

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 Judiciary Committee

BILL: CS/SB 530

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

SUBJECT: Adoption

DATE: March 8, 2010 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Preston | Walsh | CF | Fav/CS |
| 2. | Daniell | Maclure | JU | Favorable |
| 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:

This bill adds a section of law to the Florida Adoption Act 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 information relating to the lawful possession, storage, or use of a firearm or ammunition. Further the bill prohibits 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 new section of law created by the bill, as well as current law relating to the prohibition of firearms registration;
- Require that the Department of Children and Family Services' rules include the 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 the statutory language relating to the safe storage of firearms;
and
- Provide that failure to comply with certain statutory requirements 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 section 409.175, Florida Statutes. This bill creates section 63.0422, Florida Statutes.

II. Present Situation:

Florida Adoption Act

The Florida Adoption Act¹ applies to public and private adoptions involving the following entities: Department of Children and Family Services (DCF or the department); child-placing agencies licensed by DCF under s. 63.202, F.S.; child-caring agencies registered under s. 409.176, F.S.; an attorney licensed to practice law in Florida; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

When it created the Florida Adoption Act, the Legislature intended to provide stable and permanent homes for adoptive children in a prompt manner and to prevent disruption of the adoptive placement, as well as to hold adoptive parents accountable to meet the needs of the children.²

The department promulgated administrative rules related to the screening, application, and evaluation process for adoptive parents.³ Prospective adoptive parents are required to execute an adoption application. The department incorporated an application to adopt in its rules which can be used, or a community based care provider can create its own form, as long as it contains all of the elements of DCF's form.⁴ The department's 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. Additionally, although DCF's administrative rules address firearm and ammunition storage requirements for certain entities, they do not provide for the evaluation of prospective adoptive parents' ownership of firearms or ammunition by adoption agencies.⁵ However, 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.⁶

¹ Chapter 63, F.S.

² Section 63.022(1), F.S.

³ See rules 65C-16.00 – 65C-16.007, F.A.C.

⁴ Rule 65C-16.004(5), F.A.C. The department's adoption form is CF-FSP 5071 and can be found on the department's website. See Florida Dep't of Children and Family Services, *DCF Forms*, <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx> (type in "CF-FSP 5071" in the Form Number field) (last visited Mar. 5, 2010).

⁵ See rule 65C-16.005, F.A.C. Rules 65C-13.025 and 65C-13.030 of the Florida Administrative Code address firearm and ammunition storage and will be discussed in the "Firearms and Ammunition" section of this bill analysis.

⁶ Department of Children and Family Services, *Staff Analysis and Economic Impact, SB 530* (Nov. 23, 2009) (on file with the Senate Committee on Judiciary); see also Marc Caputo, *NRA: Don't let adoption agencies ask about guns in homes*,

Firearms and Ammunition

The right to keep and bear arms is addressed by both the Florida Constitution and the U.S. Constitution. The Second Amendment to the U.S. Constitution states: “A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.”

Article I, subsection 8(a) of the Florida Constitution states: “The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”

Chapter 790, F.S., related to weapons and firearms, clearly recognizes the constitutional right of individuals to own firearms. Specifically, s. 790.335(1), F.S., states:

- (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.
 2. Protect the privacy rights of law-abiding firearm owners.

Following this rationale, Florida law prohibits, with some exceptions, a state governmental agency and its agents, both public and private, from maintaining a list or record of firearms and the owners of those firearms.⁷ In addition to criminal sanctions, a governmental entity may be assessed a fine of up to \$5 million for violating s. 790.335, F.S.⁸

The Legislature has also recognized that children may be injured or killed when firearms and ammunition are improperly stored, and that sometimes “legislative action is necessary to protect the safety of our children.”⁹ Accordingly, current law requires anyone who owns or stores a loaded firearm to keep it safely stored away from any minor who may access it without permission. Specifically, Florida law provides:

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

TampaBay.com, Nov. 5, 2009, available at <http://www.tampabay.com/news/politics/stateroundup/nra-dont-let-adoption-agencies-ask-about-guns-in-homes/1049430> (last visited Mar. 5, 2010).

⁷ Section 790.335(2), F.S.

⁸ Section 790.335(4)(c), F.S.

⁹ Section 790.173(1), F.S.

retrieve and use it as easily and quickly as if he or she carried it on his or her body.¹⁰

With limited exceptions, the Legislature occupies the “whole field of regulation of firearms and ammunition,” including ownership and possession.¹¹ 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.

