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# Health & Human Services Committee

**Tuesday, January 23, 2024  
12:30 PM – 2:30 PM  
Morris Hall (17 HOB)**

**Meeting Packet**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Committee

**Start Date and Time:** Tuesday, January 23, 2024 12:30 pm  
**End Date and Time:** Tuesday, January 23, 2024 02:30 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

CS/HB 529 Pub. Rec./Photographs, Recordings, and Reports of Autopsies of Suicide Victims by Ethics, Elections & Open Government Subcommittee, Trabulsy  
HB 677 Organ Donation by Berfield, Harris  
HB 775 Surrendered Infants by Canady, Beltran

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m. Monday, January 22, 2024.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 22, 2024.

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at [www.myfloridahouse.gov](http://www.myfloridahouse.gov).

**NOTICE FINALIZED on 01/19/2024 4:03PM by Arnold.Sabrina**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 529 Pub. Rec./Photographs, Recordings, and Reports of Autopsies of Suicide Victims

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee, Trabulsky

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee	16 Y, 0 N, As CS	Rando	Toliver
2) Health & Human Services Committee		Guzzo	Calamas
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law provides that photographs, videos, and audio recordings held by an agency that depict or record the following incidents are confidential and exempt from public record requirements:

- The killing of a law enforcement officer acting in accordance with his or her official duties.
- The killing of a victim of mass violence.
- The killing of a minor.

Additionally, photographs, videos, and audio recordings of an autopsy held by a medical examiner are confidential and exempt from public record requirements. The autopsy report of a minor whose death was related to an act of domestic violence is protected in its entirety and may only be released to a surviving parent if he or she did not commit the act of domestic violence.

In all other circumstances the surviving spouse — or in the case of a minor, any surviving parent — of the deceased may view, listen to, and copy such records. If there is no surviving spouse, the surviving parents must have access to such records, and if there is no surviving spouse or parent, then the adult children must have such access. Current law permits a court to grant a person authorization to access such records and for the disclosure of such records to a federal, state, or local agency, if disclosure is in furtherance of that agency's official duties.

The bill creates two public record exemptions for certain information related to victims of suicide. The first exemption provides that photographs, videos, and audio recordings held by an agency that depict the suicide of a person are confidential and exempt from public record requirements. The second exemption provides that the autopsy report of a person whose manner of death was suicide, held by a medical examiner, is confidential and exempt from public disclosure. The bill allows for disclosure of such records to a surviving spouse of the deceased. If there is no surviving spouse, the surviving parents must have access, and if there is no surviving spouse or parent, then the surviving adult children and siblings must have access.

The bill provides for retroactive application of the newly-created public record exemptions. The bill also provides the public record exemptions are subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have an insignificant negative fiscal impact on state and local governments. See fiscal comments.

**Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for exemption<sup>2</sup> from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>3</sup>

The Florida Statutes also address the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>4</sup> Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>6</sup> An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.<sup>7</sup>

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>8</sup>

##### Confidentiality of Photographs, Recordings, and Autopsy Reports

Current law makes a photograph, video, or audio recording that depicts or records the following confidential and exempt<sup>9</sup> from public record requirements:

- The killing of a law enforcement officer acting in accordance with his or her official duties.

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<sup>1</sup> Article I, s. 24(a), FLA. CONST.

<sup>2</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

<sup>3</sup> Article I, s. 24(c), FLA. CONST.

<sup>4</sup> See s. 119.01, F.S.

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> Section 119.15(6)(b), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 119.15(3), F.S.

<sup>9</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *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); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *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 Op. Att'y Gen. Fla. 04-09 (2004).

