

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7111 PCB HHSC 15-03 Conscience Protection for Private Child-Placing Agencies

SPONSOR(S): Judiciary Committee; Health & Human Services Committee; Brodeur and others

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee	12 Y, 6 N	Tuszynski	Calamas
1) Judiciary Committee	11 Y, 4 N, As CS	Weber	Havlicak

SUMMARY ANALYSIS

Conscience protection laws prevent individuals and entities from being required to perform services that violate their religious beliefs or moral convictions. These statutes have historically related to abortion, sterilization, and contraception, but conscience protection legislation was recently enacted in relation to adoption services. Two states have enacted legislation that permits private child-placing agencies to refuse to perform adoption services if a proposed placement would violate the agency's written religious or moral convictions or policies.

HB 7111 creates adoption services conscience protection within s. 409.175, F.S., to allow private child-placing agencies and family foster homes affiliated with the agencies, to object to performing, assisting in, recommending, consenting to, or participating in the placement of a child if a placement violates the agency's written religious or moral convictions or policies.

The bill also protects the licensure, grants, contracts, and ability to participate in government programs for those agencies that object to performing adoption services required for the placement of a child or to facilitate the licensure of a family foster home if that placement or licensure violates the agency's written religious or moral convictions or policies.

The bill does not have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Adoptions

“Adoption is the legal procedure by which a child becomes, through court action, part of a family other than that of his or her birth parents.”¹ Adoption services are performed by all community-based lead agencies throughout the state² as well as private child-placing agencies. All child-placing agencies must be licensed by the Department of Children and Families (DCF), and include any person, corporation, or agency, public or private, other than a parent or legal guardian, that places or arranges for placement of a child in an adoptive home.^{3,4} As of December 2014, Florida has 82 licensed private child-placing agencies that perform both public and private adoptions.⁵ Licensure of these agencies requires compliance with personnel requirements, written policies, financial reports, purpose statements, intake procedures, and record keeping.⁶

Child Welfare System Adoptions

Adoption is a method of achieving permanency for children who have suffered abuse, neglect, or abandonment and who are unable to be reunified with their biological parents. Research indicates that children generally have better outcomes through adoption than through placement in long-term foster care.⁷

In Florida, DCF provides child welfare services.⁸ Statute requires child welfare services, including adoption services, to be delivered through community-based care (CBC) lead agencies contracted by DCF.⁹ For example, CBC’s provide pre- and post-adoption services such as information and referral services, support groups, adoption-related libraries, case management and training.¹⁰

During Fiscal Year 2013, 3,415 adoptions of children within the child welfare system were finalized in Florida. Over the last 6 federal fiscal years, the number of finalized adoptions has ranged from 2,945 to 3,870 annually.¹¹

The vast majority of children adopted in FY 2013 were adopted by either relatives (49.83%) or foster parents (24.8%). Non-relative parents comprised 24% of adoptions.¹²

¹ The Florida Bar, *Adoptions in Florida Pamphlet*, <http://www.floridabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/40018bdf1f308fe985256b2f006c5c11?OpenDocument#WHA T%20IS%20ADOPTION%3F> (last visited Mar. 30, 2015). [hereinafter *Adoptions in Florida Pamphlet*]

² s. 409.986(1), F.S.

³ s. 409.175, F.S.

⁴ Rule 65C-15, F.A.C.

⁵ Email from Nicole Stookey, Deputy Director of Legislative Affairs, Department of Children and Families RE: Adoptions, licensure numbers (March 16, 2015).

⁶ Rule 65C-15, F.A.C.

⁷ Evan B. Donaldson, *Keeping the Promise: Critical Need for Post-Adoption Services to Enable Children and Families to Succeed* 8, ADOPTIONINSTITUTE (Oct. 2010), <http://adoptioninstitute.org/publications/keeping-the-promise-the-critical-need-for-post-adoption-services-to-enable-children-and-families-to-succeed/>.

