

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 439 CS Certificate of Birth Resulting in Stillbirth  
**SPONSOR(S):** Planas and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 746

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| REFERENCE                               | ACTION         | ANALYST          | STAFF DIRECTOR |
|---|----------------|------------------|----------------|
| 1) Health Care Regulation Committee     | 9 Y, 0 N, w/CS | Bell             | Mitchell       |
| 2) Governmental Operations Committee    |                | Ziegler/Mitchell | Williamson     |
| 3) Health Care Appropriations Committee |                |                  |                |
| 4) Health & Families Council            |                |                  |                |
| 5) _____                                |                |                  |                |

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### SUMMARY ANALYSIS

The bill allows the parent of a stillborn child to receive a "certificate of birth resulting in stillbirth." The bill specifies the information to be given the parent of a stillborn child regarding the availability of the certificate of birth resulting in stillbirth. The bill sets forth requirements for the certificate of birth resulting in stillbirth.

The bill authorizes the Department of Health to prescribe the form and content of a certificate of birth resulting in stillbirth by rule. The bill also provides a broad grant of rulemaking authority to the Department of Health for administration.

The fiscal impact on state government expenditures is estimated at \$4,700 for forms and computer system modifications in the first year. The fiscal impact on state government revenues is projected to be \$603 in the first year and \$900 in the second year. The bill does not appear to create, modify, or eliminate revenues or expenditures of local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill creates a “certificate of birth resulting in stillbirth.” The certificate of birth resulting in stillbirth is optional and is in addition to the certificate of fetal death. There appears to be a fiscal impact on state government expenditures which is not immediately offset by a fiscal impact on state government revenues. The bill increases the rulemaking authority of the Department of Health.

Empower Families - The certificate of birth resulting in stillbirth may help families with the grieving and healing process.

### B. EFFECT OF PROPOSED CHANGES:

#### Vital Records and Fetal Deaths

The Florida Vital Statistics Act<sup>1</sup> authorizes the Department of Health to establish an Office of Vital Statistics, which is responsible for the uniform and efficient registration, compilation, storage, and preservation of all vital records<sup>2</sup> in Florida, including births and fetal deaths.<sup>3</sup>

Section 382.031, Florida Statutes, sets forth the requirements for certificates of births for live births.<sup>4</sup> Section 382.008, Florida Statutes, sets forth the requirements for certificates of fetal death.<sup>5</sup>

There currently is no separate definition, category, or certificate for a stillbirth, which is “an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.”<sup>6</sup> This bill creates a definition of stillbirth<sup>7</sup> and creates section 382.0085, Florida Statutes, to provide for a “stillbirth registration.”

The bill requires the person filing the fetal death certificate<sup>8</sup> to advise the parent of a stillborn child that the parent has the option to obtain a “certificate of birth resulting in stillbirth”<sup>9</sup> by contacting the Office of Vital Statistics. The bill provides that a certificate of birth resulting in stillbirth:

- May only be requested by a parent named on a fetal death certificate;
- May be issued regardless of the date on which the certificate of fetal death was issued;
- May be subject to a fee of not less than \$3 or more than \$5;

<sup>1</sup> Fla. Stat. § 382.001 (2005) (provides that chapter 382, Florida Statutes, is the Florida Vital Statistics Act).

<sup>2</sup> Fla. Stat. § 382.002(13) (2005) (vital records include certificates or reports of birth, death, fetal death, marriage, dissolution of marriage (divorce), and name changes).

<sup>3</sup> Fla. Stat. § 382.003 (2005).

<sup>4</sup> Fla. Stat. § 382.002(9) (2005) (“the complete expulsion or extraction of a product of human conception from its mother, irrespective of the duration of pregnancy, which, after such expulsion, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, and definite movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached”).

<sup>5</sup> Fla. Stat. § 382.002(5) (2005) (“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> Fla. HB 439 CS (2005).

<sup>7</sup> The bill creates a new definition in section 382.002(14), Florida Statutes.

<sup>8</sup> Fla. Stat. §382.008(2) (2005) (The funeral director is responsible for filing the certificate of fetal death; in the absence of a funeral director, a physician or other person in attendance at or after the death is responsible for filing the certificate of fetal death.)

<sup>9</sup> The bill creates a new definition in section 382.002(1), Florida Statutes.

- Must include the state file number of the corresponding certificate of death;
- Must contain the statement: “This certificate is not proof of a live birth.”
- May not be used to calculate live birth statistics;

The bill requires the parents to be told how to contact the Office of Vital Statistics and that the copy of the certificate of birth resulting in stillbirth is a public record.

