception may have occurred. This notice is required to be published in every city in which the mother resided or traveled, in which conception may have occurred, during the 12 months before the minor's birth, pursuant to s. 63.087(6), F.S.

¹² Under s. 382.013(2)(c), F.S., the Department of Health, Office of Vital Statistics is required to accept and file affidavits of paternity executed by the mother and the person to be named as the father on the birth certificate. Such properly executed affidavit results in preparation of the birth certificate. These affidavits of paternity executed by both the mother and the father are used as the basis for obtaining child support payments as part of the Department of Revenue's child support enforcement activities in conjunction with Title IV-D of the Social Security Act.

required if he demonstrates his commitment to the responsibilities of fatherhood as follows:

1. As to a child who is 6 months or older at placement, the *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 provided financial support in accordance with his ability, if not prevented from doing so by the person having lawful custody of the child, AND either:
 - 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
 - Maintained regular communication with the child or the person who has custody of the child, when physically or financially unable to visit, or when not prevented from doing so by the birth mother.
 - The expression of desire to fulfill parental responsibilities unsupported by evidence does not preclude a finding by the court that the unmarried biological father failed to comply with the requirements of the bill.
 - An unmarried biological father who openly lived with the child for at least 6 months within the 1 –year period following birth is exempt from these requirements.
2. As to a child who is younger than 6 months at placement, an *unmarried biological father* must have registered with the registry; filed an affidavit that he is personally fully able and willing to take responsibility for the child and agreed to an order of child support and a contribution to the mother's living and medical expenses incurred for her pregnancy; and if he had knowledge of the pregnancy, paid a fair and reasonable amount of the expenses in connection with the pregnancy and birth, when not prevented from doing so by the birth mother or agency having lawful custody of the child.

Failure to comply with these requirements results in the waiver and surrender of the *unmarried biological father's* rights, including notice and consent, regarding the child. Failure to respond to a notice from the registry within 30 days also results in his waiver of rights as his consent is no longer required.

If the birth mother identifies a man who she believes is the unmarried biological father of her child, the adoption entity may provide notice and shall conduct a diligent search if his location is unknown. If neither the diligent search nor the Putative Father Registry reveals a match, the adoption entity may petition the court to declare that the adoption entity has no further obligation to provide notice and that his consent is not required.

An *unmarried biological father* who resides in another state may contest a termination of parental rights and assert his interest in a child prior to the judgment of adoption if: 1) The unmarried mother left that state without notifying him that she could be located in Florida; 2) He has attempted to locate the mother but does not know or have reason to know that she is in Florida; and 3) He has substantially complied with the requirements of the state where the mother previously resided or was located in order to protect his parental interests.

The bill allows an affidavit of non-paternity to be executed prior to the birth of the minor, where previously such affidavit could not be executed pre-birth. The affidavit of non-paternity is irrevocable. The consent form is modified to conform to the provisions of the bill. If a person seeks to withdraw consent, 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 is not otherwise prohibited from having custody of the child.

The bill gives a minor parent the power to consent to the adoption of his or her child, which may not be revoked upon reaching the age of majority or otherwise becoming emancipated. If younger than 14, the consent or affidavit of non-paternity must be witnessed by a parent, legal guardian, or court-appointed guardian ad litem.

The notice and consent provisions provided in this bill do not apply in cases in which the child is conceived as a result of a violation of the criminal laws of this state.

Abandonment

Abandonment is currently defined by statute as “a situation in which the parent or person having legal custody of a child, while being able, makes no provision for the child’s support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations.”¹³ If the efforts of such person are only marginal such that they do not evince “a settled purpose to assume all parental duties,” the court can make a finding of abandonment. In making this decision, the court may consider the conduct of a father towards the child’s mother during her pregnancy. A finding of abandonment resulting in a termination of parental rights must be based on clear and convincing evidence. The statute sets out relevant factors that the court must consider in making a determination of abandonment, most of which require that the person failed to act *after* being informed that he was the father. A finding of abandonment can not be based upon a lack of emotional support to a birth mother during her pregnancy, but may be based upon emotional abuse to a birth mother during her pregnancy.^{14 15}

The only conduct that the court may consider in determining whether a child has been abandoned

¹³ See s. 63.032(1), F.S.