- The killing of a victim of mass violence.
- The killing of a minor.<sup>10</sup>

All photographs, video, and audio recordings contained within autopsy reports held by a medical examiner are also confidential and exempt from public record requirements.<sup>11</sup> However, the autopsy report of a minor whose death was related to an act of domestic violence is protected from disclosure in its entirety and may only be released to a surviving parent who did not commit the act of domestic violence.<sup>12</sup>

In all other circumstances, a surviving spouse — or in the case of a minor, any surviving parent — may view, listen to, or copy any such records.<sup>13</sup> If the deceased has no surviving spouse, the surviving parents must have access to such records, and if there is no surviving spouse or parent, the adult children must have access to the records.<sup>14</sup>

A federal, state, or local government agency may make a written request to access or copy such photographs, recordings, or autopsy reports for the purpose of performing its official duties. The agency must keep the identity of the deceased confidential, unless disclosure is otherwise required in the performance of its official duties.<sup>15</sup>

Any other person wishing to access such photographs, recordings, or autopsy reports may petition the court for authorization to do so. If such a petition is filed with the court, the surviving spouse, or other surviving family member, must be given reasonable notice, a copy of the petition, and an opportunity to be present and heard at any hearing. Upon a showing of good cause, a court may issue an order authorizing any person access to such photographs, recordings, or autopsy reports under the direct supervision of the custodian of the record and may order any appropriate restrictions or stipulations on such access.<sup>16</sup>

The court must consider the following factors to determine if there is good cause relating to a request to access such photographs, recordings, or autopsy reports:

- Whether disclosure is necessary for the public evaluation of governmental performance.
- The seriousness of the intrusion into the deceased's family's right to privacy and whether disclosure is the least intrusive means available.
- The availability of similar information in other public records.<sup>17</sup>

If a petition making such request is filed with the court, the surviving spouse or other family member must be given reasonable notice, a copy of the petition, and have the opportunity to be present and heard at any hearing on the petition.<sup>18</sup>

A custodian of a photograph, recording, or autopsy report who willfully and knowingly violates the provisions of law governing access to these records commits a third-degree felony.<sup>19</sup> Similarly, a person who willfully and knowingly violates a court order regarding such records commits a third-degree felony.<sup>20</sup>

<sup>10</sup> Section 119.071(2)(p)2.a., F.S.

<sup>11</sup> Section 406.135(2)(a), F.S.

<sup>12</sup> Section 406.135(2)(b), F.S.

<sup>13</sup> Section 119.071(2)(p)2.a., F.S.; s. 406.135(2)(a), F.S.

<sup>14</sup> Section 119.071(2)(p)2.a., F.S.; s. 406.135(2)(a), F.S.

<sup>15</sup> Section 119.071(2)(p)3.b., F.S.; s. 406.135(3)(b), F.S.

<sup>16</sup> Section 119.071(2)(p)4.a., F.S.; s. 406.135(4)(a), F.S.

<sup>17</sup> Section 119.071(2)(p)4.b., F.S.; s. 406.135(4)(b), F.S.

<sup>18</sup> Section 119.071(2)(p)5., F.S.; s. 406.135(5)(a), F.S.

<sup>19</sup> Section 119.071(2)(p)6.a., F.S.; s. 406.135(6)(a), F.S. A third-degree felony is punishable by up to five years in prison, or a fine of up to \$5,000. See ss. 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>20</sup> Sections 119.071(2)(p)6.b., F.S., and 406.135(6)(b), F.S.

## Effect of the Bill

The bill creates two public record exemptions for certain information related to victims of suicide. The first exemption provides that photographs, video recordings, and audio recordings held by agency that depict the suicide of a person<sup>21</sup> are confidential and exempt from public record requirements. The second exemption provides that the autopsy report of a person whose manner of death was suicide, held by a medical examiner, is confidential and exempt from public disclosure.

The bill incorporates the same provisions as current law regarding access to the exempt records. Specifically, the bill provides that:

- A local government entity or a state or federal agency may, pursuant to a written request, may access such records.
- The custodian of the record, or his or her designee, may not permit any other person to access such records without a court order.
- A person wishing to access such records may petition the court for authorization to do so, in which case the surviving spouse, or other family member, must be given notice.
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such records. The custodian of such records, or his or her designee, must directly supervise anyone who accesses such records.
- Any custodian of such records who willfully or knowingly violates the provisions of the bill regarding access to the records and any person who violates a court order issued pursuant to the provision of the bill commits a third-degree felony.

The bill provides that a surviving spouse of the deceased whose manner of death was by suicide may access any photograph, recording, or autopsy report. If the deceased has no surviving spouse, then the surviving parents must have access to such records, and if there is no surviving spouse or parent, the adult children and siblings must have access to the records. The bill further provides that the deceased's surviving relative granted authority to access such records may designate in writing an agent to access the records.