⁸ s. 20.19(4)(a)3., F.S.

⁹ s. 409.986(1), F.S.

¹⁰ Explore Adoption, *Frequently Asked Questions*, <http://www.adoptflorida.org/docs/faqs.pdf> (last visited Mar. 30, 2015).

¹¹ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES, *Adoption of Children with Public Child Welfare Agency Involvement by State: FY 2004 - FY 2013*, <http://www.acf.hhs.gov/programs/cb/resource/adoptions-with-agency-involvement-by-state-fy2004-fy2013> (last visited Mar. 27, 2015).

¹² U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES, *Prior Relationship of Adoptive Parent(s) to Child: 10/1/2012 - 9/30/2013*, <http://www.acf.hhs.gov/programs/cb/resource/prior-relation-2013> (last visited Mar. 30, 2015).

Private Adoptions

Private adoptions are adoptions that occur outside of the child welfare system. Licensed child-placing agencies act as intermediaries between natural and potential adoptive parents providing adoption services. These services include home studies, counseling, education, legal services, and post-placement services.¹³ These adoptions are arranged by licensed child-placing agencies and require judicial action but are not otherwise tracked by the state.¹⁴

Foster Care

Often, before children are adopted, several of them enter the foster care system. Foster care is “made up of individuals or families who have requested to be able to take dependent children in to their home.”¹⁵ There are more than 4,200 licensed foster homes in Florida caring for nearly 8,000 children.¹⁶ A number of the licensed foster homes are private, religious affiliated organizations. For example, Florida Baptist Children’s Home served over six hundred children in foster care, often keeping siblings together instead of being divided into different foster homes.¹⁷ Likewise, the Jewish Adoption and Family Care Options is a nonprofit that receives foster care children through the state foster care system, court system, or by the birth parents and provides the children with licensed foster parents who meet their requirements.¹⁸ These organizations provide case management services for the children and a stable and safe environment.

Conscience Protections

Healthcare

Historically, conscience protections grant health care providers the ability to refuse to perform services related to abortion, sterilization, and more recently contraception, if those services are contrary to the provider’s religious beliefs.¹⁹ In 1973, the Church²⁰ Amendment became the first conscience clause enacted into law.²¹ It was passed in response to the United States Supreme Court’s decision in *Roe v. Wade*²² and stated that public officials may not require individuals or entities who receive public funds to perform medical procedures, or make facilities available for procedures, that are “contrary to [the individual or entity’s] religious beliefs or moral convictions.”²³

By 1978 almost all states had conscience protection legislation related to abortion.²⁴ Today, every state but West Virginia has conscience protection statutes for individual providers in relation to abortion.²⁵ Section 390.0111(8), F.S., grants conscience protection for hospitals, physicians, or any person who refuses to participate in the termination of a pregnancy in Florida.²⁶ In addition to these

¹³ See *Adoptions in Florida Pamphlet*, *supra* note 1.

¹⁴ *Id.*

¹⁵ Fostering Florida’s Future, *Fostering Definitions*, <http://www.fosteringflorida.com/fosteringdefinitions.shtml> (last visited April 2, 2015).

¹⁶ Fostering Florida’s Future, *2012 Achievement*, <http://www.fosteringflorida.com/docs/FosteringFloridasFuture-2012report.pdf> (last visited April 2, 2015).

¹⁷ Florida Baptist Children’s Homes & Orphan’s Heart, *2013 Annual Report*, <https://www.fbchomes.org/about-us/annual-reports/> (last visited April 2, 2015).

¹⁸ JAFCO, *Foster Care*, <https://www.jafco.org/what-we-do/foster-care/> (last visited April 2, 2015). These requirements include, but are not limited to, completion of an 8 week training program, two family consultations, adequate space for children, and criminal background clearance.