¹⁴ See s. 63.089(4), F.S. Two Florida Supreme Court cases have in recent years examined the rights of unwed fathers during the adoption process. In 1989, the Supreme Court of Florida held that a father’s conduct toward the mother during the pregnancy could evidence abandonment of his unborn child. *In the Matter of the Adoption of Doe*, 543 So.2d 741 (Fla. 1989), cert. denied 493 U.S. 964 (1989). Once the father was found to have abandoned his child, the statute precluded him from objecting to the subsequent adoption, and therefore he had no right to notice or an opportunity to be heard on the issue. More recently the Court upheld a finding of abandonment by the father based on his lack of emotional support and his emotional abuse of the mother during her pregnancy. *In re the Adoption of Baby E.A.W.*, 658 So.2d 961 (Fla. 1995), cert. denied 516 U.S. 1051 (1996).

¹⁵ See s. 63.089(4), F.S. The court must consider, among other relevant factors not inconsistent with this section: whether the actions demonstrate a willful disregard for the safety or well being of the child or unborn child; whether other persons prevented the person from making efforts; whether the person, while being able, refused to provide financial support or medical expenses after being informed that he may be the father of the child; whether the person having legal custody of the child made the child’s whereabouts known to the person alleged to have abandoned the child, advised of the needs of the child or of the mother in regards to the pregnancy, or informed that person of medical appointments and tests; is incarcerated for a substantial period of time before the child will reach the age of 18; has been convicted of specified violent crimes; or continuing the relationship with the incarcerated parent would be harmful to the child.

is conduct that occurred *after* the father was informed that he may be the father, or after a diligent search and notice was served.¹⁶

Effects of proposed changes: The term “abandonment” is amended to include the following conduct as evidence of abandonment: 1) “little or no’ communication with the child” and 2) “lack of emotional support” to a birth mother during her pregnancy. Section 63.089(4), F.S., is similarly amended to tract the definition in s. 63.032(1), F.S. The court will no longer be able to consider the following factors when determining whether there is abandonment by someone: 1) whether the person having legal custody of the child made the child’s whereabouts known, 2) whether the person who allegedly abandoned the child was advised of the child’s needs, or the mother’s needs in regards to the pregnancy; or 3) whether such person was informed of medical appointments and tests. The bill also removes language which allowed a finding of lack of financial or medical support to be made if the putative father had known he was the father. The bill also deletes provisions that restricted the finding of abandonment to that conduct which occurred after the father was informed or given notice that he might be the father.

The Florida Putative Father Registry:

Effects of proposed changes:

The bill creates the Florida Putative Father Registry in s. 63.054, F.S. It provides for the following:

- Requires an unmarried biological father to register with the registry is he wants to preserve any right to notice and consent.
- Allows a putative father registrant to register with the registry at any time up until a petition for termination of parental rights has been filed.
- Requires a putative father registrant to provide under written oath, the name, address, date of birth, and physical description of the mother; the date, place, and location of conception; and the name, date, and place of birth of the child, if known.
- Places the duty on the putative father registrant to update the registry information.
- Allows a putative father registrant to designate an agent or representative to receive communication on his behalf.
- Allows a putative father registrant to revoke his claim to paternity at any time prior to the child’s birth.
- Requires a petition in a proceeding to terminate parental rights or adoption proceeding to contact the Office of Vital Statistics with the Department of Health, to search the Putative Father Registry and to obtain a certificate from the Office that identifies each registered unmarried biological father whose information matches the search request; or that no matching registration was located in the registry.
- Requires the Office of Vital Statistics to:
 - Establish the Florida Putative Father Registry.
 - Charge a nominal fee to cover the costs of filing, indexing, and searching.
 - Adopt by rule application forms for initiation of a search of the registry, and make the forms available.

¹⁶ See s. 63.089(4)(c), F.S.

- Produce and distribute, within existing resources and in three languages (English, Spanish, and Creole), a pamphlet or publication informing the public about the registry; and provide additional information using public service announcements or the Internet.¹⁷
- Does not excuse or waive a petitioner's duty to comply with the diligent search and inquiry requirements.

