

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 Appropriations

BILL: SB 672

INTRODUCER: Senator Bean

SUBJECT: Certificates of Nonviable Birth

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting

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 that occurs after the completion of the 9th week of gestation but before the 20th week of gestation of a pregnancy. The pregnancy must have been verified by a health care practitioner.

When requested to do so by a parent, the Department of Health (DOH), Office of Vital Statistics, must register nonviable births based upon information submitted by certain health care practitioners and facilities. The DOH must then issue a certificate within 60 days of a parent’s properly submitted request. The person required to register a nonviable birth must advise a parent how to request the certificate of nonviable birth.

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.

The bill has an indeterminate impact on state revenues and expenditures; however, any costs incurred by DOH will be absorbed within DOH’s existing resources.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Vital Statistics

The Office of Vital Statistics,¹ housed within the DOH, is responsible for compiling, storing, and preserving the vital records of the state. Vital records² are the official certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related to these records.

Florida officially began collecting birth and death records in 1917. Two years later, in 1919, the state became a nationally recognized death registration jurisdiction. In 1924, the state became a nationally recognized birth registration jurisdiction. Since 1927, marriage and dissolution records have been filed with the Office of Vital Statistics.³ 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 where the birth occurred or submitted electronically to the state registrar. Responsibility for filing the certificate is assigned to various persons depending upon where 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.⁴

Death and Fetal Death Registration

A certificate for each death or fetal death⁵ 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.⁶

¹ The statutes consistently refer to the “Office” of Vital Statistics and not the “Bureau” of Vital Statistics. For example, see s. 382.003, F.S. While the statutes refer to an Office of Vital Statistics, the DOH has established this responsibility at the bureau level. See the DOH’s organizational chart available at: <http://www.floridahealth.gov/about-the-department-of-health/documents/orgchart.pdf>.

² Section 382.002(17), F.S.

³ Department of Health, Florida Vital Statistics Annual Report, August 2016, Page *vii*, <http://www.flpublichealth.com/VSBOOK/pdf/2015/Intro.pdf> (last visited March 16, 2017).

⁴ Section 382.013, F.S.

⁵ 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.

⁶ Section 382.008(1), F.S.

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.⁷ This law is known as Katherine's Law.⁸

The certificate of birth resulting in stillbirth is not proof of live birth⁹ and may not be used to establish identity.¹⁰ Gestation must be 20 weeks or more,¹¹ and there must be a fetal death certificate on file with the Bureau of Vital Statistics in order for a certificate to be prepared. The information included on the certificate comes from the fetal death certificate.

Miscarriage

Miscarriage is often described as the spontaneous loss of a pregnancy that occurs before the 20th week of gestation. Approximately 10 to 20 percent of all known pregnancies end in miscarriage. The number of miscarriages might actually be higher because some occur before a woman is aware that she is pregnant.¹²

Stephanie Saboor Grieving Parents Act

In 2003, the Legislature enacted the Stephanie Saboor Grieving Parents Act.¹³ The act applies to a physician, physician assistant, nurse, or midwife¹⁴ or a hospital, ambulatory surgical center, or birth center¹⁵ with custody of fetal remains following a spontaneous fetal demise that occurs after a gestation period of less than 20 completed weeks. Those persons or facilities are required 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.^{16,17}

III. Effect of Proposed Changes:

Section 1 creates the “Grieving Families Act,” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage.

Section 2 amends 382.002, F.S., to define a “nonviable birth” as an unintentional, spontaneous fetal demise that occurs after the completion of the 9th week of gestation but before the 20th week of gestation. The pregnancy must have been verified by a health care practitioner.

⁷ 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.

⁸ Ch. 2006-118, Laws of Fla.

⁹ Section 382.0085(4)(e), F.S.

¹⁰ See <http://www.floridahealth.gov/certificates/certificates/birth/Stillbirth/index.html> (last visited March 16, 2017).

¹¹ Section 382.002(16), F.S.

¹² 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 16, 2017).

¹³ Chapter 2003-52, L.O.F., codified at s. 383.33625, F.S.

¹⁴ See s. 383.33625(2), F.S., which requires a health care practitioner licensed pursuant to chapter 458, 459, 464, or 467, F.S., to provide the notification.

¹⁵ Section 383.33625(4), F.S., requires a facility licensed pursuant to chapter 383 or chapter 395, F.S., to provide the notification.

¹⁶ Section 383.33625(4), F.S.

¹⁷ Fetal remains of less than 20 completed weeks of gestation would be considered biomedical waste, which is governed by s. 381.0098, F.S.

Section 3 amends s. 382.008, F.S., to provide that 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 Office of Vital Statistics 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 Office of Vital Statistics in order to obtain the certificate of nonviable birth, and that a copy of the original is available as a public record.

Section 5 creates s. 382.0086, F.S., to require the DOH to 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 provisions of this section closely follow the provisions for obtaining a certificate of birth resulting in stillbirth.¹⁸ This section requires the request for a certificate of nonviable birth to be on a form adopted by rule promulgated by the DOH, which includes the date of the nonviable birth and the county in which the nonviable birth occurred.

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, which provides, “This certificate is not proof of a live birth.”

Only a parent named on the nonviable birth registration may request the Office of Vital Statistics to issue a certificate of nonviable birth. This request may be made at any time. This section provides that the Office of Vital Statistics may refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration. This refusal is final agency action and is not subject to review under chapter 120, F.S., the Administrative Procedures Act. However, once the certificate has been issued, any person may request a copy of that certificate pursuant to a public records request.

This section further provides:

- That the Office of Vital Statistics 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.

¹⁸ See s. 382.0085, F.S.

- Rulemaking authority for the DOH to prescribe the form, content, and process for issuance of a certificate of nonviable birth.

Section 6 amends s. 382.0255, F.S., to authorize the DOH to impose a fee of between \$3 and \$5 for processing and filing a new certificate of nonviable birth.

Section 7 provides that the effective date of the bill is 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 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 that the registration of nonviable birth be filed with the Office of Vital Statistics.

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 the bill are triggered, these entities will experience similar administrative expenses as those in the private sector.

The DOH will experience an indeterminate positive fiscal impact from the assessment of a fee – between \$3 and \$5 – for the issuance of a certificate of nonviable birth. The

volume of requests by parents for a certification of nonviable births is unknown. The collection of fees established in the bill should offset additional administrative expenses incurred by the DOH for the implementation of the bill.

The DOH will need to develop a web-based nonviable birth module and develop forms for registration and certification of nonviable births and system and database changes. The cost for system development is estimated at \$50,000, which would be a nonrecurring expenditure and absorbed within existing resources of the DOH.¹⁹

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 similar legislation, becomes a law.

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.

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.

¹⁹ *Department of Health, House Bill 101 Fiscal Analysis (Jan. 9, 2017) (on file with the Senate Committee on Judiciary.)*