

HOUSE OF REPRESENTATIVES ANALYSIS

BILL #: HB 89
SPONSOR(S): Johnson and others
TIED BILLS: None.

RELATING TO: Disposition of Fetal Remains
IDEN./SIM. BILLS: SB 2082 (s)

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: (1) Health Standards (Sub), 6 Y, 0 N, Chavis, Collins. Row 2: (2) Health Care. Row 3: (3) Health Appropriations (Sub). Row 4: (4) Appropriations. Row 5: (5).

SUMMARY ANALYSIS

HB 89 creates the "Stephanie Saboor Grieving Parents Rights Act." The bill requires health care facilities having custody of a fetus following a spontaneous fetal demise of less than 20 gestational weeks to notify the mother of her option to arrange for the burial or cremation of the fetus and to provide written notice to the mother of her options regarding those remains. The bill requires the mother to elect her options within 24 hours after notification. The bill provides that the disposition of a fetus of less than 20 gestational weeks would be subject to the same laws and rules that apply currently to a fetus of 20 gestational weeks or more. The bill requires the Department of Health to develop forms to be used for notifications and elections.

The bill takes effect upon becoming law.

Current state law provides for the disposal of fetal remains of less than 20 gestational weeks as "biomedical waste," however, under current law an authorized person can make arrangements with a licensed funeral director or direct disposer for an alternative disposition. Current law does not require notice to be provided to the mother concerning her options regarding the disposition of a fetus of less than 20 gestational weeks.

According to the Department of Health, the cost of implementation of this bill is \$4,800. [See: Section II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT]

On February 18, 2003, the Subcommittee on Health Standards adopted a "strike-everything" amendment to the bill. (See Section IV. For explanation of the amendment).

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

HB 89 requires that the disposition of a fetus of a gestation period of less than 20 weeks be subject to the same laws and rules that apply in the case of a fetal death that occurs in this state after a gestation period of 20 weeks. This would require the issuance of a death certificate by the Bureau of Vital Statistics and the issuance of a burial-transit permit. In addition, in some Medical Examiner Districts, if the mother should elect to have the remains cremated, this would require an authorization from the Medical Examiner. Currently, a death certificate is not issued for a fetal death of less than 20 weeks of gestation. If a mother chooses to have the fetal remains of less than 20 weeks of gestation buried or cremated, a burial-transit permit is not required and authorization from the Medical Examiner is not necessary.

#### B. EFFECT OF PROPOSED CHANGES:

A “spontaneous fetal demise” is categorized as a miscarriage. A miscarriage is the unplanned ending of a pregnancy before the 20th week of the pregnancy. Fifteen to twenty percent of all pregnancies end with a miscarriage. Seventy-five percent of miscarriages occur within the first trimester (12 weeks), while twenty-five percent of miscarriages occur during the 13th to 20th week. [Harvard Medical School: <http://research.bidmc.harvard.edu/>]

In the majority of states, including Florida, contents of the womb following a spontaneous fetal demise prior to 20 weeks of gestation are typically handled as biomedical waste, unless otherwise directed by an authorized person. Hospitals incinerate the material as they would any other “nonliquid human tissue and body parts.” Currently, eleven states (South Dakota, Massachusetts, Virginia, Rhode Island, Iowa, Indiana, Minnesota, Colorado, Illinois, Arkansas, and Kansas) provide for notification to the mother of her option to make private arrangements for the handling of the fetal remains. Typically, such arrangements are subject to the same transportation, burial, and cremation laws and regulations for fetal demise greater than 20 weeks of gestation.

#### Florida Law

Under Florida law, a fetal death certificate is required to be issued if death occurs prior to the complete expulsion or extraction of a product of human conception from its mother if the 20<sup>th</sup> week of gestation has been reached (ss. 382.002(5) and 382.008, F.S.). Fetal remains from a spontaneous miscarriage of less than 20 weeks gestation are classified as “biomedical waste” which is regulated by section 381.0098, F.S. Under current law, there is no specific state prohibition for burying or cremating fetal remains less than 20 weeks of gestation and there is no state law requiring that a mother be informed that she may choose to arrange for burial or cremation of the fetus prior to the 20<sup>th</sup> week of gestation. However, many hospitals have developed internal policies to notify the mother of her options following a spontaneous fetal death. Section 470.0294, F.S., relating to Funeral Directing, Embalming, and Direct Disposition, does specifically authorize a licensed funeral director or direct disposer to handle the

disposition of fetal remains when a death certificate is not issued under Chapter 382, F.S., when authorized by someone with the common law or statutory right to make such a decision.

