

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill gives mothers more time to make a decision on whether to surrender their infants, and could prevent unsafe abandonment by mothers who abandon their infants after three days of age.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida established safe newborn abandonment in 2000.¹ Section 383.50 establishes safe abandonment protections for parents, identifies the places for safe abandonment, and delineates the obligations of the entities initially receiving safely abandoned infants. Section 63.0423 delineates the obligations of child-placing agencies and establishes procedures with respect to safely abandoned infants.

Present Situation

Safe Abandonment

Florida law provides that a parent may safely abandon an infant at a fire station, EMS station, or hospital emergency room within 3 days of birth.² The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment.³ Infants admitted to a hospital under the safe abandonment law are presumed eligible for Medicaid coverage.⁴ The hospital then transfers the child to a licensed child-placing agency.⁵

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.⁶ The licensed child-placing agency seeks emergency custody via court order, and may place the child with court-approved prospective adoptive parents who become the infant's guardians pending termination of parental rights and final adoption.⁷ The infant's parent may make a claim of parental rights to the court or to the entity having custody of the child at any time before the termination of parental rights.⁸ Parenthood may be determined by scientific testing, if ordered by the court.⁹

Safe abandonment under this statute does not constitute abuse or neglect, and a child safely abandoned under this statute is not deemed abandoned for purposes of reporting and investigation

¹ § 1, Ch. 200-188, Laws of Florida.

² § 383.50(1), Florida Statutes (2007).

³ § 383.50(3), Florida Statutes (2007).

⁴ § 383.50(8), Florida Statutes (2007).

⁵ § 383.50(7), Florida Statutes (2007).

⁶ § 63.0423(3), Florida Statutes (2007).

⁷ § 63.0423(2), Florida Statutes (2007).

⁸ § 63.0423(6), (7), Florida Statutes (2007).

⁹ § 63.0423(7), Florida Statutes (2007).

requirements of chapter 39 governing abuse, neglect and abandonment.¹⁰ Similarly, criminal investigation of a safe abandonment under this statute is prohibited, unless there is actual or suspected child abuse or neglect.¹¹ Consistent with these provisions, section 383.50(5) states that the abandoning parent has the “absolute right to remain anonymous”, and prohibits pursuit of the parent. In addition, section 383.50(2) establishes a presumption that the abandoning parent consented to the termination of parental rights. A parent may rebut that presumption by making a claim for parental rights prior to termination.

However, section 63.0423 requires child-placing agencies to “initiate a diligent search” for a parent whose identity is known, in order to notify the parent of hearings on termination of parental rights and to obtain consent to termination of parental rights. Similarly, termination of parental rights requires the parent to consent in writing (or provide an affidavit of non-paternity), unless consent is waived by the court.¹²

Since 2000, at least 90 infants were safely abandoned pursuant to this law. In that time, 38 infants are known to have been unsafely abandoned, of which 14 lived and 24 died.¹³ Locations for those unsafe abandonments include 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.¹⁴

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. In practice, 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.¹⁵ However, stakeholders indicate this practice is sporadically observed and may result in the mother’s identity being 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 section 63.0423.

Effect of Proposed Changes:

The bill extends the period of time in which a newborn infant may be safely abandoned from 3 days to 7 days. The bill requires hospitals to complete an infant’s birth certificate without naming the mother if the infant is born in the hospital, the mother expresses intent to leave the infant and not return, and the mother requests it.

¹⁰ § 383.50(9), Florida Statutes (2007).

¹¹ § 383.50(10), Florida Statutes (2007).

¹² § 63.0423(5), Florida Statutes (2007).

¹³ “Babies Statistics” table, A Safe Haven for Newborns, <http://asafehavenfornewborns.com/babiesstatistics.asp> (last viewed January 26, 2008).

¹⁴ “Babies Left in Unsafe Places”, A Safe Haven for Newborns, <http://asafehavenfornewborns.com/tragedies.asp> (last viewed January 26, 2008).

¹⁵ Vital Records Registration Handbook, December 2007 Revision, pp. 22-23, Office of Vital Statistics, Florida Department of Health, http://www.doh.state.fl.us/Planning_eval/Vital_Statistics/General_Information_main_page.html (last viewed January 26, 2008).

The bill makes several changes to provide consistency between the two sections of law governing safe newborn abandonment regarding the treatment of the abandoning parent's anonymity, pursuit and consent to termination of parental rights. The bill reiterates in section 63.0423 the provision currently found in section 383.50 creating a presumption of consent to termination of parental rights for the abandoning parent and providing that express consent is not required. The bill reiterates in section 63.0423 the provision currently found in section 383.50 prohibiting pursuit of the abandoning parent, and expressly prohibits pursuit, search and notification of the abandoning parent unless there is actual or suspected child abuse or neglect. The bill deletes current requirements for child-placing agencies to pursue the parent of a safely abandoned child, if known, for the purpose of providing notice of hearings and obtaining consent to termination of parental rights. Similarly, the bill deletes the current requirement of consent to adoption or an affidavit of non-paternity for termination of parental rights to a safely abandoned infant.

The bill replaces the term "abandoned" in this context with "surrendered". This further clarifies existing law distinguishing safe abandonment at a fire station, EMS station or emergency room from legal abandonment, which is treated as abuse or neglect.

C. SECTION DIRECTORY:

Section 1. Amends s.39.01, F.S., relating to the definitions of "abandoned" and "harm."

Section 2. Amends s. 39.201, F.S., relating to the term "abandoned."

Section 3. Amends s. 63.0423(1)-(10), F.S., relating to: the term "abandoned;" presumption of consent to termination of parental rights; pursuit, search and notification of surrendering parent; and consent to adoption of surrendered infants.

Section 4. Amends s. 383.50(1) and (5), F.S., relating to: the term "abandoned;" infant age for surrendering; and completion of birth certificates for certain surrendered infants.

Section 5. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be a modest increase in Medicaid costs if the number of surrendered infant's increases, however, the amount is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language for this PCB was workshopped in the February 5, 2007, Health Innovation Committee meeting. The committee members voted to recommend this language for consideration by the Healthcare Council when considering this PCB.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On **February 5, 2008**, the Healthcare Council adopted one strike-all amendment with title amendment by the bill sponsor. The strike-all amendment:

- Eliminates references to “abandoned” in s. 39.01, s. 39.201(2)(g), s. 63.0423, and 383.50, F.S., and replaces references with “surrendered” where applicable to a newborn child left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50, F.S..
- Conforms provisions of law related to the filing of a petition for termination of parental rights to provisions of the strike-all amendment.

The bill was reported favorably with one strike-all amendment.

The analysis reflects the bill as amended.