The bill provides for retroactive application of the newly-created public record exemptions. The public record exemptions created by the bill are subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2029, unless reviewed and saved from repeal by the Legislature. The bill also provides the constitutionally required public necessity statement.<sup>22</sup>

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

**Section 2:** Provides a public necessity statement.

**Section 3:** Amends s. 406.135, F.S., relating to autopsies; confidentiality of photographs and video and audio recordings; exemptions.

**Section 4:** Provides a public necessity statement.

**Section 5:** Provides an effective date of upon becoming a law.

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<sup>21</sup> The bill defines "suicide of a person" to mean events that depict the suicide of a person, the body of a person whose manner of death was by suicide, or any portion of such person's body.

<sup>22</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on state and local agencies that are custodians of photographs, recordings, or autopsy reports relating to the suicide of a person, as staff responsible for complying with public record requests may require training related to the newly-created public record exemptions. However, any additional costs will likely be absorbed within existing resources.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record exemption. The bill creates two public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates two public record exemptions; thus, it includes two public necessity statements. The public necessity statement regarding photographs or video or audio recordings of a suicide of a person states that the Legislature finds, in part, that based on the highly sensitive representations of the deceased in such photographs or recordings, the release and publication of such materials could cause trauma, humiliation, and emotional injury to the immediate family of the deceased. Furthermore, the Legislature finds that the release of such photographs and video and audio recordings may cause persons who have a mental illness or who are experiencing severe depression to consider suicide. The public necessity statement regarding an autopsy report of a victim of suicide states that the Legislature finds, in part, that based on the



graphic and sensitive nature of autopsy reports of a person whose manner of death was by suicide, the release and publication of such reports could cause trauma, humiliation, and emotional injury to the immediate family of the deceased.

#### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for photographs, recordings, and autopsy reports concerning the suicide of a person, none of which appear broader than necessary to accomplish their purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 10, 2024, the Ethics, Elections & Open Government Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required that the surviving spouse of a victim of suicide, or other specified family member if there is no surviving spouse, be given notice when a person files a petition with a court requesting to view or copy records exempted under the bill. Additionally, the surviving spouse, or other family member, must be given a copy of the petition and an opportunity to be present and heard at any hearing on the petition.

This analysis is drafted to the committee substitute as approved by the Ethics, Elections & Open Government Subcommittee.

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.071, F.S.; defining the term "suicide of a  
4           person"; creating an exemption from public records  
5           requirements for a photograph or video or audio  
6           recording of the suicide of a person; providing  
7           exceptions; requiring that any viewing, copying,  
8           listening to, or other handling of such photograph or  
9           video or audio recording be under the direct  
10          supervision of the custodian of the record or his or  
11          her designee; providing notice requirements; providing  
12          criminal penalties; providing construction; providing  
13          for retroactive application; providing for future  
14          legislative review and repeal of the exemption;  
15          providing a statement of public necessity; amending s.  
16          406.135, F.S.; creating an exemption from public  
17          records requirements for autopsy reports of suicide  
18          victims; providing exceptions; requiring that any  
19          viewing, copying, listening to, or other handling of  
20          such autopsy reports be under the direct supervision  
21          of the custodian of the record or his or her designee;  
22          providing notice requirements; providing criminal  
23          penalties; providing construction; providing for  
24          retroactive application; providing for future  
25          legislative review and repeal of the exemption;

26 providing a statement of public necessity; providing  
 27 an effective date.

28

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Paragraph (p) of subsection (2) of section  
 32 119.071, Florida Statutes, is amended to read:

33 119.071 General exemptions from inspection or copying of  
 34 public records.—

35 (2) AGENCY INVESTIGATIONS.—

36 (p)1. As used in this paragraph, the term:

37 a. "Killing of a law enforcement officer who was acting in  
 38 accordance with his or her official duties" means all acts or  
 39 events that cause or otherwise relate to the death of a law  
 40 enforcement officer who was acting in accordance with his or her  
 41 official duties, including any related acts or events  
 42 immediately preceding or subsequent to the acts or events that  
 43 were the proximate cause of death.