¹⁹ See generally, Erin Whitcomb, *A Most Fundamental Freedom of Choice: An International Review of Conscientious Objection to Elective Abortion*, 24 ST. JOHN’S J. LEGAL COMMENT. 771, 783-90 (2010); Catherine Grealis, *Religion in the Pharmacy: A Balanced Approach to Pharmacists’ Right to Refuse to Provide Plan B*, 97 GEO. L.J. 1715, 1718-20 (2009); and Kimberly A. Parr, *Beyond Politics: A Social and Cultural History of Federal Healthcare Conscience Protections*, 35 AM. J.L. & MED. 620, 620-23 (2009).

²⁰ Sen. Frank Church (R-ID).

²¹ 42 U.S.C. § 300a-7.

²² 410 U.S. 113 (1973).

²³ 42 U.S.C. § 300a-7(b).

²⁴ Rachel Benson Gold, *Conscience Makes a Comeback in the Age of Managed Care*, THE GUTTMACHER REPORT ON PUBLIC POLICY (Feb. 1998), <https://www.guttmacher.org/pubs/tgr/01/1/gr010101.html>.

²⁵ GUTTMACHER INSTITUTE - STATE POLICIES IN BRIEF, *Refusing to Provide Health Services*, http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf (last visited Mar. 30, 2015). [hereinafter GUTTMACHER INSTITUTE, *Refusing to Provide Health Services*]

²⁶ s. 390.0111(8), F.S.

state statutes there are federal statutes providing conscience protections for health care providers related to abortion.²⁷

Similarly, 17 states have conscience protection statutes for individual providers related to sterilization, and 10 states have conscience protection statutes for individual providers related to contraception.²⁸ Florida does not have specific conscience protection for sterilization but has conscience protection for physicians or other persons for refusing to furnish contraception.²⁹

Education

Conscience protection has also emerged in education. In 2011, Missouri amended its Constitution to include, “no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs.”³⁰ Although most do not amend their constitutions, “the vast majority of states have adopted legislation allowing parents to opt their children out of educational curriculum that they contend conflicts with their religious beliefs.”³¹ In 2013, the state of New Hampshire enacted a broad statutory provision allowing any parent to opt out of specific curricula based on any “objectionable” reason.³²

Adoption Services

Two states have enacted adoption services conscience protection legislation: North Dakota in 2003,³³ and Virginia in 2012.³⁴ Both the North Dakota and Virginia adoption services conscience protection laws protect private child-placing agencies from:

- Being required to perform any duties related to the placement of a child for adoption if the proposed placement would violate the agency’s written religious or moral convictions or policies.
- Denial of initial licensure, revocation of licensure, or failure to renew licensure based on the agency’s objection to performing the duties required to place a child for adoption in violation of the agency’s written religious or moral convictions or policies.
- Denial of grants, contracts, or participation in government programs based on the agency’s objection to performing the duties required to place a child for adoption in violation of the agency’s written religious or moral convictions or policies.

North Dakota’s statute states that the agency’s refusal to perform the duties required to place a child for adoption does not constitute a determination that the proposed adoption is not in the best interest of the child.³⁵ The Virginia statute is silent as to a best interest determination and states that the refusal to perform the duties required to place a child for adoption is limited to the extent allowed by federal law and shall not form a basis of any claim for damages.³⁶ Neither law has been challenged on constitutional grounds.

²⁷ 42 U.S.C. § 2996f(b)(8) (prohibiting federal funds to be used in litigation to procure nontherapeutic abortion or to compel any individual to perform an abortion contrary to the religious beliefs or moral convictions of such individual or institution); 20 U.S.C. § 1688 (providing neutrality with respect to abortion in Title IX); 42 U.S.C. § 238n (prohibiting discrimination by the Federal Government against any health care entity that does not provide, train in, or refer for abortions); 42 U.S.C. § 1395w-22(j)(3)(B) (providing conscience protection for providers who accept Medicare); 42 U.S.C. § 1396u-2(b)(3) (providing conscience protection for providers who accept Medicaid); and *Patient Protection and Affordable Care Act*, Pub. L. No. 111-148, 124 Stat 119 (2010) (allowing qualified health plans under the Patient Protection and Affordable Care Act to choose whether to cover abortions).

