

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Policy Committee

BILL: CS/SB 1704

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Storms and others

SUBJECT: Abandonment of a Newborn Infant

DATE: March 24, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.	Stovall	Wilson	HP	Favorable
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 1704 amends Florida’s newborn safe abandonment laws to clarify that a parent who safely surrenders a newborn is presumed to have consented to termination of his or her parental rights. The bill expressly prohibits the search for and notification of the surrendering parent, unless there is actual or suspected child abuse or neglect.

The bill extends the period during which a newborn infant may be safely surrendered from 3 days to 7 days, and requires hospitals to complete the birth certificate of a safely surrendered newborn infant without naming the mother under specified circumstances.

The bill replaces the term “abandoned” with the word “surrendered” throughout the relevant statutes to distinguish infants who are relinquished to a safe haven from children who are abandoned as a matter of child abuse.

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, 63.0423 and 383.50.

II. Present Situation:

Safe Haven for Newborns

Beginning with Texas in 1999, infant safe haven legislation has been enacted in most states as “an incentive for [a] mother in crisis to safely relinquish [her baby] to a safe haven where the baby will be protected and provided with medical care until a permanent home can be found.”¹ Safe haven laws generally allow the parent to remain anonymous and avoid prosecution for abandonment or neglect in exchange for safely surrendering the baby.² In most states, the safe haven laws apply to infants up to 72 hours old, although in 14 states³ the law applies to infants up to 1 month old and, in North Dakota, the law applies to children up to 1 year old.⁴

Florida passed newborn safe abandonment legislation in 2000.⁵ Section 383.50, F.S., establishes safe abandonment protections for parents, identifies the places for safe abandonment, and describes the obligations of the entities initially receiving safely abandoned infants. Section 63.0423, F.S., delineates the obligations of child-placing agencies and establishes procedures with respect to safely abandoned infants.

Pursuant to s. 383.50, F.S., a parent may safely abandon an infant at a fire station, emergency medical services station, or hospital emergency room within 3 days of birth.⁶ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment.⁷ The hospital then transfers the child to a licensed child-placing agency.⁸

Pursuant to s. 63.0423, F.S., the child-placing agency is required to request assistance from law enforcement within 24 hours of receiving the infant, to determine whether the child is a missing child.⁹ The licensed child-placing agency seeks emergency custody via court order, and may place the child with court-approved prospective adoptive parent(s), who become the infant’s guardian(s) pending termination of parental rights (TPR) and final adoption.¹⁰ The infant’s biological parent(s) may make a claim of parental rights to the court or to the entity having custody of the child at any time before TPR.¹¹ Parenthood may be determined by scientific testing, if ordered by the court.¹²

A child who is safely abandoned is not deemed abandoned for purposes of the reporting and investigation requirements of ch. 39, F.S., governing child abuse, neglect and abandonment.¹³

¹ Child Welfare Information Gateway, *Infant Safe Haven Laws* (November 2004), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.pdf (last visited March 24, 2008).

² *Id.*

³ Arkansas, Connecticut, Idaho, Louisiana, Maine, Missouri, Montana, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, South Carolina, and West Virginia. *Id.* at p. 3.

⁴ *Id.*

⁵ Chapter 2000-188, L.O.F.

⁶ Section 383.50(1), F.S.

⁷ S. 383.50(3), F.S.

⁸ S. 383.50(7), F.S.

⁹ S. 63.0423(3), F.S.

¹⁰ S. 63.0423(2), F.S.

¹¹ S. 63.0423(6) and (7), F.S.

¹² S. 63.0423(7)(a), F.S.

¹³ S. 383.50(9), F.S.

Similarly, criminal investigation of a safe abandonment is prohibited, unless there is actual or suspected child abuse or neglect.¹⁴

Pursuant to s. 383.50(5), F.S., the abandoning parent has the absolute right to remain anonymous, and may not be pursued or followed after expressing intent to leave the baby. In addition, there is a presumption that the abandoning parent intended to leave the infant and consented to TPR.¹⁵

Despite the presumption, however, s. 63.0423(4), F.S., requires a child-placing agency to initiate a diligent search for a parent whose identity is known, in order to notify the parent of the TPR hearing. In addition, the court is precluded from granting a TPR petition until the parent executes a consent or an affidavit of non-paternity, the parent has failed to timely¹⁶ reclaim the infant, or consent is otherwise waived.¹⁷

Since 2000, at least 90 infants have been safely abandoned pursuant to this law. During the same time period, 38 infants are known to have been unsafely abandoned; 14 of those infants lived and 24 died.¹⁸ Locations for the unsafe abandonments included trash cans, dumpsters, churches, a nursing home, a hotel room, a beach, a vacant lot, the front porch of a private home, a hotel garage, a concrete pile, and a canal.¹⁹

Birth Certificates

According to stakeholders, some mothers give birth in the hospital and then leave their infants at the hospital. Florida law does not specifically include hospitals (other than emergency rooms) in the list of authorized locations for safe abandonment. In practice, however, according to stakeholders, these abandonments are treated as authorized safe abandonments.

