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DATE: February 20, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH REGULATION
ANALYSIS**

BILL #: HB 1211
RELATING TO: Vital Statistics - "Infants Born Alive Protection Act"
SPONSOR(S): Representative Flanagan
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION
 - (2) COUNCIL FOR HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Section 382.002(9), F.S., currently states, "live birth" means 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.

This bill creates the Infants Born Alive Protection Act. It amends section 382.002(9), F.S., the definition of "live birth" on vital statistics by adding that the definition shall apply whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

According to the Department of Health (DOH), Vital Statistics Program, the new language makes the definition of live birth different from the National Center for Health Statistics (NCHS) Model definition of Live Birth that all 50 states and seven registration districts have adopted and utilize in submitting health statistics to NCHS. This would be a change in how it is currently done nationally and may make Florida a non-standard reporting state. This could affect Florida's statistics by inflating the infant mortality and infant death rates.

The bill specifies that the following three procedures could result in a live birth: natural or induced labor, cesarean section, or induced abortion. Under current law, a birth certificate is required for each live birth s. 382.013, F.S.. By clarifying the definition of live birth in the vital statistics chapter, all live birth reporting requirements must be met.

Based on information provided by the DOH, any fiscal impact would be minimal.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

Increases the frequency in which the local registrar will have to create certificates.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Currently, live births require that a birth certificate be filed, s. 382.013, F.S.-- Birth registration. If a death then occurs, a death certificate must then be filed, s. 382.008, F.S.—Death and fetal death registration.

According to the department, the public has access to the number of births and deaths that occur in any facility, office, or any other place in which a doctor is in attendance.

Florida Laws

Definitions --

Section 382.002 (9), F.S., currently states, "**live birth**" means 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.

Section 390.011 (1), F.S., "**Abortion**" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

The "abortion" definition clearly states that the intent of the mother is an element of the definition. However, that intention does not preclude the possibility that a fetus could have vital signs within the definition of s. 382.002, F.S., after an abortion procedure has been performed. According to the DOH, no birth certificates are currently filed for abortions that result in a fetus displaying vital signs after extraction.

Centers for Disease Control and Prevention model law definition

According to DOH, Office of Vital Statistics Program, the Centers for Disease Control and Prevention (CDC) model law definition of a "live birth" is as follows:

"Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of the pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

Florida Laws

Section 382.013, F.S., **Birth registration.**--A certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred and shall be registered by the local registrar if the certificate has been completed and filed in accordance with this chapter and adopted rules. The information regarding registered births shall be used for comparison with information in the state case registry, as defined in chapter 61.

(1) FILING.--

(a) If a birth occurs in a hospital, birth center, or other health care facility, or en route thereto, the person in charge of the facility shall be responsible for preparing the certificate, certifying the facts of the birth, and filing the certificate with the local registrar. Within 48 hours after the birth, the physician, midwife, or person in attendance during or immediately after the delivery shall provide the facility with the medical information required by the birth certificate.

(b) If a birth occurs outside a facility and a physician licensed in this state, a certified nurse midwife, a midwife licensed in this state, or a public health nurse employed by the department was in attendance during or immediately after the delivery, that person shall prepare and file the certificate.

(c) If a birth occurs outside a facility and the delivery is not attended by one of the persons described in paragraph (b), the person in attendance, the mother, or the father shall report the birth to the registrar and provide proof of the facts of birth. The department may require such documents to be presented and such proof to be filed as it deems necessary and sufficient to establish the truth of the facts to be recorded by the certificate and may withhold registering the birth until its requirements are met.

(d) If a birth occurs in a moving conveyance and the child is first removed from the conveyance in this state, the birth shall be filed and registered in this state and the place to which the child is first removed shall be considered the place of birth.

(e) The mother or the father of the child shall attest to the accuracy of the personal data entered on the certificate in time to permit the timely registration of the certificate.

(f) If a certificate of live birth is incomplete, the local registrar shall immediately notify the health care facility or person filing the certificate and shall require the completion of the missing items of information if they can be obtained prior to issuing certified copies of the birth certificate.