²⁸ GUTTMACHER INSTITUTE, *Refusing to Provide Health Services*.

²⁹ s. 381.0051(5), F.S.

³⁰ MO. CONST. art. 1 s. 5.

³¹ Claire Marshall, *The Spread of Conscience Clause Legislation*, 39 HUMAN RIGHTS MAGAZINE No. 2 (2013), available at

http://www.americanbar.org/publications/human_rights_magazine_home/2013_vol_39/january_2013_no_2_religious_freedom/the_spread_of_conscience_clause_legislation.html.

³² N.H. Rev. Stat. Ann. § 186:11.

³³ N.D. Cent. Code §§ 50-12-03 and 50-12-07.1.

³⁴ Va. Code Ann. § 63.2-1709.3.

³⁵ N.D. Cent. Code § 50-12-07.1.

³⁶ Va. Code Ann. § 63.2-1709.3(D).

In 2006, Catholic Charities of Boston stopped providing adoption services based on a conflict between church teaching and state law.³⁷ Like Florida, to participate in adoption placements in Massachusetts, whether or not the agency receives state funding, the child-placing agencies must be licensed.³⁸ However, Massachusetts law prohibits discrimination based on sexual orientation.³⁹ Catholic Charities explained in a press release that “[i]n spite of much effort and analysis, Catholic Charities of Boston finds that it cannot reconcile the teaching of the Church, which guides our work, and the statutes and regulation of the Commonwealth.”⁴⁰ The previous year, Catholic Charities had been responsible for over a third of all Boston area private adoptions.⁴¹ Catholic Charities of San Francisco stopped providing adoption services for the same reasons that same year,⁴² and similar events occurred in Illinois in 2011.⁴³

Private adoption service agencies in Florida already place children in homes that conform to their written religious beliefs and moral convictions. For example, Florida Baptist Children’s Homes states that they are “committed to providing forever, Christian families for children placed in our care, and . . . helping families answer God’s call to adopt.”⁴⁴ Additionally, the Jewish Adoption and Family Care Options states that they were created “to ensure that Jewish children who were being removed from their home due to abuse or neglect . . . would at least be able to take with them the one piece of their identity that comes from their connection with their Jewish heritage.”⁴⁵

Effect of Proposed Changes

This bill creates conscience protection in s. 409.175, F.S. The conscience protection addresses licensure, contracts, and liability of private child-placing agencies and family foster homes⁴⁶ or residential child-caring agencies⁴⁷ affiliated with private child-placing agencies.

The bill relieves any private child-placing agency from the requirement to participate in any placement of a child or facilitating in any licensing of a family foster home that would violate the agency’s written religious or moral convictions or policies.

The bill creates licensure protection by barring the Department of Children and Families from denial or revocation of licensure because of a private child-placing agency’s refusal to participate in a placement or facilitate in a licensure of a family foster home against the agency’s written religious or moral convictions or policies. This licensure protection extends to any family foster homes or residential child-caring agencies affiliated with the private child-placing agency.

³⁷ *Catholic Charities pulls out of adoptions*, THE WASHINGTON TIMES (Mar. 17, 2006), <http://www.washingtontimes.com/news/2006/mar/14/20060314-010603-3657r/>.

³⁸ Mass. Gen. Laws Ann. ch. 15D, § 8.

³⁹ Mass. Gen. Laws Ann. ch. 151B, § 4.

⁴⁰ J. Bryan Hehir & Jeffrey Kaneb, *Statement of Catholic Charities, Archdiocese of Boston, On Adoption Programs*, ARCHDIOCESE OF BOSTON NEWS/EVENTS (Mar. 10, 2006), http://www.bostoncatholic.org/uploadedFiles/News_releases_2006_statement060310-2.pdf.

