

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 Committee on Health Policy

BILL: SB 672

INTRODUCER: Senator Bean

SUBJECT: Certificates of Nonviable Birth

DATE: March 13, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Favorable
2.			JU	
3.			AP	

I. Summary:

SB 672 creates the “Grieving Families Act” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise occurring 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.

The Department of Health, Bureau of Vital Statistics (BVS) must establish a process for registering nonviable births pursuant to information submitted by certain health care practitioners and facilities in response to a parent’s request for such submission and for issuing a certificate of nonviable birth upon the parent’s request.

The bill prohibits using a certificate of nonviable birth in the calculation of live birth statistics.

The bill specifies that the provisions in this act may not be used as a basis 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.

II. Present Situation:

Vital Statistics

Vital Statistics consists of official records of birth, death, fetal death, marriage, and dissolution of marriage. Official collection of Florida’s birth and death records started in 1917. Florida became a nationally recognized death registration jurisdiction in 1919 and a nationally recognized birth

registration jurisdiction in 1924. Marriage and dissolution records have been filed with Florida's Bureau of Vital Statistics since June 1927.¹

The BVS within the Department of Health (DOH or department) is responsible for the uniform registration, compilation, storage, and preservation of all vital records in the state.² In addition to the state office which operates under the direction of the state registrar, district offices operate under the direction of local registrars.

Birth Registration

A certificate for each live birth that occurs in this state must be filed within five days after the birth. The certificate may be filed with the local registrar of the district in which the birth occurred or submitted electronically to the state registrar. Responsibility for filing the certificate is assigned to various persons depending upon the location in which the birth occurs. For example, if the birth occurs in a hospital, birth center, or other health care facility, or in route thereto, the person in charge of the facility is responsible for filing the certificate. The health care practitioner in attendance is responsible for providing the facility with the information required by the birth certificate. If the birth occurs outside a facility and a physician, certified nurse midwife, midwife, or a public health nurse was in attendance, then that person must file the certificate.³

Death and Fetal Death Registration

A certificate for each death or fetal death⁴ that occurs in this state must be filed within five days after the death. The certificate may be filed with the local registrar of the district in which the death or fetal death occurred or submitted electronically to the state registrar.

Katherine's Law - Certificate of Birth Resulting in Stillbirth

In 2006, Florida's governor signed into law legislation that allows for the creation and issuance of a Certificate of Birth Resulting in Stillbirth.⁵ This law is known as Katherine's Law.⁶

The Certificate of Birth Resulting in Stillbirth is not proof of live birth and may not be used to establish identity. Gestation must be 20 weeks or more, and there must be a fetal death certificate on file with the BVS in order for a certificate to be prepared. The information included on the certificate comes from the fetal death certificate.

¹ Department of Health, Florida Vital Statistics Annual Report, August 2016, Page *vii*, <http://www.flpublichealth.com/VSBOOK/pdf/2015/Intro.pdf> (last visited March 8, 2017).

² Section 382.003, F.S. The statutes refer to an Office of Vital Statistics, however, the department has established this responsibility at the bureau level. See the Department's Organizational chart available at: http://www.floridahealth.gov/about-the-department-of-health/_documents/orgchart.pdf (last visited March 8, 2017).

³ Section 382.013, F.S.

⁴ Section 382.002(8), F.S., defines "fetal death" as 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.

⁵ Section 382.002(16), F.S., defines "stillbirth" as an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.

⁶ See s. 382.0085, F.S.

Miscarriage

Miscarriage is the spontaneous loss of a pregnancy before the 20th week. About 10 to 20 percent of known pregnancies end in miscarriage. But the actual number is likely higher because many miscarriages occur so early in pregnancy that a woman doesn't realize she is pregnant.⁷

Stephanie Saboor Grieving Parents Act

In 2003, the Legislature enacted the Stephanie Saboor Grieving Parents Act⁸ which requires a physician, physician assistant, nurse, or midwife;⁹ or a hospital, ambulatory surgical center, or birth center,¹⁰ having custody of fetal remains following a spontaneous fetal demise occurring after a gestation period of less than 20 completed weeks, to notify the mother of her option to arrange for the burial or cremation of the fetal remains, as well as the procedures provided by general law.¹¹

III. Effect of Proposed Changes:

SB 672 creates the “Grieving Families Act” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage.

