

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 Children, Families, and Elder Affairs Committee

BILL: CS/SB 530

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Altman

SUBJECT: Adoption

DATE: March 4, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill amends ch. 63, F.S., relating to adoption, to prohibit public and private adoption agencies or entities from making adoption suitability determinations based on the lawful possession, storage, or use of a firearm or ammunition. The bill also prohibits an adoption agency or entity from requiring the adoptive parent or prospective adoptive parent to disclose such firearm and ammunition information. Further the bill restricts the adoption agency or entity from restricting the lawful possession, storage, or use of a firearm or ammunition as a condition for an individual to adopt.

The bill also amends provisions relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies to:

- Provide that requirements for the licensure and operation of a child-placing agency shall also include compliance with the requirement of a section newly created by the bill and current law relating to the prohibition of firearms registration;
- Require that the department's rules shall include adoption of a form to be used by child-placing agencies during an adoption home study that requires all prospective adoptive

- parent applicants to acknowledge in writing the receipt of a document containing solely and exclusively the language in s. 790.174, F.S., relating to safe storage of firearms; and
- Provide that failure to comply with the requirements of the section newly created by the bill and current law relating to the prohibition of firearms registration is a ground for denial, suspension, or revocation of a license for a family foster home, residential child-caring agency, or child placing agency.

This bill substantially amends s. 409.175, F.S. It also creates s. 63.0422 F.S.

II. Present Situation:

Background

Adoption

Ch. 63, F.S., known as the Florida Adoption Act, applies to all adoptions, both public and private, involving the following entities: Department of Children and Families (DCF or the department); child-caring agencies registered under s. 409.176, F.S.; an intermediary such as an attorney; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

Information from Prospective Adoptive Parents

DCF promulgated administrative rules related to the screening, application, and evaluation process for adoptive parents.¹ Prospective adoptive parents are required to execute an adoption application – either DCF form CF-FSP 5071,² which is incorporated by reference in DCF rules, or an adoption application in a format created by a community based care provider that contains “all of the elements of CF-FSP 5071.”³ Form CF-FSP 5071 requests necessary identifying information from prospective adoptive parents, but DCF does not request any information regarding the prospective adoptive parents’ ownership or possession of firearms or ammunition.

While administrative rules do not provide for the evaluation of prospective adoptive parents’ ownership of firearms or ammunition by adoption agencies, some adoption agencies in Florida have added questions regarding possession and storage of firearms and ammunition to the adoptive home study and approval process for prospective adoptive parents.^{4,5}

¹ 65C-16.004 and 65C-16.005, F.A.C.

² Available at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx>. Last visited February 25, 2010.

³ 65C-16.004, F.A.C.

⁴ Department of Children and Family Services, Staff Analysis and Economic Impact, HB 315 (SB 530 was identical to HB 315 at the time the analysis was completed). November 23, 2009. On November 11, 2009, at least one of those agencies, Children’s Home Society of Florida, a licensed adoption agency, issued a memo instructing staff to no longer make nor keep any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

⁵ On December 1, 2009, the department issued a memorandum acknowledging that there was no statutory authority for adoption agencies to ask questions relating to safe storage of gun and ammunition. The department also stated it will take action to correct the rule relating to licensed out-of-home caregivers which requires separate storage. Memorandum from DCF General Counsel and Director of Children’s Legal Services to the Director of the Office of Family Safety (Dec.1, 2009) (on file with the Senate Committee on Children, Families, and Elder Affairs).

Information from Foster Parents

Department rules, however, do address firearm and ammunition storage requirements for foster parents:

(5) Initial Licensing Home Study. A staff person, certified pursuant to Section 402.40(7), F.S., from the supervising agency shall perform a thorough assessment of each prospective licensed out-of-home caregiver and document this assessment in a home study, which shall include, at a minimum:

(d) Home and Neighborhood:

2. A description of how the home complies with safety requirements, including location and verification of operating fire extinguishers with current tag and smoke detectors, storage of medications, cleaning supplies and toxins. The description shall also include the storage of alcoholic beverages, **weapons and ammunition**, location of burglar bars, fireplaces, handrails on stairways and space heaters, if applicable.⁶

(5) Physical Environment.

