

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 746

INTRODUCER: Judiciary Committee, Senator Wise and others

SUBJECT: Certificates of Birth and Death/Certificate of Birth Resulting in Stillbirth

DATE: March 10, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/2 amendments</u>
2.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill provides requirements related to certificates of birth and death, including the issuance of a “certificate of birth resulting in stillbirth.” “Stillbirth” is defined as an unintended, intrauterine fetal death after a gestation age of not less than 20 completed weeks. Only a parent listed on the fetal death certificate may make the initial request for a certificate of birth resulting in stillbirth. The person who is required to file a fetal death certificate must advise the parent of a stillborn child of the availability of a certificate of birth resulting in stillbirth, how to request and obtain such a certificate, and that a copy of the original certificate is available as a public record when held by an agency. The bill requires specified information on the certificate of birth resulting in stillbirth to correspond to the information on the corresponding fetal death certificate. A certificate of birth resulting in stillbirth must contain the statement “This certificate is not proof of live birth.”

The Office of Vital Statistics may not use a certificate of birth resulting in stillbirth to calculate live birth statistics. A refusal by the Office of Vital Statistics to issue a certificate of birth resulting in stillbirth to a person who is not listed as a parent on the fetal death certificate constitutes final agency action and is not subject to review under the Administrative Procedure Act. The certificate of birth resulting in stillbirth and the statutory definition of stillbirth may not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth. The department must prescribe by rule the form, content, and process for the certificate of birth resulting in stillbirth. The department is authorized to collect a fee for a certificate of birth resulting in stillbirth.

The bill authorizes the local registrar of the Office of Vital Statistics of DOH to receive electronically the certificate of death or fetal death which is required to be filed with the local registrar. The bill authorizes the local registrar of the Office of Vital Statistics of DOH to receive electronically the birth certificate for each live birth that is required to be filed with the local registrar.

The bill amends the following sections of the Florida Statutes: 382.002, 382.008, 382.013, and 382.0255. The bill creates section 382.0085, Florida Statutes.

## II. Present Situation:

Chapter 382 is the Florida Vital Statistics Act. Section 382.002, F.S., defines “fetal death” to mean death 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 and the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. “Live birth” is defined to mean the complete expulsion or extraction of a product of human conception from its mother, irrespective of the duration of pregnancy, which, after such expulsion, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, and definite movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. “Registrant” means the child entered on the birth certificate, the deceased entered on a death certificate, and the husband or wife entered on a marriage or dissolution of marriage record.

A certificate for each live birth that occurs in Florida must be filed within 5 days after the birth with the local registrar of the district in which the birth occurred.<sup>1</sup> A certificate for each death and fetal death that occurs in Florida must be filed within 5 days after such death and prior to final disposition of the dead body or fetus.<sup>2</sup> The funeral director who first assumes custody of a dead body or fetus must file the certificate of death or fetal death. In the absence of the funeral director, the physician or other person in attendance at or after the death must file the certificate of death or fetal death. The original certificate of death or fetal death must contain all the information required by the Department of Health (DOH or department) for legal, social, and health research purposes. All information relating to the cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records of this state are confidential and exempt from the Public Records Law, except for health research purposes as approved by the department.<sup>3</sup>

A procedure for filing a certificate of birth is provided in chapter 382, F.S., and rules adopted by DOH. Certified copies of the original birth certificate or a new or amended certificate are confidential and exempt from the Public Records Law and may only be issued to specified persons including the registrant, if of legal age, and the registrant’s parent or guardian or other legal representative.<sup>4</sup> To protect the integrity of vital records and prevent the fraudulent use of the birth certificates of deceased persons, DOH must match birth and death certificates and post

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<sup>1</sup> Section 382.013, F.S.

<sup>2</sup> Section 382.008(1), F.S.

<sup>3</sup> Section 382.008(6), F.S.

<sup>4</sup> Section 382.025(1), F.S.

the fact of death to the appropriate birth certificate. Except for a commemorative birth certificate, any certification of a birth certificate of a deceased registrant must be marked “deceased.” In the case of a commemorative birth certificate, such indication of death must be made on the back of the certificate.

### III. Effect of Proposed Changes:

The bill provides requirements related to certificates of birth and death, including the issuance of a “certificate of birth resulting in stillbirth.” The bill requires specified information on the certificate of birth resulting in stillbirth to correspond to the information on the corresponding fetal death certificate. The Department of Health (DOH or department) is authorized to collect a fee for a certificate of birth resulting in stillbirth.