Hospital registrars complete birth certificates for infants born in the hospital. Current practice allows hospitals to maintain the anonymity of an abandoning mother by indicating the mother is “unknown” on the birth certificate.²⁰ However, stakeholders suggest that this practice is only sporadically observed and that sometimes the mother’s identity is made known to the child-placing agency who receives the infant. Because the identity of the mother is known, the agency is then obligated to pursue her for notification and consent purposes pursuant to s. 63.0423, F.S.²¹

¹⁴ S. 383.50(10), F.S.

¹⁵ S. 383.50(2), F.S.

¹⁶ Pursuant to s. 383.50(6), F.S., a parent may reclaim an abandoned newborn up until the court enters a judgment terminating parental rights.

¹⁷ S. 63.0423(5), F.S.

¹⁸ Gloria M. Silverio Foundation, A Safe Haven for Newborns, “Babies Statistics” table, available at <http://asafehavenfornewborns.com/babiesstatistics.asp> (last visited March 24, 2008).

¹⁹ Gloria M. Silverio Foundation, A Safe Haven for Newborns, “Babies Left in Unsafe Places,” available at <http://asafehavenfornewborns.com/tragedies.asp> (last visited March 24, 2008).

²⁰ Office of Vital Statistics, Florida Department of Health, Vital Records Registration Handbook (December 2007 Revision) at pp. 22-23, available at http://www.doh.state.fl.us/Planning_eval/Vital_Statistics/General_Information_main_page.html (last visited March 24, 2008).

²¹ See Correspondence from Nick E. Silverio, Founder, Gloria M. Silverio Foundation, to Senator Rhonda [sic] Storms (January 23, 2008), on file with the Florida Senate Committee on Children, Families and Elder Affairs (CFEA).

III. Effect of Proposed Changes:

Section 1. Amends s. 39.01, F.S., to replace the term “abandoned” with the word “surrendered,” where applicable, to describe newborn infants who are relinquished to safe havens as opposed to children who are abandoned as a matter of child abuse.

Section 2. Amends s. 39.201, F.S., to replace the term “abandoned” with the word “surrendered” for reporting provisions related to newborn infants who are relinquished to safe havens.

Section 3. Amends s. 63.0423, F.S., to clarify that a parent who safely surrenders a newborn infant is presumed to have consented to TPR, therefore express consent to termination is not required. The bill expressly prohibits the search for and notification of the surrendering parent, unless there is actual or suspected child abuse or neglect. This language is consistent with current law in s. 383.50, F.S.

The bill deletes the provision in s. 63.0423(5), F.S., that precludes a court from granting a TPR petition in a surrendered newborn infant case until a consent or affidavit of nonpaternity has been executed or the parent has failed to timely reclaim the infant.

The bill amends s. 63.0423(6), F.S., to require a claim to parental rights of a surrendered newborn infant to be made before the court enters a TPR judgment.

Section 4. Amends s. 383.50, F.S., to replace the term “abandoned” with the word “surrendered” and extend the period during which a newborn infant may be surrendered from 3 to 7 days. The bill requires a hospital to complete a surrendered infant’s birth certificate without naming the mother if the infant was born in the hospital, the mother expresses intent to leave the infant, and the mother requests that her name not be included on the birth certificate.

Section 5. Provides that the act will take effect on July 1, 2008.

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 Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a modest increase in Medicaid costs²² if the number of surrendered infants increases, however, the amount is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 302 – 307 provide that a hospital, emergency medical services station, or fire station is not required to report a safely surrendered newborn infant under s. 39.201, F.S., unless there is actual or suspected child abuse. However, s. 39.201(2)(g), F.S., (line 62) implies there is a mandatory duty to report surrendered newborn infants by stating that reports involving surrendered newborn infants as described in s. 383.50 shall be made...

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families and Elder Affairs Committee on March 19, 2008:

Replaces the term “abandoned” with the word “surrendered” throughout the relevant statutes to distinguish infants who are relinquished to a safe haven from children who are abandoned as a matter of child abuse, and clarifies that it is mandatory for a hospital to complete a birth certificate without naming the birth mother under specified circumstances. (WITH TITLE AMENDMENT)

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²² Pursuant to s. 383.50(8), F.S., infants admitted to the hospital under the safe abandonment law are presumed eligible for Medicaid coverage.