(2) PATERNITY.--

(a) If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction.

(b) Notwithstanding paragraph (a), if the husband of the mother dies while the mother is pregnant but before the birth of the child, the name of the deceased husband shall be entered on the birth

certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction.

(c) If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. The facility shall give notice orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor, any rights afforded due to minority status, and responsibilities that arise from signing an acknowledgment of paternity, as well as information provided by the Title IV-D agency established pursuant to s. 409.2557, regarding the benefits of voluntary establishment of paternity. Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit or a notarized voluntary acknowledgment of paternity.

(d) If the paternity of the child is determined by a court of competent jurisdiction as provided under s. 382.015, the name of the father and the surname of the child shall be entered on the certificate in accordance with the finding and order of the court. If the court fails to specify a surname for the child, the surname shall be entered in accordance with subsection (3).

(e) If the father is not named on the certificate, no other information about the father shall be entered on the certificate.

(5) DISCLOSURE.--The original certificate of live birth shall contain all the information required by the department for legal, social, and health research purposes. However, all information concerning parentage, marital status, and medical details shall be confidential and exempt from the provisions of s. 119.07(1), except for health research purposes as approved by the department, nor shall copies of the same be issued except as provided in s. 382.025.

Section 382.008, F.S., **Death and fetal death registration.--**

(1) A certificate for each death and fetal death which occurs in this state shall be filed on a form prescribed by the department with the local registrar of the district in which the death occurred within 5 days after such death and prior to final disposition, and shall be registered by such registrar if it has been completed and filed in accordance with this chapter or adopted rules. The certificate shall include the decedent's social security number, if available. In addition, each certificate of death or fetal death:

(2) The funeral director who first assumes custody of a dead body or fetus shall file the certificate of death or fetal death. In the absence of the funeral director, the physician or other person in attendance at or after the death shall file the certificate of death or fetal death. The person who files the certificate shall obtain personal data from the next of kin or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail, by the physician or medical examiner responsible for furnishing such information. For fetal deaths, the physician, midwife, or hospital administrator shall provide any medical or health information to the funeral director within 72 hours after expulsion or extraction.

(3) Within 72 hours after receipt of a death or fetal death certificate from the funeral director, the medical certification of cause of death shall be completed and made available to the funeral director by the physician in charge of the decedent's care for the illness or condition which resulted in death, the physician in attendance at the time of death or fetal death or immediately before or after such death or fetal death, or the medical examiner if the provisions of s. 382.011 apply. The physician or medical examiner shall certify over his or her signature the cause of death to the best of his or her knowledge and belief.

(a) The local registrar may grant the funeral director an extension of time upon a good and sufficient showing of any of the following conditions:

1. An autopsy is pending.
2. Toxicology, laboratory, or other diagnostic reports have not been completed.
3. The identity of the decedent is unknown and further investigation or identification is required.

(b) If the physician or medical examiner has indicated that he or she will sign and complete the medical certification of cause of death, but will not be available until after the 5-day registration deadline, the local registrar may grant an extension of 5 days. If a further extension is required, the funeral director must provide written justification to the registrar.

(4) If the local registrar has granted an extension of time to provide the medical certification of cause of death, the funeral director shall file a temporary certificate of death or fetal death which shall contain all available information, including the fact that the cause of death is pending. The physician or medical examiner shall provide an estimated date for completion of the permanent certificate.

(5) A permanent certificate of death or fetal death, containing the cause of death and any other information which was previously unavailable, shall be registered as a replacement for the temporary certificate. The permanent certificate may also include corrected information if the items being corrected are noted on the back of the certificate and dated and signed by the funeral director, physician, or medical examiner, as appropriate.

(6) The original certificate of death or fetal death shall contain all the information required by the department for legal, social, and health research purposes. All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records of this state are confidential and exempt from the provisions of s. 119.07(1), except for health research purposes as approved by the department; nor may copies of the same be issued except as provided in s. 382.025.