44 b. "Killing of a minor" means all acts or events that  
 45 cause or otherwise relate to the death of a victim who has not  
 46 yet reached the age of 18 at the time of the death, including  
 47 any related acts or events immediately preceding or subsequent  
 48 to the acts or events that were the proximate cause of the death  
 49 of a victim under the age of 18, events that depict a victim  
 50 under the age of 18 being killed, or events that depict the body

51 of a victim under the age of 18 who has been killed.

52 c. "Killing of a victim of mass violence" means events  
53 that depict either a victim being killed or the body of a victim  
54 killed in an incident in which three or more persons, not  
55 including the perpetrator, are killed by the perpetrator of an  
56 intentional act of violence.

57 d. "Suicide of a person" means events that depict the  
58 suicide of a person, the body of a person whose manner of death  
59 was suicide, or any portion of such person's body.

60 2.a. A photograph or video or audio recording that depicts  
61 or records the killing of a law enforcement officer who was  
62 acting in accordance with his or her official duties or the  
63 killing of a victim of mass violence is confidential and exempt  
64 from s. 119.07(1) and s. 24(a), Art. I of the State  
65 Constitution, except that a surviving spouse of the decedent may  
66 view and copy any such photograph or video recording or listen  
67 to or copy any such audio recording. If there is no surviving  
68 spouse, the surviving parents must ~~shall~~ have access to such  
69 records. If there is no surviving spouse or parent, the adult  
70 children must ~~shall~~ have access to such records. Nothing in this  
71 sub-subparagraph precludes a surviving spouse, parent, or adult  
72 child of the victim from sharing or publicly releasing such  
73 photograph or video or audio recording.

74 b. A photograph or video or audio recording that depicts  
75 or records the killing of a minor is confidential and exempt

76 | from s. 119.07(1) and s. 24(a), Art. I of the State  
77 | Constitution, except that a surviving parent of the deceased  
78 | minor may view and copy any such photograph or video recording  
79 | or listen to or copy any such audio recording. Nothing in this  
80 | sub-subparagraph precludes a surviving parent of the victim from  
81 | sharing or publicly releasing such photograph or video or audio  
82 | recording.

83 | c. A photograph or video or audio recording that depicts  
84 | or records the suicide of a person is confidential and exempt  
85 | from s. 119.07(1) and s. 24(a), Art. I of the State  
86 | Constitution, except that a surviving spouse of the deceased may  
87 | view and copy any such photograph or video recording or listen  
88 | to or copy any such audio recording. If there is no surviving  
89 | spouse, the surviving parents must have access to such records.  
90 | If there is no surviving spouse or parent, the adult children  
91 | and siblings must have access to such records. This section does  
92 | not preclude a surviving spouse, parent, adult child, or sibling  
93 | of the victim from sharing or publicly releasing such photograph  
94 | or video or audio recording.

95 | 3.a. The deceased's surviving relative, with whom  
96 | authority rests to obtain such records, may designate in writing  
97 | an agent to obtain such records.

98 | b. Notwithstanding subparagraph 2., a local governmental  
99 | entity, or a state or federal agency, in furtherance of its  
100 | official duties, pursuant to a written request, may view or copy

101 a photograph or video recording or may listen to or copy an  
102 audio recording of the killing of a law enforcement officer who  
103 was acting in accordance with his or her official duties, the  
104 killing of a victim of mass violence, ~~or~~ the killing of a minor,  
105 or the suicide of a person, and, unless otherwise required in  
106 the performance of its duties, the identity of the deceased  
107 shall remain confidential and exempt.

108 c. The custodian of the record, or his or her designee,  
109 may not permit any other person to view or copy such photograph  
110 or video recording or listen to or copy such audio recording  
111 without a court order.

