

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: Children and Families Committee

BILL: SB 172

INTRODUCER: Senator Rich

SUBJECT: Adoption

DATE: February 8, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides an exception to the current prohibition against adoption by homosexuals, allowing such adoptions if the court finds by clear and convincing evidence that:

- the adoptee resides with the person proposing to adopt,
- that the adoptee recognizes the person as the adoptee's parent, and
- that granting the adoptee permanency in that home is more important to the adoptee's developmental and psychological needs than maintaining the adoptee in a temporary placement.

This bill substantially amends s. 63.042, Florida Statutes.

II. Present Situation:

Since 1977, Florida law has prohibited adoption by homosexuals. This ban has been challenged as unconstitutional, but efforts to overturn it have been unsuccessful.¹ Florida was until recently the only state with an outright ban on homosexual adoptions, but two other states (Utah and Mississippi) have recently enacted similar statutes.²

¹ *Lofton v. Secretary of Dept. of Children and Family Services*, C.A.11 (Fla.)2004, 358 F.3d 804, rehearing en banc denied 377 F.3d 1275, certiorari denied 125 S.Ct. 869, 160 L.Ed.2d 825.

² Florida's prohibition is arguably the broadest of all states, banning all adoption by homosexuals. Mississippi bans adoption by gay couples and Utah by unmarried adults living together in a sexual relationship. New Hampshire previously also banned homosexual adoption but repealed the prohibition in 1999.

Estimates of the number of children in the United States who are being parented by homosexuals vary widely, ranging from a high of “at least 10 million children”³ to numbers far lower.⁴ The data in this regard appears to be highly unreliable and the projections subject to the bias of the reporter.

Same-sex couples become parents in a variety of ways, of which adoption is one. Foster parenting is another. In Florida, as in most other states,⁵ there is no prohibition against homosexual foster parenting. While there is no debate as to whether some foster parents are homosexual, the Department of Children and Families (DCF) is unable to provide information as to either the number of homosexual foster parents or the number of foster children with homosexual foster parents.⁶

Both federal⁷ and state law⁸ require states to achieve permanency for children in foster care and have the expectation that permanency will be achieved within 12 months after the child is placed in foster care. Florida law⁹ identifies adoption as the primary permanency goal for children who cannot be reunited with their parents.

A review of the growing body of research on the effect of same-sex parenting on children, published in the Fall 2005 edition of The Future of Children, concluded the following:

After considering the methodological problems inherent in studying small, hard-to-locate populations--- problems that have bedeviled this literature--- the authors find that the children who have been studied are doing about as well as children normally do. What the research does not yet show is whether the children studied are typical of the general population of children raised by gay and lesbian couples.¹⁰

III. Effect of Proposed Changes:

The bill will allow homosexuals to adopt when the court finds by clear and convincing evidence that the adoptee resides with the person proposing to adopt, that the adoptee recognizes the person as the adoptee’s parent, and that granting the adoptee permanency in that home is more

³ *Equality from State to State 2005*, Human Rights Campaign Foundation (December 2005), found at www.hrc.org (February 2, 2006).

⁴ Daney, Timothy J. *State of the States: Update on Homosexual Adoption in the U.S.*, Family Research Council Issue 243, found at www.frc.org (February 2, 2006).

⁵ Arkansas, Nebraska, and Missouri have policies which prohibit their departments of social services from approving homosexual foster parents. Court challenges to the policies in Arkansas and Missouri are pending.

⁶ Regulations prohibiting homosexuals from serving as foster parents have been struck down by the courts in Arkansas (this decision is under appeal), and are currently being challenged in Missouri. In California, legal action against the county-based adoption agency was halted when the agency signed an agreement not to discriminate on the basis of sexual orientation.

⁷ The primary relevant federal law is the Adoptions and Safe Families Act (ASFA), P.L. 105-89, and its implementing regulations.

⁸ Section 39.703, F.S.

⁹ Section 39.621, F.S.

¹⁰ Meezan, William and Jonathan Rauch, *Gay Marriage, Same-Sex Parenting, and America’s Children*, The Future of Children, vol. 15, number 2, Fall 2005. See www.futureofchildren.org. The Future of Children is a publication of The Woodrow Wilson School of Public and International Affairs at Princeton University and The Brookings Institution.

important to the adoptee's developmental and psychological needs than maintaining the adoptee in a temporary placement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Some additional children may be able to leave foster care, resulting in savings to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A number of professional organizations, including the American Medical Association,¹¹ the Child Welfare League of America,¹² and the National Association of Social Workers,¹³ have gone on record in opposition to bans on homosexuals either as adoptive parents or as foster parents.

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

¹¹ Policy Number H-60.940 (Resolution 204, A-04).

¹² *Standards of Excellence for Child Welfare Services*, Child Welfare League of America, Standards 4.7 (Nondiscrimination in provision of services to adoptive applicants) and 3.18 (Nondiscrimination in selecting foster parents).

¹³ *Social Work Speaks*, abstracted under "Lesbian, Gay and Bisexual Issues," found at www.naswdc.org/resources/abstracts/abstracts/lesbian.asp on February 9, 2006.

VIII. Summary of Amendments:

None.

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