

By the Committee on Family Law & Children and
Representatives Murman, Kelly, Roberts, Sanderson, Feeney,
Peaden, Maygarden and Byrd

1 A bill to be entitled
2 An act relating to child protection; creating
3 s. 383.50, F.S.; prescribing duties of
4 hospitals and fire stations with respect to
5 abandoned newborn infants, as defined;
6 providing for anonymity of such infants'
7 parents; amending s. 39.01, F.S.; redefining
8 the term "abandoned"; amending s. 39.201, F.S.;
9 revising duties of the central abuse hotline to
10 accept specified reports of abandoned newborn
11 infants and disclose names of eligible licensed
12 child-placing agencies; amending s. 63.167,
13 F.S.; providing duties of the state adoption
14 information center with respect to maintaining
15 a list of child-placing agencies with which
16 abandoned newborns may be placed; creating s.
17 63.0423, F.S.; prescribing rights, duties and
18 procedures for licensed child-placing agencies
19 with respect to custody, placement, and
20 adoption of abandoned newborn infants;
21 providing limited relief from judgment of
22 termination of parental rights; amending s.
23 63.182, F.S.; providing a statute of repose for
24 setting aside adoptions; providing duties of
25 the Department of Children and Family Services
26 in conjunction with the Department of Health to
27 produce media campaign with respect to
28 abandoned newborns; creating s. 827.035, F.S.;
29 providing that certain actions with respect to
30 a newborn infant shall not constitute neglect
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1 or contributing to the dependency of a child;
2 providing an effective date.

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4 WHEREAS, in this state and in the nation, newborn
5 infants have suffered and died as the result of abandonment in
6 life-threatening situations, and

7 WHEREAS, the parents of newborn infants are often under
8 severe emotional stress, and

9 WHEREAS, anonymity, confidentiality, and freedom from
10 prosecution for parents may encourage them to leave a newborn
11 infant safely and thus save the newborn infant's life, NOW,
12 THEREFORE,

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14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 383.50, Florida Statutes, is
17 created to read:

18 383.50 Treatment of abandoned newborn infant.--

19 (1) As used in this section, the term "newborn infant"
20 means a child that a licensed physician reasonably believes to
21 be approximately 3 days old or younger at the time the child
22 is left at a hospital or a fire station.

23 (2) There is a presumption that the parent who leaves
24 the newborn infant in accordance with this section intended to
25 leave the newborn infant and consented to termination of
26 parental rights.

27 (3) Each fire station staffed with full-time
28 firefighters or emergency medical technicians shall accept any
29 newborn infant left with a firefighter or emergency medical
30 technician. The fire station shall consider these actions as
31 implied consent to and shall:

1 (a) Provide emergency medical services to the newborn
2 infant to the extent he or she is trained to provide those
3 services, and
4 (b) Arrange for the immediate transportation of the
5 newborn infant to the nearest hospital with emergency
6 services. Any firefighter or emergency medical technician
7 accepting or providing emergency medical services to a newborn
8 infant pursuant to this subsection is immune from criminal or
9 civil liability for having performed the act. Nothing in this
10 subsection limits liability for negligence.
11 (4) Each hospital of this state subject to s. 395.1041
12 shall, and any other hospital may, admit and provide all
13 necessary emergency services and care, as defined in s.
14 395.002(10), to any newborn infant left with the hospital in
15 accordance with this section. The hospital or any of its
16 licensed health care professionals shall consider these
17 actions as implied consent for treatment, and a hospital
18 accepting physical custody of a newborn infant has implied
19 consent to perform all necessary emergency services and care.
20 The hospital or any of its licensed health care professionals
21 is immune from criminal or civil liability for acting in good
22 faith in accordance with this section. Nothing in this
23 subsection limits liability for negligence.
24 (5) Except where there is actual or suspected child
25 abuse or neglect, any parent who leaves a newborn infant with
26 a firefighter or emergency medical technician at a fire
27 station or brings a newborn infant to an emergency room of a
28 hospital and expresses an intent to leave the newborn infant
29 and not return has the absolute right to remain anonymous and
30 to leave at any time and may not be pursued or followed unless
31 the parent seeks to reclaim the newborn infant.

