

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 101 Certificates of Nonviable Birth  
**SPONSOR(S):** Health Quality Subcommittee; Cortes and others  
**TIED BILLS:** HB 103 **IDEN./SIM. BILLS:** SB 672

| REFERENCE                                  | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Health Quality Subcommittee             | 13 Y, 0 N, As<br>CS | Siples  | McElroy                                  |
| 2) Health Care Appropriations Subcommittee | 14 Y, 0 N           | Mielke  | Pridgeon                                 |
| 3) Health & Human Services Committee       |                     |         |  |

### SUMMARY ANALYSIS

HB 101 creates the "Grieving Families Act" which allows the parents of a pregnancy that results in a fetal demise to request and be issued a "certificate of nonviable birth." The bill defines "nonviable birth" as an unintentional, spontaneous fetal demise occurring after the 9th week of gestation but before the completion of the 20th week of gestation of a pregnancy that has been verified by health care practitioner.

The bill requires certain health care practitioners who attends or diagnoses a nonviable birth or the health care facility at which it occurs to advise the parent:

- That the parent may request the preparation of a certificate of nonviable birth;
- That the parent may obtain a certificate of nonviable birth by contacting the Office of Vital Statistics;
- How the parent may contact the Office of Vital Statistics to request the certificate of nonviable birth; and
- That the certificate of nonviable birth is available as a public record when held by an agency.

Upon the request of a parent, certain health care practitioners and health care facilities that attend or diagnose a nonviable birth must register the nonviable birth with the Bureau of Vital Statistics, electronically or on a form prescribed by the Department of Health within 30 days of receipt of such request. The bill prohibits the Bureau of Vital Statistics from including the certificate of nonviable birth in its calculations of live birth statistics.

The bill prohibits the use of a certificate of nonviable birth to establish or maintain a civil cause of action for bodily injury, civil injury, or wrongful death against any person or any entity.

The bill authorizes DOH to charge a fee of not less than \$3 or more than \$5 for processing and filing a new certificate of nonviable birth. The processing and filing fee may generate estimated annual revenues ranging from \$18,173 - \$48,106 based on historical data. The bill has a negative, non-recurring fiscal impact to DOH during its first year of operation of \$50,000, to establish forms and make any technological changes which can be handled within existing agency resources. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Vital Statistics in Florida**

The Florida Vital Statistics Act directs the Department of Health (DOH), to establish the Bureau of Vital Statistics (Bureau)<sup>1</sup> under the direction of a state registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records<sup>2</sup> in this state.<sup>3</sup> DOH is also responsible for establishing registration districts throughout the state and appointing a local registrar of vital statistics for each registration district.

##### Registration of Live Births

Within five days of each live birth in this state, a certificate of live birth must be filed with the local registrar of the district in which the birth occurred.<sup>4</sup> The state registrar may receive the registration of the birth certificate electronically through facsimile or other electronic transfer.

##### Registration of Deaths

A certificate for each death or fetal death<sup>5</sup> that occurs in Florida must be filed within 5 days after such death and prior to the final disposition of the dead body or fetus.<sup>6</sup> Final disposition means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.<sup>7</sup> The registration of the death certificate may be submitted via DOH's electronic death registration system to the Bureau on a form prescribed by DOH, or to the local registrar of the district in which the death occurred.

##### Stillbirth Registration

DOH must issue a certificate of birth resulting in stillbirth<sup>8</sup> upon the request of any parent listed on a fetal death certificate.<sup>9</sup> There must be a fetal death certificate on file with bureau.<sup>10</sup> The certificate of birth resulting in stillbirth must be issued within 60 days of the request and a parent may request the certificate of birth resulting in stillbirth regardless of the date the fetal death certificate was issued.<sup>11</sup> The certificate of birth resulting in stillbirth may not be used to pursue a civil cause of action against a person or an entity for bodily injury, personal injury, or wrongful death.<sup>12</sup>

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<sup>1</sup> Although the statute refers to an Office of Vital Statistics, it has been established as the Bureau of Vital Statistics within DOH.

<sup>2</sup> A vital record is defined as certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related thereto. Section 382.001(17), F.S.

<sup>3</sup> Section 382.003, F.S.

<sup>4</sup> Section 382.013, F.S.

<sup>5</sup> Section 382.002(8), F.S., a "fetal death" is a death prior to the complete expulsion or extraction of a product of human conception from its mother if the 20th 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.

<sup>6</sup> Section 382.008, F.S.

<sup>7</sup> Section 382.002(9), F.S.

<sup>8</sup> Section 382.002(16), F.S., a stillbirth is an unintentional, intrauterine fetal death after a gestational age of not less than 20 completed weeks.