The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise occurring 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.

A parent who experiences a nonviable birth may request a licensed nurse or licensed midwife who attends or diagnoses a nonviable birth; or a hospital, ambulatory surgical center, or birthing center at which a nonviable birth occurs, to electronically file, or submit a form for, a registration of nonviable birth. The health care practitioner or facility must electronically file, or submit the form to the BVS within 30 days after receipt of the request.

These health care practitioners or facilities must advise a parent who experiences a nonviable birth of the opportunity to request the preparation of a certificate of nonviable birth, how to contact the BVS in order to obtain the certificate of nonviable birth, and that a copy of the original is available as a public record.

The DOH must issue a certificate of nonviable birth within 60 days after receipt of a properly completed request from a parent named on the registration of nonviable birth. The bill requires the request for a certificate of nonviable birth to be on a form adopted by department rule and include the date of the nonviable birth and the county in which the nonviable birth occurred.

⁷ See for example, The Mayo Clinic, Miscarriage website at: <http://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/home/ovc-20213664>, (last visited on March 12, 2017).

⁸ Chapter 2003-52, L.O.F., codified at s. 383.33625, F.S.

⁹ See s. 383.33625(2), F.S., which requires a health care practitioner licensed pursuant to ch. 458, ch. 459, ch. 464, or ch. 467, F.S., to provide the notification.

¹⁰ Section 383.33625(4), F.S., requires a facility licensed pursuant to ch. 383 or ch. 395, F.S., to provide the notification.

¹¹ Fetal remains of less than 20 completed weeks of gestation would be considered biomedical waste, which is governed by s. 381.0098, F.S.

The certificate of nonviable birth must contain:

- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use “baby boy,” “baby girl,” or “baby” if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate: “This certificate is not proof of a live birth.”

Only a parent named on the nonviable birth registration may request the BVS to issue a certificate of nonviable birth. This request may be made at any time. The bill provides that the BVS may refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration; and that this refusal is final agency action that is not subject to review under ch. 120, F.S., the Administrative Procedures Act. Once the certificate has been issued however, any person may request a copy of that certificate pursuant to a public records request.

The bill further provides:

- That the BVS may not use a certificate of nonviable birth in the calculation of live birth statistics.
- That the provisions in this act may not be used as a basis 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.
- Rulemaking authority for the department to prescribe the form, content, and process for issuance of a certificate of nonviable birth.
- Authority for the department to impose a fee of between \$3 and \$5 for processing and filing a new certificate of nonviable birth.

The act takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

A parent who requests the issuance of a certificate of nonviable birth will be expected to pay a fee of not less than \$3 or more than \$5.

The specified health care practitioners and health care facilities will incur an administrative expense related to informing patients who have experienced a nonviable birth about their option to request the preparation of a registration of nonviable birth, the issuance of a certificate of nonviable birth, and the information related to that process. An additional administrative expense will be incurred if a parent requests the registration of nonviable birth be filed with the BVS.

C. Government Sector Impact:

To the extent that the health care practitioners and health care facilities are governmental entities or engaged in governmental functions when responsibilities under this bill are triggered, they will experience similar administrative expenses as those in the private sector.

The DOH will need to develop a web based nonviable birth module for the existing electronic registry and develop forms for registration and certification of nonviable births. System and database changes are estimated at \$50,000.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 674 creates an exemption from the public records law for information relating to the cause of death and the parentage, marital status, and medical information in all nonviable birth records, except for health research purposes. The bills are linked and SB 674, if enacted, will take effect when this bill, or a similar one takes effect.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.008, 382.0085, and 382.0255.

This bill creates section 382.0086 of the Florida Statutes.

¹² Department of Health 2017 Legislative Bill Analysis for HB 101, dated January 9, 2017, which is similar to SB 672, at page 3, on file with the Senate Health Policy Committee.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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