1 (6) A parent of a newborn infant left at a hospital or
2 a fire station under this section may claim his or her newborn
3 infant up until the court enters a judgment terminating his or
4 her parental rights. A claim of parental rights of the newborn
5 infant must be made to the entity having physical or legal
6 custody of the newborn infant or to the circuit court before
7 whom proceedings involving the newborn infant are pending.

8 (7) Upon admitting a newborn infant under this
9 section, the hospital shall immediately contact a local
10 licensed child-placing agency or alternatively contact the
11 statewide central abuse hotline for the name of a licensed
12 child-placing agency for purposes of transferring physical
13 custody of the newborn infant. The hospital shall notify the
14 licensed child-placing agency that a newborn infant has been
15 left with the hospital and approximately when the licensed
16 child-placing agency can take physical custody of the child.
17 In cases where there is actual or suspected child abuse or
18 neglect, the hospital or any of its licensed health care
19 professionals shall report the actual or suspected child abuse
20 or neglect in accordance with ss. 39.1023 and 395.1023 in lieu
21 of contacting a licensed child-placing agency.

22 (8) Any newborn infant admitted to a hospital in
23 accordance with this section is presumed eligible for coverage
24 under Medicaid, subject to federal rules.

25 (9) A newborn infant left at a fire station or a
26 hospital in accordance with this section shall not be deemed
27 abandoned subject to reporting and investigation requirements
28 under s. 39.201 unless there is actual or suspected child
29 abuse or until the department takes physical custody of the
30 child.

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1 (10) A criminal investigation shall not be initiated
2 solely because a newborn infant is left at a hospital under
3 this section unless there is actual or suspected child abuse
4 or neglect.

5 Section 2. Subsections (1) and (30) of section 39.01,
6 Florida Statutes, are amended to read:

7 39.01 Definitions.--When used in this chapter, unless
8 the context otherwise requires:

9 (1) "Abandoned" means a situation in which the parent
10 or legal custodian of a child or, in the absence of a parent
11 or legal custodian, the caregiver responsible for the child's
12 welfare, while being able, makes no provision for the child's
13 support and makes no effort to communicate with the child,
14 which situation is sufficient to evince a willful rejection of
15 parental obligations. If the efforts of such parent or legal
16 custodian, or caregiver primarily responsible for the child's
17 welfare, to support and communicate with the child are, in the
18 opinion of the court, only marginal efforts that do not evince
19 a settled purpose to assume all parental duties, the court may
20 declare the child to be abandoned. The term "abandoned" does
21 not include an abandoned newborn infant as described in s.
22 383.50, a "child in need of services" as defined in chapter
23 984, or a "family in need of services" as defined in chapter
24 984. The incarceration of a parent, legal custodian, or
25 caregiver responsible for a child's welfare may support a
26 finding of abandonment.

27 (30) "Harm" to a child's health or welfare can occur
28 when any person:

29 (a) Inflicts or allows to be inflicted upon the child
30 physical, mental, or emotional injury. In determining whether
31 harm has occurred, the following factors must be considered in

1 evaluating any physical, mental, or emotional injury to a
2 child: the age of the child; any prior history of injuries to
3 the child; the location of the injury on the body of the
4 child; the multiplicity of the injury; and the type of trauma
5 inflicted. Such injury includes, but is not limited to:
6 1. Willful acts that produce the following specific
7 injuries:
8 a. Sprains, dislocations, or cartilage damage.
9 b. Bone or skull fractures.
10 c. Brain or spinal cord damage.
11 d. Intracranial hemorrhage or injury to other internal
12 organs.
13 e. Asphyxiation, suffocation, or drowning.
14 f. Injury resulting from the use of a deadly weapon.
15 g. Burns or scalding.
16 h. Cuts, lacerations, punctures, or bites.
17 i. Permanent or temporary disfigurement.
18 j. Permanent or temporary loss or impairment of a body
19 part or function.
20
21 As used in this subparagraph, the term "willful" refers to the
22 intent to perform an action, not to the intent to achieve a
23 result or to cause an injury.
24 2. Purposely giving a child poison, alcohol, drugs, or
25 other substances that substantially affect the child's
26 behavior, motor coordination, or judgment or that result in
27 sickness or internal injury. For the purposes of this
28 subparagraph, the term "drugs" means prescription drugs not
29 prescribed for the child or not administered as prescribed,
30 and controlled substances as outlined in Schedule I or
31 Schedule II of s. 893.03.