Section 382.025, F.S., Certified copies of vital records; confidentiality; research.--

(1) BIRTH RECORDS.--Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records of this state shall be confidential and are exempt from the provisions of s. 119.07(1).

(a) Certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1) and, upon receipt of a request and payment of the fee prescribed in s. 382.0255, shall be issued only as authorized by the department and in the form prescribed by the department, and only:

1. To the registrant, if of legal age;
2. To the registrant's parent or guardian or other legal representative;
3. Upon receipt of the registrant's death certificate, to the registrant's spouse or to the registrant's child, grandchild, or sibling, if of legal age, or to the legal representative of any of such persons;
4. To any person if the birth record is over 100 years old and not under seal pursuant to court order;

5. To a law enforcement agency for official purposes;
6. To any agency of the state or the United States for official purposes upon approval of the department; or
7. Upon order of any court of competent jurisdiction.

(b) To protect the integrity of vital records and prevent the fraudulent use of the birth certificates of deceased persons, the department shall match birth and death certificates and post the fact of death to the appropriate birth certificate. Except for a commemorative birth certificate, any certification of a birth certificate of a deceased registrant shall be marked "deceased." In the case of a commemorative birth certificate, such indication of death shall be made on the back of the certificate.

(c) The department shall issue, upon request and upon payment of an additional fee as prescribed under s. 382.0255, a commemorative birth certificate representing that the birth of the person named thereon is recorded in the office of the registrar. The certificate issued under this paragraph shall be in a form consistent with the need to protect the integrity of vital records but shall be suitable for display. It may bear the seal of the state printed thereon and may be signed by the Governor.

(2) OTHER RECORDS.--

(a) The department shall authorize the issuance of a certified copy of all or part of any marriage, dissolution of marriage, or death or fetal death certificate, excluding that portion which is confidential and exempt from the provisions of s. 119.07(1) as provided under s. 382.008, to any person requesting it upon receipt of a request and payment of the fee prescribed by this section. **A certification of the death or fetal death certificate** which includes the confidential portions shall be issued only:

1. To the registrant's spouse or parent, or to the registrant's child, grandchild, or sibling, if of legal age, or to any person who provides a will that has been executed pursuant to s. 732.502, insurance policy, or other document that demonstrates his or her interest in the estate of the registrant, or to any person who provides documentation that he or she is acting on behalf of any of them;
2. To any agency of the state or local government or the United States for official purposes upon approval of the department; or
3. Upon order of any court of competent jurisdiction.

(b) All portions of a certificate of death shall cease to be exempt from the provisions of s. 119.07(1) 50 years after the date of death.

(3) RECORDS AND DATA DISTRIBUTION.--The department may issue vital records or data to:

(a) A federal agency, if the agency shares in the cost of collecting, processing, and transmitting such data and if the data is only used by the federal agency for statistical purposes or for other purposes specifically authorized by the department.

(b) An office of vital statistics for a jurisdiction outside this state, pursuant to an agreement with the department, when such records or other reports relate to residents of that jurisdiction or persons born in that jurisdiction. The agreement must require that the copies be used for statistical and administrative purposes only and must provide for the retention and disposition of such copies.

(c) Other governmental agencies upon such terms or conditions as may be prescribed by the department.

(d) A research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department and maintains the records or data in accordance with the approved protocol and a purchase and data-use agreement with the department. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, or does not have scientific merit. The agreement must restrict the release of any information which would permit the identification of persons found in vital statistics records, limit the use of the records or data to the approved research protocol, and prohibit any other use of the records or data.

Records or data issued under this subsection are exempt from the provisions of s. 119.07(1), and copies of records or data issued pursuant to this subsection remain the property of the department.

(4) CERTIFIED COPIES OF ORIGINAL CERTIFICATES.--Only the state registrar and local registrars are authorized to issue any certificate which purports to be a certified copy of an original certificate of live birth, death, or fetal death. Except as provided in this section, preparing or issuing certificates is exempt from the provisions of s. 119.07(1).