<sup>9</sup> Section 382.005, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

A healthcare practitioner or health care facility required to register the fetal death, must advise the parent of the stillborn child that they may request a certificate of birth resulting in stillbirth and how to receive such certificate.<sup>13</sup> The parent must also be advised that the certificate of birth resulting in stillbirth is a public record if it is held by an agency.<sup>14</sup>

The certificate of birth resulting in stillbirth contains the date of the stillbirth, the county in which the stillbirth occurred, the name of the stillborn child, the state file number of the corresponding certificate of fetal death, and a statement that the certificate is not proof of live birth.

### **Loss of Pregnancy: Miscarriages**

A miscarriage occurs when there is a sudden unexpected loss of a pregnancy before it reaches the 20th week of gestation.<sup>15</sup> It is estimated that anywhere between 10 to 15 percent of known or clinically recognized pregnancies will end in miscarriage.<sup>16</sup> However, the exact number of miscarriages that occur is unknown because many occur before a woman knows she is pregnant. The majority of miscarriages occur in the first trimester (13 weeks) of a pregnancy.<sup>17</sup>

#### Stephanie Saboor Grieving Parents Act

In 2003, the Legislature enacted the “Stephanie Saboor Grieving Parents Act (Act).” The Act requires certain health care practitioners and health care facilities having custody of fetal remains following a spontaneous fetal demise after a gestation of less than 20 completed weeks to notify the mother of her option to arrange for the burial or cremation of the fetal remains.<sup>18</sup> The notification may provide other options including a ceremony, a certificate, or common burial of fetal remains. The mother may also choose to allow the health care practitioner or health care facility to follow the procedures provided by general law for the handling of fetal demise.<sup>19</sup>

### **Effect of Proposed Changes**

HB 101 creates the “Grieving Families Act” which allows the parents of a pregnancy that results in a fetal demise to request and be issued a “certificate of nonviable birth.” The bill defines “nonviable birth” as an unintentional, spontaneous fetal demise occurring after the 9th week of gestation but before the completion of the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

The bill directs nurses and certified midwives who attend or diagnose a nonviable birth, as well as hospitals and birthing centers at which a nonviable birth occurs, to advise the parent:

- That the parent may request the preparation of a certificate of nonviable birth;
- That the parent may obtain a certificate of nonviable birth by contacting the Office of Vital Statistics;

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, *Pregnancy Loss: Condition Information, What is pregnancy loss/miscarriage?*, available at <https://www.nichd.nih.gov/health/topics/pregnancyloss/conditioninfo/Pages/default.aspx> (last visited February 9, 2017). The loss of a pregnancy after the 20th week of gestation is called a stillbirth.

<sup>16</sup> U.S. Dep’t of Health and Human Services, Office of Women’s Health, *Pregnancy: Pregnancy Loss*, (last rev. Sept. 27, 2010), available at <https://www.womenshealth.gov/pregnancy/you-are-pregnant/pregnancy-loss.html> (last visited February 9, 2017).

<sup>17</sup> American Pregnancy Association, *Miscarriage*, (updated August 2016), available at <http://americanpregnancy.org/pregnancy-complications/miscarriage/> (last visited February 9, 2017).

<sup>18</sup> Chapter 2003-52, Laws of Fla., codified at s. 383.33625, F.S. The health care practitioners required to advise the mother of her options for the fetal remains include physicians, nurses, or midwives that have custody of the fetal remains.

<sup>19</sup> Fetal remains of a nonviable birth of less than 20 weeks gestation would be considered “biomedical waste,” which is governed by s. 381.0098, F.S.

- How the parent may contact the Office of Vital Statistics to request the certificate of nonviable birth; and
- That the certificate of nonviable birth is available as a public record when held by an agency.<sup>20</sup>

Within 30 days of a receipt of a request from a parent, those health care practitioners and health care facilities required to advise a parent of the availability of the certificate of nonviable birth must file a registration of nonviable birth with the State Registrar or a local registrar. The registration may be filed in the state's electronic death registration system or on a file prescribed by DOH.

The bill authorizes the State Registrar to receive certificates of nonviable birth, in the same manner as it receives the certificates of death and certificates of fetal death.

To order a certificate of nonviable birth, a parent's request must be on a form prescribed by DOH, which must include the date of the nonviable birth and the county in which the nonviable birth occurred. DOH must issue the certificate of nonviable birth within 60 days of the receipt of the request from a parent listed on the registration. A parent may request a certificate of nonviable birth regardless of the date on which the nonviable birth occurred. The Office of Vital Statistics must inform any parent who requests a certificate of nonviable birth that a copy of the document is available as a public record.

