

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7007 PCB GOS 22-02 OGSR/Nonviable Birth Certificates/Department of Health
SPONSOR(S): Government Operations Subcommittee, Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 7000

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Government Operations Subcommittee | 13 Y, 0 N | Roth | Toliver |
| 1) Professions & Public Health Subcommittee | 16 Y, 0 N | Rahming | McElroy |
| 2) State Affairs Committee | 20 Y, 0 N | Roth | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Vital Statistics Act directs the Department of Health (DOH) to establish the Bureau of Vital Statistics under the direction of a state registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records in Florida.

A nonviable birth is an “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.” For any nonviable birth in Florida, DOH must issue a certificate of nonviable birth within 60 days upon the request of a parent named on the registration of nonviable birth.

Current law provides a public record exemption for certain information that may be collected by DOH when issuing a nonviable birth certificate. Specifically, the parentage of the fetus, marital status of the parents, the cause of death, and any medical information included in nonviable birth records are confidential and exempt from public disclosure. However, DOH may issue a certified copy of an original nonviable birth certificate, which includes the confidential and exempt information, to the fetus’s parent; to any local, state, or federal agency for official purposes upon approval by DOH; or upon the order of any court of competent jurisdiction. Additionally, DOH may release the confidential and exempt information for health research purposes as approved by the department.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2022, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Department of Health (DOH)

The purpose of DOH is to protect and promote the health of all residents and visitors in Florida.⁵ Under current law, DOH must:

- Identify, diagnose, and conduct surveillance of diseases and health conditions in the state and accumulate the health statistics necessary to establish trends.
- Implement interventions that prevent or limit the impact or spread of diseases and health conditions.
- Collect, manage, and analyze vital statistics and other health data to inform the public and formulate public health policy and planning.
- Maintain and coordinate preparedness for and responses to public health emergencies in the state.
- Provide or ensure the provision of quality health care and related services to identified populations in the state.
- Regulate environmental activities that have a direct impact on public health in the state.
- Regulate health practitioners for the preservation of the health, safety, and welfare of the public.⁶

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, Fla. Const.

⁵ Section 20.43(1), F.S.

⁶ Section 20.43(1)(a)-(g), F.S.

Vital Statistics in Florida

The Florida Vital Statistics Act⁷ directs DOH to establish the Bureau of Vital Statistics⁸ under the direction of a state registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records⁹ in this state.¹⁰ DOH is also responsible for establishing registration districts throughout the state and appointing a local registrar of vital statistics for each registration district.¹¹

Registration of Live Births

Within five days of each live birth in Florida, a certificate of live birth must be filed with the local registrar of the district in which the birth occurred.¹² The state registrar may receive the registration of the birth certificate electronically through facsimile or other electronic transfer.¹³

Registration of Deaths

A certificate for each death or fetal death¹⁴ that occurs in Florida must be filed within five days after such death and prior to the final disposition of the dead body or fetus.¹⁵ “Final disposition” means the burial, interment, entombment, cremation, removal from the state, anatomical donation, or other authorized disposition of a dead body or fetus.¹⁶ The registration of the death certificate may be submitted via DOH’s electronic death registration system to the Bureau of Vital Statistics on a form prescribed by DOH, or to the local registrar of the district in which the death occurred.¹⁷

Stillbirth Registration

DOH must issue a certificate of birth resulting in stillbirth upon the request of any parent listed on a fetal death certificate.¹⁸ A stillbirth is an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.¹⁹ The certificate of birth resulting in stillbirth must be issued within 60 days of the request²⁰ and a parent may request the certificate of birth resulting in stillbirth regardless of the date the fetal death certificate was issued.²¹ 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.²²

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. 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.²³

⁷ Section 382.001, F.S.

⁸ Although the statute refers to an Office of Vital Statistics, it has been established as the Bureau of Vital Statistics within DOH. The Bureau has been established under DOH’s Division of Public Health Statistics and Performance Management.

⁹ 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. S. 382.002(18), F.S.

¹⁰ Section 382.003(1), F.S.

¹¹ Section 382.003(2), F.S.

¹² Section 382.013, F.S.

¹³ Section 382.013(1)(h), F.S.

¹⁴ Section 382.002(8), F.S., defines a “fetal death” as 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.

¹⁵ Section 382.008(1), F.S.

¹⁶ Section 382.002(9), F.S.

¹⁷ Section 382.008(1), F.S.

¹⁸ Section 382.0085, F.S.

¹⁹ Section 382.002(17), F.S.