1 3. Leaving a child without adult supervision or
2 arrangement appropriate for the child's age or mental or
3 physical condition, so that the child is unable to care for
4 the child's own needs or another's basic needs or is unable to
5 exercise good judgment in responding to any kind of physical
6 or emotional crisis.

7 4. Inappropriate or excessively harsh disciplinary
8 action that is likely to result in physical injury, mental
9 injury as defined in this section, or emotional injury. The
10 significance of any injury must be evaluated in light of the
11 following factors: the age of the child; any prior history of
12 injuries to the child; the location of the injury on the body
13 of the child; the multiplicity of the injury; and the type of
14 trauma inflicted. Corporal discipline may be considered
15 excessive or abusive when it results in any of the following
16 or other similar injuries:

- 17 a. Sprains, dislocations, or cartilage damage.
- 18 b. Bone or skull fractures.
- 19 c. Brain or spinal cord damage.
- 20 d. Intracranial hemorrhage or injury to other internal
21 organs.
- 22 e. Asphyxiation, suffocation, or drowning.
- 23 f. Injury resulting from the use of a deadly weapon.
- 24 g. Burns or scalding.
- 25 h. Cuts, lacerations, punctures, or bites.
- 26 i. Permanent or temporary disfigurement.
- 27 j. Permanent or temporary loss or impairment of a body
28 part or function.
- 29 k. Significant bruises or welts.

1 (b) Commits, or allows to be committed, sexual
2 battery, as defined in chapter 794, or lewd or lascivious
3 acts, as defined in chapter 800, against the child.

4 (c) Allows, encourages, or forces the sexual
5 exploitation of a child, which includes allowing, encouraging,
6 or forcing a child to:

- 7 1. Solicit for or engage in prostitution; or
- 8 2. Engage in a sexual performance, as defined by
9 chapter 827.

10 (d) Exploits a child, or allows a child to be
11 exploited, as provided in s. 450.151.

12 (e) Abandons the child. Within the context of the
13 definition of "harm," the term "abandons the child" means that
14 the parent or legal custodian of a child or, in the absence of
15 a parent or legal custodian, the person responsible for the
16 child's welfare, while being able, makes no provision for the
17 child's support and makes no effort to communicate with the
18 child, which situation is sufficient to evince a willful
19 rejection of parental obligation. If the efforts of such a
20 parent or legal custodian or person primarily responsible for
21 the child's welfare to support and communicate with the child
22 are only marginal efforts that do not evince a settled purpose
23 to assume all parental duties, the child may be determined to
24 have been abandoned. The term "abandoned" does not include an
25 abandoned newborn infant as described in s. 383.50.

26 (f) Neglects the child. Within the context of the
27 definition of "harm," the term "neglects the child" means that
28 the parent or other person responsible for the child's welfare
29 fails to supply the child with adequate food, clothing,
30 shelter, or health care, although financially able to do so or
31 although offered financial or other means to do so. However,

1 a parent or legal custodian who, by reason of the legitimate
2 practice of religious beliefs, does not provide specified
3 medical treatment for a child may not be considered abusive or
4 neglectful for that reason alone, but such an exception does
5 not:

6 1. Eliminate the requirement that such a case be
7 reported to the department;

8 2. Prevent the department from investigating such a
9 case; or

10 3. Preclude a court from ordering, when the health of
11 the child requires it, the provision of medical services by a
12 physician, as defined in this section, or treatment by a duly
13 accredited practitioner who relies solely on spiritual means
14 for healing in accordance with the tenets and practices of a
15 well-recognized church or religious organization.

