

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 Judiciary Committee

BILL: CS/SB 1704

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

SUBJECT: Surrendered Newborn Infants/Safe Haven Protection

DATE: April 15, 2008

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Toman	Jameson	CF	Fav/CS
2. Stovall	Wilson	HP	Favorable
3. Cary	MacLure	JU	Favorable
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:

This bill 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 licensed agency from searching for or notifying 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 legally surrendered from three days to seven 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 mothers in crisis to safely relinquish their babies to designated locations where the babies are protected and provided with medical care until a permanent home is 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 one month old and, in Missouri and North Dakota, the law applies to children up to one year old.⁴

Florida passed newborn safe abandonment legislation in 2000.⁵ The law establishes safe abandonment protections for parents, identifies the places for safe abandonment, and describes the obligations of the entities initially receiving safely abandoned infants.⁶ It also delineates the obligations of child-placing agencies and establishes procedures with respect to safely abandoned infants.⁷

A parent may safely leave an infant at a fire station, emergency medical services station, or hospital emergency room within three days of birth.⁸ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment.⁹ The hospital then transfers the child to a licensed child-placing agency.¹⁰

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.¹¹ 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.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* (July 2007), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.pdf (last visited April 11, 2008).

² *Id.*

³ Arkansas, Connecticut, Idaho, Louisiana, Maine, Montana, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, and West Virginia. *Id.* at 2.

⁴ *Id.*

⁵ Chapter 2000-188, Laws of Fla.

⁶ Section 383.50, F.S.

⁷ Section 63.0423, F.S.

⁸ Section 383.50(1), F.S.

⁹ Section 383.50(3), F.S.

¹⁰ Section 383.50(7), F.S.

¹¹ Section 63.0423(3), F.S.

¹² Section 63.0423(2), F.S.

¹³ Section 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

The abandoning parent has the absolute right to remain anonymous, and may not be pursued or followed after expressing intent to leave the baby.¹⁵ In addition, there is a presumption that the abandoning parent intended to leave the infant and consented to TPR.¹⁶

Despite the presumption, however, the child-placing agency is required to initiate a diligent search for a parent whose identity is known, in order to notify the parent of the TPR hearing.¹⁷ In addition, the court is precluded from granting a TPR petition until the parent executes a consent to adoption or an affidavit of non-paternity, the parent has failed to timely¹⁸ reclaim the infant, or consent is otherwise waived.¹⁹

After surrendering the baby, 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,²⁰ and in certain instances, after TPR.²¹ In order to determine maternity or paternity of the person seeking parental rights, parenthood may be determined by scientific testing at the expense of the parent claiming parental rights, if ordered by the court.²²

Since 2000, at least 98 infants have been safely abandoned pursuant to this law.²³ During the same time period, 38 infants are known to have been unsafely abandoned; 14 of those infants lived and 24 died.²⁴ 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.²⁵

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

¹⁴ Section 383.50(10), F.S.

¹⁵ Section 383.50(5), F.S.

¹⁶ Section 383.50(2), F.S.

¹⁷ Section 63.0423(4), F.S.

¹⁸ 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.

¹⁹ Section 63.0423(5), F.S.

²⁰ Section 63.0423(6) and (7), F.S.

²¹ Section 63.0423(9), F.S.

²² Section 63.0423(7)(a), F.S.

²³ Gloria M. Silverio Foundation, A Safe Haven for Newborns, "Babies Statistics" table, *available at* <http://asafehavenfornewborns.com/babiesstatistics.asp> (last visited April 11, 2008).

²⁴ *Id.*

²⁵ Gloria M. Silverio Foundation, A Safe Haven for Newborns, "Babies Left in Unsafe Places," *available at* <http://asafehavenfornewborns.com/tragedies.asp> (last visited April 11, 2008).

“unknown” on the birth certificate.²⁶ 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.²⁷

III. Effect of Proposed Changes:

The bill replaces 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. The bill also makes several technical or grammatical changes to the wording of the applicable statutes.

The bill amends s. 63.0423, F.S., to clarify that a parent who safely surrenders a newborn infant is presumed to have consented to termination of parental rights (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 to adoption 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.

The bill amends s. 383.50, F.S., to extend the period during which a newborn infant may be surrendered from three to seven 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.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁶ Office of Vital Statistics, Florida Department of Health, Vital Records Registration Handbook (December 2007 Revision) at 22-23, available at http://www.doh.state.fl.us/Planning_eval/Vital_Statistics/General_Information_main_page.html (last visited April 11, 2008).

²⁷ 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.

C. Trust Funds Restrictions:

None.

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 costs²⁸ if the number of surrendered infants increases; however, the amount is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.

B. Amendments:

None.

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

²⁸ Pursuant to s. 383.50(8), F.S., infants admitted to the hospital under the safe abandonment law are presumed eligible for Medicaid coverage.