HB 89 requires a health care facility having custody of a fetus following a spontaneous fetal demise of a fetus less than 20 weeks of gestation to notify the mother in writing of her right to arrange for burial or cremation, including, but not limited to: a ceremony; a certificate; or common burial of the tissue. In addition, the mother must elect, in writing, her option to arrange for the burial or cremation of the fetus. The bill requires that the disposition of the fetus be subject to the same laws and rules that currently apply to the disposal of a fetus of 20 weeks or more of gestation. The bill requires the Department of Health to develop the forms needed for notification of the mother and election of this option. In addition, the bill requires the health care facility to provide the forms to the mother.

Nothing in this bill requires the health care facility or the state to underwrite the costs of the mother's decision to exercise her option for burial or cremation of the fetus.

The bill takes effect upon becoming a law.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 383.33625, F.S., the "Stephanie Saboor Grieving Parents Rights Act," provides for disposition of the fetal remains of less than 20 complete weeks; requires notification of the mother by the health care facility of her options for disposal; and requires the development of forms by the Department of Health.

**Section 2.** Provides that the act takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

**Department of Health:**

Notification and Training for Funeral Directors, Medical Examiners, hospitals, physicians, and county vital statistics staff	\$1,500
Form Development	\$ 800
System modification to allow entry of fetal demises less than 20 weeks	<u>\$2,500</u>
TOTAL	\$4,800

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Based on information provided by the Department of Health, the bill will require county health departments to issue and file burial transit permits for fetal demises of less than 20 weeks.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The Department of Health provided an analysis which indicates that there will be a cost associated with a health care facility notifying the mother of her rights to dispose of the fetus, the facility obtaining the written request from the mother within 24 hours of the fetal demise, and the physician making this a part of the mother's medical records.

Although disposal of the fetal remains by burial or cremation is optional, the mother who chooses to bury or cremate the fetus will incur the expense of such disposal and the funeral director will benefit financially from the family.

**D. FISCAL COMMENTS:**

According to the Department of Health, this bill will require Medical Examiners to provide cremation authority before cremation can occur for a fetus less than 20 weeks gestation. Some Medical Examiner districts charge for cremation authorizations.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other

None.

**B. RULE-MAKING AUTHORITY:**

Subsection (3) of s. 383.33625, F.S., requires the Department of Health to develop forms to be used for the notifications and elections under the section; however, according to the Department of Health, the bill does not grant the department specific rulemaking authority to do so.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Department of Health provided the following comments:

This bill could adversely affect the validity and reliability of Florida's vital statistics. The national model law for vital records does not provide for recordation of a fetal death prior to twenty

weeks gestation. The bill makes the fetal death law application voluntary, only at the request of the mother. This would be the only vital record maintained in Florida or any other state which is recorded only if chosen by an individual. This will result in unreliable numbers and will adversely impact Florida's ability to use its vital records for purposes of establishing rights to certain federal and private funding opportunities.

The lack of a fetal death record does not prevent disposition. If the parent(s) wish to bury or cremate the remains, section 470.0294, F.S., currently addresses this issue.

The bill directs medical facilities to provide the information to the mother. The Department of Health has no regulatory power or oversight of medical facilities. The Agency for Health Care Administration (AHCA) is the only division of state government with authority to direct health care facilities to implement this law.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 18, 2003, the Subcommittee on Health Standards adopted a "strike-everything" amendment which:

- Changed the name of the act to the "Stephanie Saboor Grieving Parents Act";
- Specifies that the notification requirement applies to "facilities licensed pursuant to chapters 383 and 395" (birthing centers and hospitals) and "health care practitioners" (medical doctors, osteopathic doctors, nurses, and midwives);
- More accurately reflects the notification requirement to the mother; and
- Specifies that the Agency for Health Care Administration and the Department of Health have rulemaking authority to develop the forms to implement this act.

The "strike-everything" differs from the bill, as filed, as follows:

- Removes the word "right" or "rights" in describing the act and the mother's options in determining how the fetal remains will be disposed;
- Specifies that the Department of Health will develop the forms for notification of the mother and her election of options to be utilized by the specified health care practitioners; and
- Specifies that the Agency for Health Care Administration will develop the forms for notification of the mother and her election of options to be utilized by the specified facilities.