16 (g) Exposes a child to a controlled substance or
17 alcohol. Exposure to a controlled substance or alcohol is
18 established by:

19 1. Use by the mother of a controlled substance or
20 alcohol during pregnancy when the child, at birth, is
21 demonstrably adversely affected by such usage; or

22 2. Continued chronic and severe use of a controlled
23 substance or alcohol by a parent when the child is
24 demonstrably adversely affected by such usage.

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26 As used in this paragraph, the term "controlled substance"
27 means prescription drugs not prescribed for the parent or not
28 administered as prescribed and controlled substances as
29 outlined in Schedule I or Schedule II of s. 893.03.

30 (h) Uses mechanical devices, unreasonable restraints,
31 or extended periods of isolation to control a child.

1 (i) Engages in violent behavior that demonstrates a
2 wanton disregard for the presence of a child and could
3 reasonably result in serious injury to the child.

4 (j) Negligently fails to protect a child in his or her
5 care from inflicted physical, mental, or sexual injury caused
6 by the acts of another.

7 (k) Has allowed a child's sibling to die as a result
8 of abuse, abandonment, or neglect.

9 (l) Makes the child unavailable for the purpose of
10 impeding or avoiding a protective investigation unless the
11 court determines that the parent, legal custodian, or
12 caregiver was fleeing from a situation involving domestic
13 violence.

14 Section 3. Present paragraphs (f) and (g) of
15 subsection (2) of section 39.201, Florida Statutes, are
16 redesignated as paragraphs (g) and (h), respectively, and a
17 new paragraph (f) is added to that subsection to read:

18 39.201 Mandatory reports of child abuse, abandonment,
19 or neglect; mandatory reports of death; central abuse
20 hotline.--

21 (2)

22 (f) Reports involving abandoned newborn infants as
23 described in s. 383.50 shall be made and received by the
24 department.

25 1. If the report is of an abandoned newborn infant as
26 described in s. 383.50 and there is no indication of abuse,
27 neglect, or abandonment of the infant other than that
28 necessarily entailed in the infant having been left at a fire
29 station or hospital, the department shall provide to the
30 caller the name of a licensed child-placing agency on a
31 rotating basis from a list of licensed child-placing agencies

1 eligible and required to accept physical custody of and to
2 place newborn infants left at a hospital or a fire station.
3 The report shall not be considered a report of abuse, neglect,
4 or abandonment solely because the infant has been left at a
5 hospital pursuant to s. 383.50.

6 2. If the caller reports indications of abuse or
7 neglect beyond that necessarily entailed in the infant having
8 been left at a fire station or hospital, the report shall be
9 considered as a report of abuse, neglect, or abandonment and
10 shall be subject to the requirements of s. 39.395 and all
11 other relevant provisions of this chapter, notwithstanding any
12 provisions of chapter 383.

13 Section 4. Paragraph (f) is added to subsection (2) of
14 section 63.167, Florida Statutes, to read:

15 63.167 State adoption information center.--

16 (2) The functions of the state adoption information
17 center shall include:

18 (f) Maintaining a list of licensed child-placing
19 agencies eligible and willing to take custody of and place
20 newborn infants left at a hospital, pursuant to s. 383.50. The
21 names and contact information for the licensed child-placing
22 agencies on the list shall be provided on a rotating basis to
23 the statewide central abuse hotline.

24 Section 5. Section 63.0423, Florida Statutes, is
25 created to read:

26 63.0423 Procedures with respect to abandoned
27 newborns.--

28 (1) A licensed child-placing agency that takes
29 physical custody of a newborn infant left at a hospital or a
30 fire station pursuant to s. 383.50, shall assume
31 responsibility for all medical costs and all other costs

1 associated with the emergency services and care of the newborn
2 infant from the time the licensed child-placing agency takes
3 physical custody of the newborn infant.