(h) Foster Home Safety

6. Dangerous weapons shall be secured in a location inaccessible to children.

Storage of guns shall comply with the requirements in Section 790.174, F.S.

Weapons and ammunition shall be locked and stored separately, and in a place inaccessible to children.⁷

Firearms and Ammunition

Current law relating to firearms clearly recognizes the constitutional right of individuals to own firearms. Specifically, s. 790.335(1), F.S., states:

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution; and

(b) The Legislature intends through the provisions of this section to:

1. Protect the right of individuals to keep and bear arms as guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

Current law also recognizes that children may be injured or killed when firearms and ammunition are improperly stored. Section 790.173(1), F.S., provides:

The Legislature finds that a tragically large number of Florida children have been accidentally killed or seriously injured by negligently stored firearms; that placing

⁶ 65C-13.025(5)(d)2., F.A.C.

⁷ 65C-13.030(5)(h)6., F.A.C.

firearms within the reach or easy access of children is irresponsible, encourages such accidents, and should be prohibited; and that legislative action is necessary to protect the safety of our children.

Therefore, anyone who owns or stores a loaded firearm is required to keep it safely stored away from any minor who may access it without permission. Specifically, s. 790.174(1), F.S. states:

A person who stores or leaves, on a premise under his or her control, a loaded firearm, as defined in s. 790.001, and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.

Further, except as otherwise provided, Florida law prohibits a state governmental agency and its agents, both public and private, from maintaining a list or record of firearms and/or their owners.⁸ Specifically, s. 790.335(2), F.S., states:

No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

With limited exceptions, the Legislature occupies the “whole field of regulation of firearms and ammunition,” including ownership and possession.⁹ Therefore, a state governmental agency and its agents, without proper statutory authority from the Legislature, cannot regulate the storage, use, and possession of firearms and ammunition.

III. Effect of Proposed Changes:

This bill creates s. 63.0422, F.S., to place restrictions on public and private adoption agencies or entities relating to firearms and ammunition. Specifically, the bill will prohibit such agencies or entities from:

- Considering the lawful possession, storage, or use of a firearm or ammunition in determining a person’s suitability to adopt;
- Requiring an adoptive parent or prospective adoptive parent to disclose information relating to a person’s lawful possession, storage, or use of a firearm or ammunition as a condition to adopt; and

⁸ Exceptions are provided for in s. 790.335(3), F.S.

⁹ s. 790.33, F.S.

- Restricting the lawful possession, storage, or use of a firearm as a condition for a person to adopt.

The bill also amends provisions relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies to:

- Provide that requirements for the licensure and operation of a child-placing agency shall also include compliance with the requirement of a section newly created by the bill and current law relating to the prohibition of firearms registration;
- Require that the department's rules shall include adoption of a form to be used by child-placing agencies during an adoption home study that requires all prospective adoptive parent applicants to acknowledge in writing the receipt of a document containing solely and exclusively the language in s. 790.174, F.S., relating to safe storage of firearms;¹⁰ and
- Provide that failure to comply with the requirements of the section newly created by the bill and current law relating to the prohibition of firearms registration is a ground for denial, suspension, or revocation of a license for a family foster home, residential child-caring agency, or child placing agency.

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:

The policies adopted by some adoption agencies relating to firearms and ammunition would appear to infringe on an individual's right to keep firearms as protected by both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution. The bill prohibits adoption agencies from violating that right.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁰ While the bill requires this form to be executed only by prospective adoptive parents, the department has already created a form meeting these requirements to be executed by all prospective foster and adoptive parents during the home study process.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.)

CS by Children, Families, and Elder Affairs on March 4, 2010:

Provides that requirements for the licensure and operation of a child-placing agency shall also include compliance with the requirement of a section newly created by the bill and current law relating to the prohibition of firearms registration.

- Requires that the department's rules shall include adoption of a form to be used by child-placing agencies during an adoption home study that requires all prospective adoptive parent applicants to acknowledge in writing the receipt of a document containing solely and exclusively the language in s. 790.174, F.S., relating to safe storage of firearms.
- Provides that failure to comply with the requirements of the section newly created by the bill and current law relating to the prohibition of firearms registration is a ground for denial, suspension, or revocation of a license for a family foster home, residential child-caring agency, or child placing agency.

B. Amendments:

None.