

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.)

BILL: SB 1222
 SPONSOR: Senator Saunders
 SUBJECT: Public Records/Parents ID/Newborns
 DATE: January 24, 2002 REVISED: 01/29/02 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------------|
| 1. | <u>Matthews</u> | <u>Johnson</u> | <u>JU</u> | <u>Fav/1 amendment</u> |
| 2. | _____ | _____ | <u>RC</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill expands upon an existing public records exemption that is currently given for the identity of a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S. It extends the exemption to include the identity of a parent who leaves a newborn infant at an emergency medical services station in accordance with s. 383.50, F.S. The bill provides findings of public necessity to justify the creation of the exemption. This bill is tied to substantive changes that were enacted last year in ch. 2001-53, L.O.F., which expanded the types of facilities and personnel that may accept abandoned newborns to include emergency medical services stations.

This bill amends s. 383.51 of the Florida Statutes.

II. Present Situation:

Abandoned Newborn Infants

Two years ago, the Legislature established an statutory process for the abandonment and subsequent adoption of unclaimed newborn infants left at specified locations.¹ See ch.2000-188,

¹ The expedited process specifically provides for the acceptance, emergency treatment, transfer of custody, termination of parental rights and adoption of abandoned newborn infants. A parent has a right to reclaim or claim an abandoned newborn within specified timeframes. The law sets forth the duties and responsibilities and limited civil immunity of specified persons as may arise from a case of an abandoned newborn. Upon receipt of a report of an abandoned newborn at any of the specified locations, the Department of Children and Families' statewide central abuse hotline must provide the names of licensed child-placing agencies on a rotating list that are eligible and required to accept custody of abandoned newborn infants, absent indicia of abuse or neglect. A licensed child-placing agency accepting an abandoned newborn is responsible for the custody and care of the newborn, must obtain a custody order and initiate a diligent search for the parent within 7 days of accepting the newborn infant to secure

L.O.F. A public records exemption was concurrently enacted to protect the identify of parents who abandoned their newborn infant at fire stations or hospitals. *See* chapter 2000-213, L.O.F. When first enacted, the law did not include emergency medical services stations. In 2001, the Legislature expanded the statutory framework to apply to situations involving abandoned newborns left at emergency medical services stations.² *See* 2001-53, L.O.F. However, the Legislature failed to enact the public records exemption bill linked to the substantive bill that would have given persons who abandoned newborn infants at these locations the same public records exemption protection as persons who abandoned newborn infants at hospitals and fire stations. *See* SB 1314 (2001)(died in House returning messages).

III. Effect of Proposed Changes:

Section 1 amends s. 383.51, F.S., to expand upon an existing exemption to the public records disclosure requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S. It affords the same public records exemption for the identity of a parent who leaves a newborn infant at an emergency medical services station as already exists for a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S.

Section 2 provides legislative findings and a statement of public necessity and public policy for the exemption to include the identity of a parent who leaves a newborn infant at an emergency medical services station in accordance with s. 383.50, F.S.

Section 3 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Public Records³ Law

consent for adoption. There is an affirmative defense to criminal prosecution if the newborn infant was left in accordance with s. 383.50, F.S., and there is no abuse or neglect.

² According to the Department of Health, in many rural counties of Florida where there are no hospitals, volunteers staff the county fire departments. It was also noted that emergency medical technicians and paramedics provide emergency medical services under the supervision of a medical director. Each county has at least one full-time emergency medical services provider that has at least one station that is staffed on a 24-hour basis.

³ Public records are defined as ~~A~~ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. ~~@~~ See ' 119.011(1), F.S. An agency is defined to include ~~A~~ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. ~~@~~ See ' 119.011(2), F.S.

Section 24 of article I of the *Florida Constitution* provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law. There must be an expressed statement of public necessity which justifies the exemption. The exemption can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in chapter 119, F.S., which provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose and it must be no broader than necessary to meet the public purpose it serves. The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose can not be accomplished without the exemption and satisfies one of three other criterion relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. *See* § 119.07(1), F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption. *See* § 119.15, F.S. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature acts to reenact the exemption. Section 119.15(3)(b), F.S., provides that an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. Accordingly, the repeal date of October 2, 2005, contained in s. 383.51, F.S. and in the bill, should be amended so that the exemption will stand repealed on October 2, 2007, in accordance with s. 119.15, F.S.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This provision may encourage and provide protection to those parents who abandoned their newborn infant and who want their identities to be exempted from public disclosure.

C. Government Sector Impact:

This provision affords emergency medical services stations and their personnel the same rights and duties as fire stations and hospitals as arises under the public records exemption for persons who abandon newborn infants at these locations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary

Amends the repeal date for the public records exemption from October 1, 2005, to October 1, 2007, to comport with a statutory requirement requiring a new repeal date when an existing public records exemption is substantially amended.