Relief from Judgment:/Statute of Repose:

Current law requires a petition to terminate parental rights be dismissed with prejudice if there is no clear and convincing evidence to terminate those rights.¹⁸ A judgment terminating parental rights or any later judgment of adoption is voidable if upon motion of a parent, the court finds that a person knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities for the minor. The motion must be filed no later than 2 years after the entry of the judgment terminating parental rights.¹⁹ The current statute of repose requires any action to vacate, set aside, or otherwise nullify a judgment terminating parental rights on any ground except fraud, to be filed within 1 year after entry of the judgment. An action based on fraud must be filed within 2 years after entry of the judgment.²⁰

Effect of proposed changes: The bill deletes the requirement that the court dismiss a petition 'with prejudice' if it does not find by clear and convincing evidence that parental rights should be terminated. The bill deletes the voidability of a judgment terminating parental rights or adoption based upon false information that prevented a parent from timely making known his or her desire to assume parental responsibilities, and instead provides that a judgment is voidable if the court finds that the adoption fails to meet the requirements of ch. 63, F.S. The bill allows visitation between the alleged parent and the child if that person has previously established a bonded relationship with the child, and allows the court longer than 45 days to hold the final hearing on the motion for relief from the judgment for good cause shown or if otherwise agreed between the parties. The statute of repose is amended to require any action to vacate, set aside, or otherwise nullify a judgment to be filed within 1 year of the judgment, regardless of the grounds upon which the action is based.

Out-of-state adoption:

It is currently unlawful for any person to place or attempt to place a minor for adoption with a person who primarily lives and works outside this state unless:

- the minor is placed with a relative within the third degree;
- the minor is placed with a stepparent;
- the parent placing the child chooses to place the minor out of state; or

¹⁷ See s. 63.054(11) as created by this bill. The pamphlet must be included in health class curriculums taught in public and charter schools, provided to hospitals, adoption entities, libraries, medical clinics, schools, universities, and providers of child-related services, upon request. The pamphlet must be offered to each person applying for a Florida identification card and a driver's license.

¹⁸ See s. 63.089(5), F.S.

¹⁹ See ss. 63.089(7) and 63.142(4)(a), F.S. After the motion is filed, the court is required to conduct a preliminary hearing regarding contact between the parent and child; the court may order scientific testing and/or supervised visitation. The court has 45 days from the preliminary hearing to conduct a final hearing on the motion to set aside the judgment.

²⁰ See s. 63.182, F.S. The statute of repose provisions are applicable notwithstanding ss. 95.031, 95.11, F.S., or any other statute.

- the minor is a special needs child.²¹

Effect of proposed changes: The bill amends the definition of ‘intermediary’ to include attorneys who place children born in this state with citizens of another state or country. The bill repeals s. 63.185, F.S., which requires primary residence and place of employment in Florida in order to adopt in this state, except for the adoption of a special needs child. The bill makes continued jurisdiction of the Florida court permissive when a minor is placed with prospective adoptive parents who primarily live and work outside Florida, and modifies the provision making it unlawful for a person to place a minor for adoption with a person who primarily lives and works outside Florida, unless all of the requirements of the Interstate Compact for the Placement of Children have been met.²²

Venue:

Current law requires a petition to terminate parental rights to be filed:

- in the county where the child resided for the previous 6 months;
- if the child is younger than 6 months or has not continuously resided in the same county for 6 months, in the county where one parent resided at the time of the execution of the consent or affidavit of non-paternity;
- if the child is younger than 6 months and a waiver of venue has been obtained, in the county where the adoption entity is located;²³
- if there is no consent or affidavit of non-paternity executed, in the county where the birth mother resides; or
- if neither parent resides in the state, the county where the adoption entity is located.²⁴

If a parent whose rights are to be terminated objects to venue, there must be a hearing; if the court determines that the parent intends to assert legally recognized grounds to contest the termination, the court shall immediately transfer venue to the county where that parent resides, or another specified county.²⁵

²¹ See ss. 63.207 and 63.212, F.S. A special needs child, as defined by s. 409.166, F.S., is a child whose permanent custody has been awarded to the Department of Children and Family Services or to a licensed child-placing agency and who has established significant emotional ties with his or her foster parents; or is not likely to be adopted because he or she is 8 years old or older; is mentally retarded; is physically or emotionally handicapped; is of black or racially mixed parentage; or is a member of a sibling group provided that two or more members of the group remain together for the purposes of adoption.

²² The Interstate Compact for the Placement of Children, as provided in s. 409.401, F.S., typically applies to children in the legal custody of the Department of Children and Families, and requires party states to cooperate with each other to ensure that each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment; the appropriate authorities in the receiving state can comply with all applicable requirements for the protection of the child; the proper authorities from the sending state may obtain complete information on which to evaluate a projected placement before it is made; and appropriate jurisdictional arrangements for the child will be promoted.

²³ Waiver of notice is provided in s. 63.062(9), F.S. If the adoption entity knows that a parent intends to object to the termination but intentionally files the petition to terminate parental rights in a county inconsistent with required venue, the adoption entity shall be responsible for the attorney’s fees of the parent contesting the transfer of venue.