⁴¹ Colleen Theresa Rutledge, *Caught in the Crossfire: How Catholic Charities of Boston Was Victim to the Clash Between Gay Rights and Religious Freedom*, 15 DUKE J. GENDER L. & POL’Y 297, 298 (2008).

⁴² Cicero A. Estrella, *Catholic Charities scaling back its role in adoption services*, SFGATE (Aug. 3, 2006),

<http://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Catholic-Charities-scaling-back-2515267.php>.

⁴³ Laurie Goodstein, *Illinois Catholic Charities close over adoption rule*, THE BOSTON GLOBE (Dec. 29, 2011),

<http://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html>.

⁴⁴ FLORIDA BAPTIST CHILDREN’S HOMES, <https://www.fbchomes.org/our-care/adoption/> (last viewed Mar. 27, 2015).

⁴⁵ JAFKO, *Preserving our Jewish Heritage*, <https://www.jafco.org/who-we-are/preserving-our-jewish-heritage/> (last visited Mar. 27, 2015).

⁴⁶ Section 409.175(2)(e), F.S., defines “family foster home” as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home.

⁴⁷ Section 409.175(2)(j), F.S., defines “residential child-caring agency” as any person, corporation, or agency, public or private, other than the child’s parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.

The bill provides private contract protection by barring the state, local government, or community-based care lead agency from denial of any grant, contract, or participation in a government program because of a private child-placing agency's refusal to participate in a placement or facilitate in the licensure of a family foster home against the agency's written religious or moral convictions or policies. This contract protection extends to any family foster homes or residential child-caring agencies affiliated with the private child-placing agency.

The bill creates liability protection for private child-placing agencies for refusal to participate in a placement or facilitate in the licensure of a family foster home that would violate its written religious or moral convictions or policies.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Equal Protection

The equal protection clause of the United States Constitution requires that no state shall deny any person within its jurisdiction “equal protection of the laws.”⁴⁸ Furthermore, Florida’s equal protection clause states that “no person shall be deprived of any right because of race, religion, national origin, or physical disability.”⁴⁹ The bill may raise an equal protection issue where a couple or individual, who is otherwise qualified to adopt, is denied by a private adoption agency for reasons that are protected under the bill.

A court’s response to an equal protection claim depends on the classification of people involved. A court will analyze government action that discriminates against people according to race, ethnicity, religion, and national origin with the strictest scrutiny.⁵⁰ In addition to those protected classes, federal and state courts also recognize quasi-suspect classes.⁵¹ If a claim does not involve a fundamental right, a suspect class, or quasi-suspect class, then a court will analyze with rational basis scrutiny, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate government objective.⁵²

The Supreme Court of the United States has a history of disallowing private discrimination and finding that a state sanctioned private parties’ discrimination against a protected class.⁵³ For example, in *Shelley v. Kraemer*, the Supreme Court found that judicial enforcement of racially restrictive covenants in private neighborhoods was sufficient to give rise to state action that promoted discrimination and was in violation of the Fourteenth Amendment.⁵⁴

In recent years, some courts have begun recognizing homosexuals as a quasi-suspect class and applying intermediate scrutiny to find laws with discriminatory effects against homosexuals unconstitutional.⁵⁵ Further, some courts, including a Florida state court, have found that laws prohibiting qualified homosexuals from participating in state-sanctioned activity, like adoption, that qualified heterosexuals can participate in freely are not justifiable even under the deferential rational basis review and are unconstitutional.⁵⁶ However, in 2004, the Eleventh Circuit Court of Appeals held that Florida’s law prohibiting homosexuals from adopting did not burden a fundamental right and withstood rational basis scrutiny.⁵⁷ This case remains good law⁵⁸ and established federal precedent that, under Florida law, homosexuals are not a suspect or quasi-suspect class.

Religious Freedom

Article 1, section 3 of the Florida Constitution states,

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof...No revenue of the state or any political

⁴⁸ U.S. CONST. amend XIV, s. 1.

⁴⁹ FLA. CONST. art. I, s. 2.