4 (2) The licensed child-placing agency shall
5 immediately seek an order from the circuit court for emergency
6 custody of the newborn infant. The emergency custody order
7 shall remain in effect until the court orders preliminary
8 approval of placement of the newborn infant in the prospective
9 home, at which time the prospective adoptive parents become
10 guardians pending termination of parental rights and
11 finalization of adoption or until the court orders otherwise.
12 The licensed child-placing agency may seek to temporarily
13 place the newborn infant in a prospective adoptive home as
14 soon as possible.

15 (3) The licensed child-placing agency that takes
16 physical custody of the newborn infant shall immediately
17 request assistance from law enforcement officials to
18 investigate and determine, through the Missing Children
19 Information Clearinghouse, the National Center for Missing and
20 Exploited Children, and any other national and state
21 resources, whether or not the newborn infant is a missing
22 child.

23 (4) Within 7 days after accepting physical custody of
24 the newborn infant, the licensed child-placing agency shall
25 initiate a diligent search to notify and to obtain consent
26 from a parent whose identity or location is unknown, other
27 than the parent who has left a newborn infant at a fire
28 station or a hospital in accordance with s. 383.50. The
29 diligent search must include, at a minimum, inquiries of all
30 known relatives of the parent, inquiries of all offices or
31 program areas of the department likely to have information

1 about the parent, inquiries of other state and federal
2 agencies likely to have information about the parent,
3 inquiries of appropriate utility and postal providers and
4 inquiries of appropriate law enforcement agencies.
5 Constructive notice must also be provided pursuant to chapter
6 49 in the county where the newborn infant was left and in the
7 county where the petition to terminate parental rights will be
8 filed. The constructive notice must include at a minimum,
9 available identifying information, and information on whom a
10 parent must contact in order to assert a claim of parental
11 rights of the newborn infant and how to assert that claim. If
12 a parent is identified and located, notice of the adjudicatory
13 hearing shall be provided. If a parent can not be identified
14 or located subsequent to the diligent search and constructive
15 notice, the licensed child-placing agency shall file an
16 affidavit of diligent search at the same time that the
17 petition to terminate parental rights is filed.

18 (5) A petition for termination of parental rights
19 under this section may not be filed until 30 days after the
20 date the newborn infant was left in accordance with s. 383.50.
21 A petition for termination of parental rights may not be
22 granted until consent to adoption or an affidavit of
23 nonpaternity has been executed by a parent of the newborn
24 infant as set forth in s. 63.062, a parent has failed to
25 reclaim or claim the newborn infant within the specified time
26 period, or the consent of a parent is otherwise waived by the
27 court.

28 (6) A claim of parental rights of the newborn infant
29 must be made to the entity having physical or legal custody of
30 the newborn infant or to the circuit court before whom
31 proceedings involving the newborn infant are pending. A claim

1 of parental rights of the newborn infant may not be made after
2 the judgment to terminate parental rights is entered, except
3 as otherwise provided by subsection (10).

4 (7) If a claim of parental rights of a newborn infant
5 is made before the judgement to terminate parental rights is
6 entered, the circuit court shall hold the action for
7 termination of parental rights pending subsequent adoption in
8 abeyance for a period of time not to exceed 60 days.

9 (a) The court shall order scientific testing to
10 determine maternity or paternity at the expense of the parent
11 claiming parental rights unless maternity or paternity has
12 been previously established legally or by scientific testing.

13 (b) The court may appoint a guardian ad litem for the
14 newborn infant and order whatever investigation, home
15 evaluation and psychological evaluation are necessary to
16 determine what is in the best interest of the newborn infant.

17 (c) The court may not terminate parental rights solely
18 on the basis that the parent left a newborn infant at a
19 hospital or fire station in accordance with s. 383.50.

20 (d) The court shall enter a judgment with written
21 findings of fact and conclusions of law.

22 (8) Within 24 hours after filing the judgment, the
23 clerk of the court shall mail a copy of the judgment to the
24 department, the petitioner, and the persons whose consent were
25 required, if known. The clerk shall execute a certificate of
26 each mailing.