²⁴ See s. 63.087(4), F.S.

²⁵ See s. 63.087(4)(b), F.S. If there is no county where the objecting parent resides, venue is in the county where at least one parent whose rights are to be terminated resides; at least one parent resided at the time of execution of the consent or affidavit of non-paternity; or the adoption entity is located if neither of the first two sub-paragraphs apply. The court is required to consider ease of access to the court for the parent who intends to contest a termination of parental rights. If there is a transfer of venue, the adoption entity or the petitioner must bear the cost of the venue transfer.

Effect of proposed changes: The bill deletes the provisions allowing venue to be waived in cases in which the child is younger than 6 months, and instead provides for a general waiver of venue by an objecting parent. The bill eliminates the waiver of venue form, and deletes provisions making the adoption entity financially responsible for the attorney's fees of the person contesting venue if the adoption entity intentionally filed the petition inconsistent with required venue. The bill further modifies venue by allowing the petition to be filed:

- in the county where the child resides (regardless of residence for the past 6 months);
- if the child doesn't reside in Florida, in the county where the adoption entity is located (eliminating venue in the county where the parent resided at the time of execution of the consent or affidavit of non-paternity, if the child is younger than 6 months);
- in the county where the adoption entity is located (deleting waiver provisions); or
- if neither parent resides in Florida, the county where the adoption entity is located (eliminating venue in the county where the mother resides if there is no consent or affidavit of non-paternity).

The bill further requires venue to be transferred to the county where the parent resides or resided at the time of execution of a consent or affidavit of non-paternity, if the parent is contesting the termination of parental rights and objects to venue.

Participation of adoption entities in adoptions of dependent children in the custody of the Department of Children and Families:

Current law provides for the termination of parental rights of dependent children (who have been abused, abandoned, or neglected and are in need of the state's protection) and the required due process safeguards, in chapter 39.²⁶ If the Department of Children and Family Services is given custody of a child for subsequent adoption pursuant to chapter 39, the department may place the child with a private agency, with a registered child-caring agency²⁷, or in a family home for subsequent adoption.²⁸ Termination of parental rights and subsequent adoption proceedings of parents who voluntarily place their children for adoption are handled by chapter 63.

Effect of proposed changes: The bill provides that it is the intent of the Legislature to provide for cooperation between private adoption entities and DCF regarding permanent placement of children in the care of the department. The bill also allows an adoption entity to intervene in the dependency case for purposes of effectuating an adoption. In such cases, a preliminary home study is required, and if the prospective adoptive parents are qualified and the adoption appears to be in the best interests of the child, the child shall be immediately transferred to the custody of the prospective adoptive parents.

²⁶ See s. 63.037, F.S., which exempts adoption proceedings initiated under ch. 39 from disclosure requirements; notice and service provisions provided in s. 63.088, F.S.; and procedures for terminating parental rights provided in s. 63.088, F.S. See also ss. 39.801-39.815, F.S. regarding provisions to terminate parental rights of dependent children.

²⁷ A registered child-caring agency as provided for in s. 409.176, F.S., is a residential child-caring agency or family foster home registered with an association that is certified by a Florida statewide child care organization which was in existence on January 1, 1984, and which publishes and requires compliance with its standards.

²⁸ See s. 39.812(1), F.S.

Fees:

Florida law currently outlines the fees, costs, and expenses that may be assessed by the adoption entity on behalf of the prospective adoptive parents. Among other things, the law allows payment of reasonable living expenses of the birth mother which she is unable to pay due to unemployment, underemployment, or disability due to the pregnancy, which has been certified by a medical professional; reasonable and necessary medical expenses; expenses necessary to comply with the provisions of the statute; court costs and litigation expenses; and professional fees based on reasonable hourly fees.²⁹ Prior approval is required when the fee exceeds specified amounts.³⁰ Lump sum payments that are non-refundable directly to the payer are prohibited.³¹ The court has discretion to order the prospective adoptive parents to pay a lesser amount for services performed (such as counseling, the preliminary home study, and the final home investigation) if it finds that such person is financially unable to pay.