⁵⁰ Under strict scrutiny, the government must show that a law with discriminatory effect advances a compelling state interest, is narrowly tailored, and is the least restrictive means for advancing that interest. *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

⁵¹ BLACK’S LAW DICTIONARY (10th ed. 2014) defines quasi-suspect classification as “[a] statutory classification based on gender or legitimacy, and therefore subject to intermediate scrutiny under equal-protection analysis.” BLACK’S defines intermediate scrutiny as “[a] standard lying between the extremes of rational-basis review and strict scrutiny. Under the standard, if a statute contains a quasi-suspect classification (such as gender or legitimacy), the classification must be substantially related to the achievement of an important governmental objective.”

⁵² *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

⁵³ *Reitman v. Mulkey*, 387 U.S. 369, 375 (1967) (reasoning that “‘(t)he instant case presents an undeniably analogous situation’ wherein the State had taken affirmative action designed to make private discriminations legally possible.”); and *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 717 (1961) (finding that discrimination by a lessee of an agency created by the State was sufficient to find that there was “discriminatory state action in violation of the Equal Protection Clause of the Fourteenth Amendment.”).

⁵⁴ *Shelley v. Kraemer*, 334 U.S. 1, 21 (1948).

⁵⁵ See *Windsor v. U.S.*, 699 F.3d 169 (2d Cir. 2012), *affirmed on other grounds* 133 S.Ct. 2675 (2013); *Golinski v. Office of Personnel Mgmt.*, 824 F.Supp.2d 968 (N.D. Cal. 2012).

⁵⁶ *Florida Dept. of Children and Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fla. 3d DCA 2010); *Bassett v. Snyder*, 2014 WL 5847607 (E.D. Mich. 2014). BLACK’S LAW DICTIONARY (10th ed. 2014) defines the “rational-basis test” as “[t]he criterion for judicial analysis of a statute that does not implicate a fundamental right or a suspect or quasi-suspect classification under the Due Process or Equal Protection Clause, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective. Rational basis is the most deferential of the standards of review that courts use in due-process and equal-protection analysis.”

⁵⁷ *Lofton v. Secretary of Dept. of Children and Family Services*, 358 F.3d 804, 818 (11th Cir. 2004).

⁵⁸ The Supreme Court denied certiorari on January 10, 2005. See *Lofton v. Secretary, Florida Dept. of Children and Families*, 543 U.S. 1081 (2005).

subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution⁵⁹

Florida's Religious Freedom Restoration Act of 1998 (FRFRA), ch. 761, F.S., guarantees that

(1) The government *shall not substantially burden*⁶⁰ *a person's exercise of religion*, even if the burden results from a rule of general applicability . . .⁶¹

It may be argued that the language of this bill does not create a new right for private adoption agencies⁶² but rather codifies an existing right guaranteed by both the Florida Constitution and the FRFRA—the right to be free from the government compelling them, as religious adherents, to engage in conduct their religion forbids. As the Supreme Court of the United States determined in *Burwell v. Hobby Lobby Stores, Inc.*, the phrase “a person’s” in the federal version of the Religious Freedom Restoration Act “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”⁶³ However, to the extent that the bill may allow private child-placing agencies who receive money from the state to discriminate based on their written religious or moral convictions may violate article I, section 3 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 2, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment extends the conscience protection to private child-placing agencies that refuse to facilitate in the licensure of family foster homes when the licensure would violate the agency's written religious or moral convictions.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

⁵⁹ FLA. CONST. art. I, s. 3.

⁶⁰ In 2004, the Florida Supreme Court held that “*a substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires.*” *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 (Fla. 2004) (emphasis added).

⁶¹ s. 761.03(1), F.S.

⁶² In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768-70 (2014), the Supreme Court of the United States determined that the phrase “a person’s” in the federal version of the Religious Freedom Restoration Act “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” *Id.* at 2768.

⁶³ 134 S.Ct. 2751, 2768-70 (2014).