**Section 1.** Amends s. 382.002, F.S., relating to definitions under the Florida Vital Statistics Act, to define “certificate of birth resulting in stillbirth” to mean a certificate issued to record the birth of a stillborn child. “Stillbirth” is defined to mean an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.

**Section 2.** Amends s. 382.008, F.S., to authorize the local registrar of the Office of Vital Statistics of DOH to receive electronically the certificate of death or fetal death that is required to be filed with the local registrar. The receipt of such a certificate by electronic transfer constitutes delivery to the local registrar as required by law.

**Section 3.** Creates s. 382.0085, F.S., to provide procedures and requirements for stillbirth registration. Only a parent listed on the fetal death certificate may make the initial request for a certificate of birth resulting in stillbirth. The section requires the person<sup>5</sup> who is required to file a fetal death certificate under the Florida Vital Statistics Act to advise the parent of a stillborn child of the availability of a certificate of birth resulting in stillbirth and how to request and obtain such a certificate by contacting the Office of Vital Statistics within DOH. A parent may request that a certificate of birth resulting in stillbirth be issued regardless of the date on which the fetal death certificate was issued. The Office of Vital Statistics must inform any parent who requests a certificate of birth resulting in stillbirth that a copy of the document is available as a public record.

To order a certificate of birth resulting in stillbirth, a parent’s request must be on a form prescribed by the department and include the date of the stillbirth and the county in which the stillbirth occurred. The request would normally include the state file number of the fetal death report. If a name does not appear on the fetal death certificate or the requesting parent does not wish to provide a name, the Office of Vital Statistics must fill in the certificate of birth resulting in stillbirth with the name “baby boy” or “baby girl” and the last name of the parents.

The department must prescribe by rule the form, content, and process for the certificate of birth resulting in stillbirth. This section requires that the certificate of birth resulting in stillbirth must contain the following information:

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<sup>5</sup> Section 382.008(2), F.S., provides that the funeral director, physician, or other person in attendance at or after the death is required to file the certificate of fetal death.

- the date of the stillbirth;
- the county in which the stillbirth occurred;
- the name of the stillborn child as provided on the original or amended fetal death certificate;
- the state file number of the corresponding fetal death certificate; and
- the statement “This certificate is not proof of live birth.”

The Office of Vital Statistics may not use a certificate of birth resulting in stillbirth to calculate live birth statistics. The bill provides that the certificate of birth resulting in stillbirth and the statutory definition of stillbirth may not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth. A refusal by the Office of Vital Statistics to issue a certificate of birth resulting in stillbirth to a person who is not listed as a parent on the fetal death certificate constitutes final agency action and is not subject to review under the Administrative Procedure Act.

**Section 4.** Amends s. 382.013, F.S., to authorize the local registrar of the Office of Vital Statistics of DOH to receive electronically the birth certificate for each live birth that is required to be filed with the local registrar. The receipt of such a certificate by electronic transfer constitutes delivery to the local registrar as required by law.

**Section 5.** Amends s. 382.0255, F.S., to authorize the Department of Health to collect fees for a certificate of birth resulting in stillbirth.

**Section 6.** Provides an effective date of July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

A person requesting a certificate of birth resulting in stillbirth must pay a fee for the certificate. The fee is to be established by rule and must be sufficient to meet the cost of

providing the service. Until rules are adopted, fees assessed pursuant to s. 382.0255, F.S., are to be assessed at the minimum fees cited. The bill provides that the Department of Health (DOH or department) must charge not less than \$3 or more than \$5 for processing and filing a new certificate of birth resulting in stillbirth.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to DOH, its costs should be offset over time. There are currently less than 1,800 fetal death certificates filed annually.<sup>6</sup> In 2005, there were 67 requests for certified fetal death records.<sup>7</sup> The department estimates first year revenue of \$603 based on the current fee of \$9 charged for a requested certification of fetal death and expenditures of \$4,700 (\$1,200 for forms design/printing costs and \$3,500 for computer system modifications). There is an estimated \$900 positive fiscal impact in year two.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>6</sup> Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note: SB 746, Jan. 9, 2006 (on file with Florida Senate, Committee on Judiciary).

<sup>7</sup> *Id.*



## **VIII. Summary of Amendments:**

None.

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