²⁰ Section 382.0085(1), F.S.

²¹ Section 382.0085(6), F.S.

²² Section 382.0085(9), F.S.

²³ Section 382.0085(2), F.S.

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.²⁴

Certificate of Nonviable Birth

A nonviable birth is an “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.”²⁵ For any nonviable birth in Florida, DOH must issue a certificate of nonviable birth within 60 days upon the request of a parent named on the registration of nonviable birth.²⁶

The person or entity authorized to register a nonviable birth must advise a parent of a nonviable birth of the following:²⁷

- 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 Bureau of Vital Statistics.
- How the parent may contact the Bureau of Vital Statistics to request a certificate of nonviable birth.
- That a copy of the original certificate of nonviable birth is available as a public record.
- That a copy of the original certificate of nonviable birth will not include the parentage, the marital status of the parent, the cause of death of the fetus, or any medical information.

Within 30 days of a receipt of a request from a parent, the 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 DOH or a local registrar of the district in which the nonviable birth occurred.²⁸ The registration may be filed in the state’s electronic death registration system or on a form prescribed by DOH.²⁹

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.³⁰ If the fetus does not have a name, the Bureau of Vital Statistics is directed to indicate “baby boy” or “baby girl” and the last name of the parent on the certificate of nonviable birth. If the sex of the fetus is not known, the Bureau of Vital Statistics is directed to indicate the name “baby” and the last name of the parent on the certificate of nonviable birth.³¹ The certificate must state, “This certificate is not proof of a live birth,” on its front.³²

The Bureau of Vital Statistics may not use a certificate of nonviable birth in the calculation of live birth statistics, and a 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.³³

Public Record Exemption under Review

In 2017, the Legislature created a public record exemption in s. 382.008(8), F.S., for certain information that may be collected by DOH when issuing a nonviable birth certificate. Specifically, the parentage of

²⁴ Section 382.0085(4), F.S.

²⁵ Section 382.002(14), F.S.

²⁶ Section 382.0086(1), F.S.

²⁷ Section 382.0086(2), F.S.

²⁸ Section 382.008(7), F.S.

²⁹ *Id.*

³⁰ Section 382.0086(4)(a)-(c), F.S.

³¹ Section 382.0086(4)(c), F.S.

³² Section 382.0086(4)(d), F.S.

³³ Sections 382.0086(8) and (9), F.S.

the fetus, marital status of the parents, the cause of death, and any medical information included in nonviable birth records are confidential and exempt³⁴ from public disclosure. However, DOH may issue a certified copy of an original nonviable birth certificate, which includes the confidential and exempt information, to the fetus's parent; to any local, state, or federal agency for official purposes upon approval by DOH; or upon the order of any court of competent jurisdiction. Additionally, DOH may release the confidential and exempt information for health research purposes as approved by the department.

The 2017 public necessity statement³⁵ for the exemption states the following:

Medical information, including the cause of death of a nonviable fetus, and any medical information pertaining thereto, is sensitive and personal in nature and disclosure of such information may lead to an invasion of privacy of a parent experiencing a nonviable birth. Disclosure of information regarding the parentage of a nonviable fetus and the marital status of such fetus' parent may discourage an individual who would otherwise request a nonviable birth certificate from doing so due to real or perceived stigma regarding the nonviability of the fetus, the fetus' parentage, or the marital status of the fetus' parent. Currently, death and fetal death records make such information confidential and exempt from public disclosure. The Legislature finds that the same protections should be afforded to a parent who wishes to memorialize a nonviable birth with a nonviable birth certificate as part of his or her grieving process.³⁶

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless saved from repeal by the Legislature.³⁷

During the 2021 interim, subcommittee staff met with staff from DOH. DOH staff stated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, DOH staff stated they had not received any complaints concerning the exemption. As such, DOH staff recommended that the exemption be reenacted as is.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption for certain information that may be collected when issuing a nonviable birth certificate, thereby reenacting the public record exemption. The bill also makes non-substantive changes to the statute to create uniformity with similar statutes.

B. SECTION DIRECTORY:

Section 1: Amends s. 382.008, F.S., to save from repeal the public record exemption for nonviable birth records.

Section 2: Provides an effective date of October 1, 2022.

³⁴ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (Aug. 1, 1985).

³⁵ Art. I, s. 24(c), Fla. Const., requires each public record exemption "state with specificity the public necessity justifying the exemption."

³⁶ Chapter 2017-39, L.O.F.

³⁷ Section 382.008(8)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.