27 (9)(a) A judgment terminating parental rights pending
28 adoption is voidable, and any later judgment of adoption of
29 that minor is voidable, if, upon the motion of a parent, the
30 court finds that a person knowingly gave false information
31 that prevented the parent from timely making known his or her

1 desire to assume parental responsibilities toward the minor or
2 from exercising his or her parental rights. A motion under
3 this subsection must be filed with the court originally
4 entering the judgment. The motion must be filed within a
5 reasonable time, but not later than 2 years after the entry of
6 the judgment terminating parental rights.

7 (b) No later than 30 days after the filing of a motion
8 under this subsection, the court must conduct a preliminary
9 hearing to determine what contact, if any, will be permitted
10 between a parent and the child pending resolution of the
11 motion. Such contact may be allowed only if it is requested by
12 a parent who has appeared at the hearing. If the court orders
13 contact between a parent and child, the order must be issued
14 in writing as expeditiously as possible and must state with
15 specificity any provisions regarding contact with persons
16 other than those with whom the child resides.

17 (c) At the preliminary hearing the court, upon the
18 motion of any party or upon its own motion, may order
19 scientific testing to determine the paternity or maternity of
20 the minor if the person seeking to set aside the judgment is
21 alleging to be the child's parent and that fact has not
22 previously been determined by legal proceedings or scientific
23 testing. The court may order supervised visitation with a
24 person for whom scientific testing for paternity or maternity
25 has been ordered. Such visitation shall be conditioned upon
26 the filing of test results with the court and those results
27 establishing that person's paternity or maternity of the
28 minor.

29 (d) No later than 45 days after the preliminary
30 hearing, the court must conduct a final hearing on the motion
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1 to set aside the judgment and enter its written order as
2 expeditiously as possible thereafter.

3 (10) Except to the extent expressly provided in this
4 section, proceedings initiated by a licensed child-placing
5 agency for the termination of parental rights and subsequent
6 adoption of a newborn left at a hospital or a fire station in
7 accordance with s. 383.50 shall be conducted pursuant to
8 chapter 63.

9 Section 6. Section 63.182, Florida Statutes, is
10 amended to read:

11 (Substantial rewording of section. See
12 s. 63.182, F.S., for present text.)

13 63.182 Statute of repose.--Notwithstanding s. 95.031
14 or s. 95.11 or any other statute:

15 (1) An action or proceeding of any kind to vacate, set
16 aside, or otherwise nullify a judgment of adoption or an
17 underlying judgment terminating parental rights on any ground,
18 including duress but excluding fraud, shall in no event be
19 filed more than 1 year after entry of the judgment terminating
20 parental rights.

21 (2) An action or proceeding of any kind to vacate, set
22 aside, or otherwise nullify a judgment of adoption or an
23 underlying judgment terminating parental rights on grounds of
24 fraud shall in no event be filed more than 2 years after entry
25 of the judgment terminating parental rights.

26 Section 7. Department; duties with respect to
27 abandoned newborns.--The Department of Health in conjunction
28 with the Department of Children and Family Services shall
29 produce a media campaign to promote safe placement
30 alternatives for newborn infants, to inform the public
31 concerning the confidentiality and limited immunity from

1 criminal prosecution offered to a parent who leaves a newborn
2 infant at a hospital or a fire station under s. 383.50,
3 Florida Statutes, and the rights of parents to reclaim or
4 claim their newborn infant within specified time periods, and
5 to publicize adoption procedures.

6 Section 8. Section 827.035, Florida Statutes, is
7 created to read:

8 827.035 Newborn infants.--It shall not constitute
9 neglect of a child pursuant to s. 827.03 or contributing to
10 the dependency of a child pursuant to s. 827.04, if a parent
11 leaves a newborn infant, as defined in s. 383.50, at a
12 hospital or fire station or brings a newborn infant to an
13 emergency room and expresses an intent to leave the infant and
14 not return, in compliance with s. 383.50.

15 Section 9. This act shall take effect July 1, 2000.
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