The bill authorizes rulemaking by the Department of Health to prescribe the form and content of the certificate of birth resulting in death and to specify the information necessary to prepare the certificate. The bill also permits broad rulemaking “to administer” section 382.0085, Florida Statutes.

The bill provides that the Department of Health is entitled to a fee of not less than \$3 or more than \$5 for the certificate of birth resulting in still birth.

The bill takes effect July 1, 2006.

### Stillbirth Legislation in Other States

Thirteen other states have passed legislation which provides a certificate that includes the words “Certificate of Birth” in the title to the parents of stillborn children: Arizona (2001), Indiana (2002), Louisiana (2003), Maryland (2003), Massachusetts (2002), Minnesota (2005), Missouri (2004), New Jersey (2004), South Carolina (2004), Texas (2005), Utah (2002), Virginia (2003), and Wisconsin (2004).<sup>10</sup>

#### C. SECTION DIRECTORY:

Section 1: Amends section 382.002, Florida Statutes, to provide definitions.

Section 2: Creates section 382.0085, Florida Statutes, to provide for stillbirth registration and a certificate of birth resulting in stillbirth.

Section 3: Amends section 382.0255, Florida Statutes, to provide a fee.

Section 4: Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Department of Health estimates a \$603 fiscal impact on state government revenues in year one and a \$900 fiscal impact on state government revenues in year two.

##### 2. Expenditures:

The Department of Health estimates a \$4,700 fiscal impact on state government revenues: \$1,200 for form design/printing costs and \$3,500 for computer system modifications.

<sup>10</sup> MISS Foundation, Legislative Reference Site, at <http://www.missingangelsbill.org/stchart.html> (last visited Mar. 6, 2006) (the MISS Foundation believes that states should record births as births, whether live or still, since

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to create, modify, amend, or eliminate revenues of local governments.

2. Expenditures:

This bill does not appear to create, modify, amend, or eliminate expenditures of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Vital Statistics is authorized to charge a fee for a certificate of birth resulting in stillbirth.

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 spend funds or take action requiring the expenditure of funds. This bill does not appear to reduce the percentage of state tax shared with counties or municipalities. This bill does not appear reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Health to prescribe the form and content of a certificate of birth resulting in stillbirth by rule. The bill also provides a broad grant of rulemaking authority to the Department of Health for administering the new provision.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Ordering a Certificate

The bill currently provides that a parent *may* provide a name for a stillborn child, the date of the event, and the county in which the event occurred on the request for a certificate of birth resulting in stillbirth. This language may be too permissive for the Department of Health to be able to require sufficient information in order to locate the fetal death certificate. That is, a parent is not required to provide *any* information, but can request a certificate of birth resulting in stillbirth. The Department of Health would then be required to do a more expansive records search or ask for additional information which the parents are not required to give. As such, the sponsor may wish to require the date of the event and the county in which the event occurred, but keep the name optional.

Drafting Issue: Public Record

In creating the certificate of birth resulting in stillbirth, the bill does not unequivocally provide whether this certificate acts as a birth certificate or a fetal death certificate. Although the bill provides duplicitous warning requirements for parents that the certificate of birth resulting in stillbirth is a public record,

section 382.025(1), Florida Statutes, provides that “all birth records of this state shall be confidential and exempt from the provisions of section 119.07(1), Florida Statutes.”<sup>11</sup>

The sponsor may wish to specifically state how this record should operate. The sponsor may also wish to remove the duplicitous public record warning requirements.

Drafting Issue: Rulemaking Authority

The bill authorizes the Department of Health to “adopt rules...to administer this section.” Because this is a very broad grant of rulemaking authority, the sponsor may wish to provide more specific guidance to the Department of Health.

Drafting Issue: Fee Placement

The authorization for the Department of Health to charge a fee for a certificate of birth resulting in stillbirth is placed in a paragraph relating to records searched and retrieved. The sponsor may wish to create a new paragraph to provide for these fees.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 22, 2006 the Health Care Regulation Committee adopted three amendments:

- Amendment 1 - Specified that a Certificate of Birth Resulting in Stillbirth is a public record.
- Amendment 2 - Removed a time constraint on the Department of Health development of the form and content of the Certificate of Birth Resulting in Stillbirth by rule.
- Amendment 3 - Requires the Office of Vital Statistics to inform any patient that requests a Certificate of Birth Resulting in Stillbirth that the document is an official public record.

The Health Care Regulation Committee reported the bill favorably with committee substitute.

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<sup>11</sup> This provision does not apply to birth records over 100 years old or those under seal pursuant to court order.