

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.)

Prepared By: Judiciary Committee

BILL: SB 142

INTRODUCER: Senator Wise

SUBJECT: Change of Name Petition

DATE: February 19, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Favorable
2.			CJ	
3.			JA	
4.				
5.				
6.				

I. Summary:

This bill, with some exceptions, requires persons seeking to legally change their names to have a state and national criminal history records check as a prerequisite to the name change.

This bill substantially amends section 68.07, Florida Statutes.

II. Present Situation:

“At common law a person could adopt another name at will, absent a fraudulent, criminal, or wrongful purpose.”¹ That right is largely preserved in s. 68.07, F.S.² However, the statutory process provides the “advantage of a public record to document the [name] change.”³

Under s. 68.07(2), F.S., a person, with some exceptions, who seeks to change his or her name must file with a court a petition under oath along with a set of fingerprints. The petition must show:

- (a) That petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.
- (b) If known, the date and place of birth of petitioner, petitioner’s father’s name, mother’s maiden name, and where petitioner has resided since birth.

¹ *Isom v. Circuit Court of the Tenth Judicial Circuit*, 437 So. 2d 732, 733 (Fla. 2d DCA 1983) (citing *Moskowitz v. Moskowitz*, 385 A.2d 120 (N.H. 1978)).

² See also Fla. Fam. L. R. P. 12.982(a)-(g).

³ *Isom*, 437 So. 2d at 733.

- (c) If petitioner is married, the name of petitioner's spouse and if petitioner has children, the names and ages of each and where they reside.
- (d) If petitioner's name has previously been changed and when and where and by what court.
- (e) Petitioner's occupation and where petitioner is employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, the profession shall be stated, where the petitioner has practiced the profession and if a graduate of a school or schools, the name or names thereof, time of graduation, and degrees received.
- (f) Whether the petitioner has been generally known or called by any other names and if so, by what names and where.
- (g) Whether petitioner has ever been adjudicated a bankrupt and if so, where and when.
- (h) Whether petitioner has ever been arrested for or charged with, pled guilty or nolo contendere to, or been found to have committed a criminal offense, regardless of adjudication, and if so, when and where.
- (i) Whether any money judgment has ever been entered against petitioner and if so, the name of the judgment creditor, the amount and date thereof, the court by which entered, and whether the judgment has been satisfied.
- (j) That the petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.
- (k) That the petitioner's civil rights have never been suspended, or if the petitioner's civil rights have been suspended, that full restoration of civil rights has occurred.

After a court rules on the name change petition, the clerk of court must send a report of the judgment, including the fingerprints, to the Florida Department of Law Enforcement (FDLE). A copy of the report must be sent by FDLE to the Department of Highway Safety and Motor Vehicles (DHSMV). The report will enable FDLE and DHSMV to revise their records to reflect the name change. With respect to a person convicted of a felony in another state or of a federal offense, FDLE must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation. The report may be forwarded by FDLE to any other law enforcement agency that may retain information related to the petitioner.⁴

Nothing in s. 68.07, F.S., provides for name change proceedings to be adversarial proceedings. As such, a court cannot always rely on another party to challenge the accuracy of the facts stated in a name change petition. Moreover, according to FDLE the fingerprints submitted with the name change petition are not used to verify the petitioner's statements regarding his or her criminal history.

⁴ Section 68.07(5), F.S.

Additionally, s. 68.07, F.S., expressly does not apply to the restoration of a former name and name changes in connection with adoptions or dissolutions of marriages. Moreover, s. 68.07, F.S., does not appear to apply to name changes resulting from marriages.⁵

III. Effect of Proposed Changes:

This bill, except as provided by existing law, requires a person seeking to legally change his or her name to have a state and national criminal history records check as a prerequisite to the name change. Consistent with existing law, those seeking to restore a former name and those seeking to change names in connection with adoptions, dissolutions of marriages, and marriages are exempt from the procedures under the bill. Additionally, the bill requires the person to submit two sets of fingerprints with the name change petition to the clerk of court. Under existing law only one set of fingerprints is required.

The bill requires the clerk to forward one set of fingerprints to the Florida Department of Law Enforcement (FDLE) to obtain a state and national criminal history records check. The results of the check are then made available for use by the court. The bill does not state expressly how the results of the criminal history check should be used. However, it seems likely that the results would be used to verify the accuracy of some of the statements made in the name change petition.

The clerk must forward the second set of fingerprints to FDLE, if the name change petition is granted. The person seeking the name change will bear the cost of fingerprinting and the \$23 fee for the state criminal history records check plus, \$24 for the national criminal history records check.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ No Florida statute has been located that expressly authorizes or creates a process for name changes upon marriage. Several statutes, however, recognize that such name changes occur. *See, e.g.*, s. 97.1031(2), F.S. (requiring voters to change their registration to reflect name changes upon marriage); s. 775.21(5)(f) and (g), F.S. (requiring sexual predators to register name changes upon marriage at a driver's license office); *see also* 14 C.F.R. s. 61.25 (permitting name changes on certain certificates issued to pilots and others by the Federal Aviation Administration); Florida Department of Highway Safety and Motor Vehicles, Name Changes, *available at* <http://www.hsmv.state.fl.us/dhsmv/married.html> (last visited February 14, 2007) (stating that "[a] name change may be handled at any driver license office by presenting an original or certified marriage certificate or court order, the incorrect license and paying the \$10 fee").

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Persons seeking to legally change their names will incur increased costs. These costs will result from additional fingerprinting and the \$23 fee to process a state criminal history records check, plus \$24 for the national criminal history records check.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Court clerks will have to make additional mailings to the Florida Department of Law Enforcement (FDLE). This bill is expected to generate 3,200 additional background checks per year according to FDLE.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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