Effect of proposed changes: The bill allows payment to the birth mother for reasonable living expenses that she is unable to pay due to a disability, and deletes the requirement that the disability be due to a pregnancy; allows the birth mother to be paid for toiletries, insurance, and other expenses for the birth mother's well being. The bill provides that these expenses are allowable during pregnancy and for a period of up to 6 weeks postpartum. The bill expands allowable fees and costs to include investigator fees, birth certificate, and medical record expenses. Fees for legal representation are allowed to be paid in a flat fee. The bill increases the amounts of fees allowed before court approval is required, deletes the requirement for prior approval of expenses incurred prior to retention of the adoption entity, and eliminates the court's ability to approve a lesser amount of professional service fees if financially unable to pay.

Preplanned adoption agreements:

Preplanned adoption agreements (surrogacy agreements) are currently placed with provisions regarding prohibited acts.³² The current provisions allow the intended mother and father to agree to pay all reasonable legal, medical, psychological, or psychiatric expenses of the volunteer mother, as well as reasonable living expenses. No other compensation shall be made pursuant to a preplanned adoption agreement.³³

Effect of proposed changes: The bill moves provisions relating to preplanned adoption agreements into a new created statutory section. The provisions are further revised to allow intended parents to agree to pay for lost wages due to the pregnancy and birth, and reasonable compensation for inconvenience, discomfort, and medical risk.

²⁹ See s. 63.097, F.S.

³⁰ Pursuant to s. 63.097(3), F.S., prior approval of the court is not required until the cumulative total of allowable amounts exceed \$2,500 in legal fees; \$500 in court costs; \$3000 in expenses; or \$1500 cumulative expenses incurred prior to the date the adoption entity was retained.

³¹ See s. 63.097(5), F.S.

³² See s. 63.212(1)(h)(2)i, F.S.

³³ See s. 63.212(1)(h)2.f., F.S.

Sanctions:

Current law places an affirmative duty on adoption entities to follow the requirements of chapter 63. In specified circumstances, the court must award reasonable attorney's fees and costs³⁴, and forward any order imposing sanctions against an attorney to the Florida Bar. The law also imposes criminal penalties against any person who violates specified provisions.³⁵ A court may prohibit an adoption entity that has violated any provision of chapter 63 from placing a minor for adoption in the future.³⁶

Effects of proposed changes: The bill makes award of attorney fees permissive rather than mandatory, and requires an evidentiary hearing to determine whether the actions or failures of the adoption entity directly contributed to a finding of fraud or duress. The bill requires any order imposing sanctions against the department to be forwarded to the Office of the Attorney General. The bill provides that any person injured by fraudulent representation in connection with an adoption is entitled to civil or criminal penalties as provided by law. Fraudulent representation shall not be a basis for dismissing a petition for termination of parental rights or adoption. Regarding criminal sanctions, the bill requires that the violation be willful and with criminal intent. Regarding the court's authority to prohibit an adoption entity from placing children for adoption in the future, the bill requires willful violation of any substantive provision relative to the rights of the parties and legality of the adoption process, and limits the prohibition to placement of children for adoption in Florida.

Other miscellaneous changes made by the bill:

The bill also does the following:

- Eliminates provisions giving a grandparent with whom a child has lived for at least a 6 month period, first priority to adopt. Requires instead that a grandparent with whom a child has lived with for at least 6 months within the 24-month period immediately preceding the filing of the petition to terminate parental rights, is entitled to notice.
- Clarifies that parents who have had their parental rights terminated by petition of the Department of Children and Family Services under chapter 39, F.S., may have contact with a child upon agreement of the adoptive parents.
- Deletes duplicative statutory provision which prohibits sickle-cell trait screening or testing as a condition of employment, or for admission into any state educational institution or state-chartered educational institution.³⁷

³⁴ See s. 63.039(2) & (3), F.S., which provide that if a court finds that a consent or an affidavit of non-paternity was obtained by fraud or duress attributable to the adoption entity, or if a person whose consent was required prevails in an action to set aside a judgment terminating parental rights or adoption, the court must award reasonable attorney's fees and costs.

³⁵ See s. 63.212(8), F.S., which imposes a 3rd degree felony penalty for violation of provisions relating to placing a child out-of-state, selling a child; charging a fee for referral; contracting for the purchase, sale, or transfer of a minor; failure to report to the court intended placement of a child; charging any fee other than those specifically allowed; and failure to disclose a preliminary or final home study. A 2nd degree misdemeanor penalty is imposed for advertising that a minor is available for adoption (except for an adoption entity).

³⁶ See s. 63.219, F.S.

³⁷ Identical or similar provisions prohibiting screening for the sickle-cell trait appear at ss. 448.076, 448.075, 626.9706, and 626.9707, F.S.