Current law relating to the regulation of weapons and firearms (ch. 790, F.S.) does not expressly cross-reference the adoption laws (ch. 63, F.S.), and vice versa. However, DCF promulgated rule 65C-13.030 of the Florida Administrative Code, which relates to standards for licensed out-of-home caregivers. Specifically, the rule provides:

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.¹²

Additionally, during the initial home study of a prospective licensed out-of-home caregiver, a certified staff person must document the description of the home and include a description about “the storage of alcoholic beverages, **weapons and ammunition**, location of burglar bars, fireplaces, handrails on stairways and space heaters.”¹³

On December 1, 2009, DCF acknowledged that it lacked the current statutory authority for some of its administrative rules related to the storage of firearms and ammunition. The department immediately eliminated the requirement and stated that it would take action to correct the Florida Administrative Code.¹⁴

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 prohibits adoption 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

¹⁰ Section 790.174(1), F.S.

¹¹ Section 790.33(1), F.S.

¹² Rule 65C-13.030(5)(h), F.A.C.

¹³ Rule 65C-13.025(5)(d), F.A.C. (emphasis added).

¹⁴ Florida Dep’t of Children and Family Services, memorandum to Alan Abramowitz, Director of the Office of Family Safety, from Mary Ann Stiles, General Counsel, and Mary Cagle, Director of the Children’s Legal Services (Dec. 1, 2009) (on file with the Senate Committee on Judiciary).

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

The bill references adoption agencies and entities. Current law does not provide a definition of an “adoption agency;” however, s. 63.032(6), F.S., defines an “agency” as “any child-placing agency licensed by the department pursuant to s. 63.202 to place minors for adoption.” It is unclear if the bill is referencing an “agency” as defined by current law, or whether the bill is referencing an “adoption agency,” which is not defined in current law and the bill does not provide a definition. If the intent is to reference an “agency,” inclusion of the term may be redundant because the definition of an “adoption entity” includes an “agency.”¹⁵

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 requirements of s. 63.0422, F.S., which is created by the bill, and current law relating to the prohibition of firearms registration;
- Require that the rules of the Department of Children and Family Services (DCF or the department) include adoption of a form¹⁶ to be used by child-placing agencies during an adoption home study which requires all prospective adoptive applicants to acknowledge in writing the receipt of a document containing solely and exclusively the language in s. 790.174, F.S., relating to the safe storage of firearms; and
- Provide that failure to comply with the requirements of ss. 63.0422 and 790.335, F.S., is a ground for denial, suspension, or revocation of a license for a family foster home, residential child-caring agency, or child placing agency.

The bill provides that DCF must adopt a form for *child-placing agencies* to use during an adoption home study which requires all prospective adoptive applicants to acknowledge in writing the receipt of statutory language relating to the safe storage of firearms. It is unclear whether other adoption entities would be required to use the form during a home study. Section 409.175(2)(d), F.S., defines a “child-placing agency” as “any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.” Under the definition, a child-placing agency excludes intermediaries; however, an intermediary is included in the definition of an “adoption entity” within ch. 63, F.S.¹⁷ As the bill is currently written, it appears that an intermediary would have to follow the requirements of s. 63.0422, F.S., created by this bill, but would not be required to have all prospective adoptive applicants acknowledge receipt of the form containing statutory language relating to the safe storage of firearms.

¹⁵ See s. 63.032(3), F.S.

¹⁶ Although the bill requires the adoption of a form, which is to be executed by prospective adoptive parents, the department has already created a form meeting these requirements. Conversation with Alan Abramowitz, Director of the Office of Family Safety, Florida Dep’t of Children and Family Services (Mar. 5, 2010).

¹⁷ See s. 63.032(3), F.S.

The bill shall take effect upon becoming a law. The department stated that it will start the rulemaking process to include the adoption of the form required by this bill as soon as the bill becomes law;¹⁸ however, providing a specific effective date may provide time for the department to finish the rulemaking process and have the bill's requirements in place before the bill becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On line 96 of the bill, the term "prospective adoptive applicants" is used to refer to those individuals who must acknowledge in writing the receipt of the department's form containing statutory language relating to the safe storage of firearms. It appears that the word "parent" may be missing from this term. The Legislature may wish to amend the bill so that it reads "prospective adoptive *parent* applicants."

VII. Related Issues:

None.

¹⁸ Conversation with Alan Abramowitz, Director of the Office of Family Safety, Florida Dep't of Children and Family Services (Mar. 5, 2010).

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:

The committee substitute:

- 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 of Children and Family Services' rules 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.