

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 Criminal and Civil Justice Appropriations Committee

BILL: SB 220

INTRODUCER: Senator Wise

SUBJECT: Change of Name/Petition

DATE: April 3, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cary	Maclure	JU	Favorable
2.	Krol	Cannon	CJ	Favorable
3.	Hendon	Sadberry	JA	Favorable
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. Form 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

⁴ Section 68.07(5), F.S.

name change petition are not used to verify the petitioner's statements regarding his or her criminal history.

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 marriage. 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 marriage, and marriages are exempt from the procedures under the bill.

Specifically, the bill provides that, before the court hearing on a petition for a name change, the petitioner must submit fingerprints for a state and national criminal history records check. Fingerprints for all name change petitioners shall be taken in a manner approved by the Florida Department of Law Enforcement (FDLE) and shall be submitted electronically to the FDLE for state processing and the Federal Bureau of Investigation for national processing for a criminal history record check. The results of the state and national check shall be returned to the clerk of the court.

The petitioner for the name change, or the parent or guardian of a minor for whom a name change is being sought, shall bear the cost of processing fingerprints and conducting this criminal history records check.

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 bill takes effect on July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates 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(6)(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 January 17, 2008) (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").

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

See discussion in the “Private Sector Impact” section below.

B. Private Sector Impact:

Persons seeking to legally change their names, or the names of their minor children, will incur increased costs resulting from the requirement for a criminal history records check. According to the Florida Department of Law Enforcement (FDLE), each criminal history records request costs \$42.25, \$23 of which goes into the FDLE Operating Trust Fund and \$19.25 of which is forwarded to the Federal Bureau of Investigation (FBI) to cover the cost of the criminal history records check. Persons who seek to restore a former name or to change a name in connection with adoptions, marriage, or dissolutions of marriage are exempt from the provisions of this law.

C. Government Sector Impact:

According to FDLE, the bill is expected to generate approximately 2,000 additional background checks per year. The fee charged for background checks will provide FDLE funds to pay for the cost of the service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

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