- Requires an intermediary to remove a child from a prospective adoptive home if deemed by the intermediary to be in the best interests of the child, prior to the court's entry of an order granting preliminary approval of the placement.
- Eliminates non-parties' rights to petition the court to review the appropriateness of the placement.
- Reduces the time period in half between the date of personal or constructive service of process and the date of the final hearing.
- Extends the time period within which an adoption entity must provide a written disclosure from 7 to 14 days, and conforms the disclosure to the provisions of this act. Deletes requirement that disclosure be repeated post birth.
- Deletes requirement that all proceedings for adoption be conducted by the same judge that conducted the termination proceedings.
- Extends the time period by which the court must mail a copy of the judgment terminating parental rights to the Department of Children and Family Services, from 24 hours to 7 days.
- Changes the time requirement for filing of the final home investigation to 90 days after placement, instead of 90 days after the date the petition was filed.
- Clarifies that the Department of Children and Family Services must be given notice of hearing on the advisability of disclosing or not disclosing information pertaining to an adoption, in the case of adoptions other than those handled by the department or a child-placing agency licensed by the department.
- Clarifies that the department is not prohibited from inspecting and copying official records maintained by an agency licensed by the department.
- Allows the department to contract with more than one licensed child-placing agency to operate the state adoption information center.
- Revises affecting the adoption process for abandoned infants including giving the court the discretion to order paternity testing and making conforming changes to the bill.
- Revises provisions relating the to the duties of an adoption entities when a child in their custody.
- Combines into one proceeding the termination of parental rights and final adoption in cases involving adoptions by relatives, adoptions of adults or adoption of stepchildren.
- Clarifies that forgiveness by a parent of vested child support arrearages owed in a step-parent adoption does not constitute a felony.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Privacy:

Article I, Section 23 of the State Constitution provides that “every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” Florida’s right to privacy protects two different types of interests. First, it protects individuals from government interference when making personal decisions. The Florida Supreme Court has found that the right to privacy protects the fundamental right of parents to raise their children.³⁸ Second, the right to privacy protects persons from compelled disclosure of private information. Any person wishing to assert the right to privacy must show state action and a reasonable expectation of privacy. Once these two elements have been established, the person’s right to privacy rises to the level of a fundamental right. To intrude, the government must show that it has a compelling state interest, and that it has used the least intrusive means to further that interest.

The constructive notice provisions of the current law have been challenged as violative of a birth-mother’s privacy rights. This legislation removes those provisions in exchange for requiring unmarried birth fathers to register with the confidential Putative Father Registry. The creation of the registry and the information thereunder may also unintentionally raise other issues of privacy for a woman.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Prospective adoptive parents may incur higher costs resulting from allowable fees paid to adoption entities and birth mothers which have been increased by the bill.

C. Government Sector Impact:

The Department of Health, Office of Vital Statistics reports the following:

	Year 1	Year 2
Total non-recurring expenses :	\$ 44,561	
Total recurring expenses :	\$ 55,773	\$71,697
Total:	\$100,334	\$71,697

The Department of Health reports that it will need to develop a database system to enter, update, and track information as required by this bill, and estimate that they will need two additional staff.

³⁸ See *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996) and *Von Eiff v. Azicri*, 720 So.2d 510 (Fla. 1998).

The Office of Vital Statistics of the Department of Health reports that of the approximately 205,000 births in Florida in 2001, 80,209 were to unmarried mothers. The Office of Vital Statistics processed approximately 6000 adoption actions in 2001. The Department processed 351 registry searches in 2002 under the current limited paternity registry. Information based on figures obtained from Texas Vital Statistics, which also operates a paternity registry, leads the Department to expect to process 30-40 registrations per year and perform 6000-8000 searches of the registry per year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no mechanism in place for a woman to challenge the accuracy or veracity of a putative father registrant, or to otherwise request removal of her name and her child's name from the registry in cases where paternity has been established by some means or in some other person or to purge information after the potential period of conception and pregnancy.

There is no mechanism in place to alert the Office of Vital Statistics as to the initiation of a petition for termination of parental rights which preclude the acceptance of a paternity claim in the Putative Father Registry beyond the statutory timeframe.

The term "unmarried biological father" is not redefined to exclude fathers who have filed affidavits of paternity pursuant to s. 382.013(2)(c), F.S., or fathers who are fathers by virtue of having adopted a child which arguably can only be done by court proceeding anyway and would therefore not be affected. This may have implications for them as to the manner of notice, service of process and consent.

VIII. Amendments:

None.