(5) RULES.--The department shall adopt and enforce all rules necessary for carrying out the provisions of this section.

C. EFFECT OF PROPOSED CHANGES:

According to the Department of Health, Vital Statistics Program, the new language makes the definition of live birth different from the National Center for Health Statistics (NCHS) Model definition of Live Birth that all 50 states and 7 registration districts have adopted and utilize in submitting health statistics to NCHS. This would be a change in how it is currently done nationally and may make Florida a non-standard reporting state. This could affect Florida's statistics by inflating the infant mortality and infant death rates.

The bill specifies that the following three procedures could result in a live birth: natural or induced labor, cesarean section, or induced abortion. Any person responsible for performing abortions, whether in a hospital, doctor's office, or abortion clinic, will have to file a birth certificate for any live birth that results from an abortion. In some cases, a death certificate may also then have to be filed. The public will have access to the number of occurrences for all facilities or offices in which live births occurred.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Cites act as the "Infants Born Alive Protection Act."

Section 2. Amends section 382.002(9), F.S., to include in the definition of a live birth that this definition shall apply whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

Section 3. Provides that the act shall take effect upon becoming law.

III. 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:

Based on information provided by DOH, any fiscal impact would be minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Right of Privacy under the Federal Constitution:

The United States Supreme Court's decision in Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) sets forth the limits that the 14th Amendment Due Process Clause of the United States Constitution imposes on the states' ability to interfere with abortion procedures.

505 U.S. at 874. In Casey, the Court held that a state has legitimate interests in protecting the life of the fetus, however, the Court held that the following two principles are paramount:

1. A woman has a right to an abortion before viability and to obtain it without undue interference from the state. Id. at 846.
2. Subsequent to viability, the state in promoting its interest in the potentiality of human life may ... proscribe abortion, except where it is necessary in appropriate medical judgment, for the preservation of the life or health of the mother. Id. at 879, quoting Roe v. Wade, 410 U.S. at 164-165.

Under Casey, state legislation that does not comply with these two principles may raise constitutional concerns.

Right of Privacy under the Florida Constitution:

The Florida Supreme Court has held that the express right of privacy in Section 23 of Article I of the Florida Constitution provides broader protection than that afforded by the U.S. Constitution. See Winfield v. Division of Pari-Mutual Wagering, 477 So.2d 544 (Fla. 1985). Therefore, any state regulation of a fundamental right is subject to the higher standard of review, i.e., strict scrutiny. The Florida Supreme Court has held that the right of privacy is “clearly implicated in a woman’s decision of whether or not to continue her pregnancy.” In re T.W., 551 So.2d 1186, 1192 (1989)(statute for parental consent for a minor’s abortion declared unconstitutional). Therefore, any statute or regulation regarding termination of pregnancy must be analyzed against whether the state has a compelling state interest and whether the state has satisfied its burden to justify its regulatory goal through the use of the least intrusive means. Id., citing to Winfield, 447 So.2d at 547.

Constitutional Implications:

The bill may possibly implicate a woman’s right of privacy, if the changes to the definition of “live birth” are construed by the courts to have the purpose or effect of placing an undue burden on the woman’s right to choose to have an abortion before viability.

Another question that arises is whether there are commonly-used, previability abortion procedures that result in a fetus displaying the statutorily defined vital signs after extraction from the mother. There is no adequate statistical data available on this question.

The statutory definition of abortion in Florida, found in s. 390.011(1), F.S., is the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

Although the bill does not specifically, by its language, limit a type of abortion procedure, the proposed changes to the definition of “live birth” may affect certain types of abortion procedures. If an abortion procedure used before viability results in an extraction or expulsion of a fetus that displays the vital signs indicated in the current statute, according to the bill, this would be a “live birth” and a birth certificate would then have to be issued.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to the National Conference of State Legislatures, 18 states have enacted legislation relating to fetuses born alive. Most of those laws explicitly provide protections and rights for those fetuses.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

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