The bill requires DOH to promulgate a rule for the form, content, and process for the certificate of nonviable birth. The certificate of nonviable birth must contain the date of the nonviable birth, the county in which the nonviable birth occurred, and the name of the fetus provided on the registration of nonviable birth submitted by the attending healthcare practitioner or the healthcare facility at which the nonviable birth occurred. If the fetus does not have a name, the Office of Vital Statistics is directed to indicate "baby boy" or "baby girl" and the last name of the parents on the certificate of nonviable birth. If the sex of the fetus is not known, the Office of Vital Statistics is directed to indicate the name "baby" and the last the name of the parents on the certificate of nonviable birth. The certificate must state, "This certificate is not proof of a live birth," on its front.

The Office of Vital Statistics may not use a certificate of nonviable birth in the calculation of live birth statistics. The bill provides that the certificate of nonviable birth and the statutory definition of nonviable birth 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 nonviable birth.

The bill authorizes DOH to collect fees of at least \$3 but no more than \$5 for the processing and filing of the certificate of nonviable birth.

The bill provides an effective date of July 1, 2017.

## B. SECTION DIRECTORY:

**Section 1:** Provides a bill title.

**Section 2:** Amends s. 382.002, F.S., relating to definitions.

**Section 3:** Amends s. 382.008, F.S., relating to death, fetal death, and nonviable birth registration.

**Section 4:** Amends s. 382.0085, F.S., relating to stillbirth registration.

**Section 5:** Creates s. 382.0086, F.S., relating to certificate of nonviable birth.

**Section 6:** Amends s. 382.0255, F.S., relating to fees.

**Section 7:** Provides an effective date of July 1, 2017.

<sup>20</sup> Pursuant to s. 119.011(2), F.S., an "agency" means any state, county, district, authority, or municipal officer, department division, board, bureau, commission, or other separate unit of government created or established by law including the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill authorizes DOH to collect a fee of at least \$3 but no more than \$5 for the certificate of nonviable birth. The estimated revenue is indeterminate. However, the following provides some potential scenarios of what revenues may be.

Using historical data on actual live births from the DOH Florida Vital Statistics Annual Report 2015<sup>21</sup>, the average number of resident pregnancies is estimated assuming between 10 and 15 percent of pregnancies end in a miscarriage. Assuming half of miscarriages occur between weeks 9 and 20, it is estimated that half of the parents of these miscarriages will request a certificate of nonviable birth.

For estimating purposes the average of calendar year 2012 - 2015 data was utilized.

Based on these assumptions, average revenues are estimated for a \$3 and \$5 fee, are as follows:

| Assuming 10% of pregnancies end in miscarriage |                        |                                   |                                  |   |
|--|------------------------|-----------------------------------|----------------------------------|---|
| Estimated total pregnancies                    | Estimated miscarriages | Estimated miscarriages 9-20 weeks | Estimated certificates requested | Estimated revenue generated with \$3.00 fee |
| 242,313  | 24,231                 | 12,116                            | 6,058                            | \$18,173                                    |

| Assuming 15% of pregnancies end in miscarriage |                        |                                   |                                  |   |
|--|------------------------|-----------------------------------|----------------------------------|---|
| Estimated total pregnancies                    | Estimated miscarriages | Estimated miscarriages 9-20 weeks | Estimated certificates requested | Estimated revenue generated with \$5.00 fee |
| 256,566  | 38,485                 | 19,242                            | 9,621                            | \$48,106                                    |

Revenues received from the processing and filing fee are deposited in the Planning and Evaluation Trust Fund. As the population of Florida increases, revenues received by the DOH may increase.

#### 2. Expenditures:

DOH indicates that it will incur costs to modify the electronic system used for the registration and certification of vital statistics, the development of forms, and database changes. The cost for modification to the system is estimated to be \$50,000.<sup>22</sup> The nonrecurring expenditure can be absorbed within existing agency resources. It is likely that expenditures will be offset by revenues.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

<sup>21</sup> Department of Health, *Florida Vital Statistics Annual Report 2015*, (September 2016), available at <http://www.flpublichealth.com/VSBOOK/pdf/2015/vscomp.pdf>.

<sup>22</sup> Department of Health, *House Bill 101 Agency Legislative Bill Analysis*, (January 9, 2017), on file with the Health Quality Subcommittee.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For a person experiencing a nonviable birth, a voluntary fee of at least \$3 and not more than \$5, must be paid for the certificate of nonviable birth.

Healthcare providers and healthcare facilities who are required to registered nonviable births may incur costs related to additional administrative burdens.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOH to adopt rules regarding the form, content, and process for the certificate of nonviable birth.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2017, the adopted an amendment that made the following changes:

- Narrowed the definition of “nonviable birth” to a fetal demise that occurs after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner;
- Authorized the registration of a nonviable birth upon the request of the parent rather than requiring such registration;
- Limited the health care practitioners who are authorized to register a nonviable birth to nurses and certified midwives; and
- Expanded the time in which a nonviable birth must be registered from 5 days to 30 days, when such registration is requested.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.