112 4.a. The court, upon a showing of good cause, may issue an  
113 order authorizing any person to view or copy a photograph or  
114 video recording that depicts or records the killing of a law  
115 enforcement officer who was acting in accordance with his or her  
116 official duties, the killing of a victim of mass violence, ~~or~~  
117 the killing of a minor, or the suicide of a person or to listen  
118 to or copy an audio recording that depicts or records the  
119 killing of a law enforcement officer who was acting in  
120 accordance with his or her official duties, the killing of a  
121 victim of mass violence, ~~or~~ the killing of a minor, or the  
122 suicide of a person and may prescribe any restrictions or  
123 stipulations that the court deems appropriate.

124 b. In determining good cause, the court shall consider:

125 (I) Whether such disclosure is necessary for the public

126 evaluation of governmental performance;

127 (II) The seriousness of the intrusion into the family's  
128 right to privacy and whether such disclosure is the least  
129 intrusive means available; and

130 (III) The availability of similar information in other  
131 public records, regardless of form.

132 c. In all cases, the viewing, copying, listening to, or  
133 other handling of a photograph or video or audio recording that  
134 depicts or records the killing of a law enforcement officer who  
135 was acting in accordance with his or her official duties, the  
136 killing of a victim of mass violence, ~~or~~ the killing of a minor,  
137 or the suicide of a person must be under the direct supervision  
138 of the custodian of the record or his or her designee.

139 5.a. A surviving spouse shall be given reasonable notice  
140 of a petition filed with the court to view or copy a photograph  
141 or video recording that depicts or records the killing of a law  
142 enforcement officer who was acting in accordance with his or her  
143 official duties or the killing of a victim of mass violence, or  
144 to listen to or copy any such audio recording, a copy of such  
145 petition, and reasonable notice of the opportunity to be present  
146 and heard at any hearing on the matter. If there is no surviving  
147 spouse, such notice must be given to the parents of the deceased  
148 and, if there is no surviving parent, to the adult children of  
149 the deceased.

150 b. A surviving parent must be given reasonable notice of a

151 petition filed with the court to view or copy a photograph or  
152 video recording that depicts or records the killing of a minor  
153 or to listen to or copy any such audio recording; a copy of such  
154 petition; and reasonable notice of the opportunity to be present  
155 and heard at any hearing on the matter.

156 c. A surviving spouse shall be given reasonable notice of  
157 a petition filed with the court to view or copy a photograph or  
158 video recording that depicts or records the suicide of a person,  
159 or listen to or copy any such audio recording, a copy of such  
160 petition, and reasonable notice of the opportunity to be present  
161 and heard at any hearing on the matter. If there is no surviving  
162 spouse, such notice must be given to the parents of the deceased  
163 and, if there is no surviving parent, to the adult children and  
164 siblings of the deceased.

165 6.a. Any custodian of a photograph or video or audio  
166 recording that depicts or records the killing of a law  
167 enforcement officer who was acting in accordance with his or her  
168 official duties, the killing of a victim of mass violence, ~~or~~  
169 the killing of a minor, or the suicide of a person who willfully  
170 and knowingly violates this paragraph commits a felony of the  
171 third degree, punishable as provided in s. 775.082, s. 775.083,  
172 or s. 775.084.

173 b. Any person who willfully and knowingly violates a court  
174 order issued pursuant to this paragraph commits a felony of the  
175 third degree, punishable as provided in s. 775.082, s. 775.083,



176 or s. 775.084.

177 c. A criminal or administrative proceeding is exempt from  
178 this paragraph but, unless otherwise exempted, is subject to all  
179 other provisions of chapter 119; however, this paragraph does  
180 not prohibit a court in a criminal or administrative proceeding  
181 upon good cause shown from restricting or otherwise controlling  
182 the disclosure of a killing, crime scene, or similar photograph  
183 or video or audio recording in the manner prescribed in this  
184 paragraph.

185 7. The exemptions ~~exemption~~ in this paragraph shall be  
186 given retroactive application and shall apply to all photographs  
187 or video or audio recordings that depict or record the killing  
188 of a law enforcement officer who was acting in accordance with  
189 his or her official duties, the killing of a victim of mass  
190 violence, ~~or~~ the killing of a minor, or the suicide of a person,  
191 regardless of whether the killing or suicide of the person  
192 occurred before, on, or after May 23, 2019. However, nothing in  
193 this paragraph is intended to, nor may be construed to, overturn  
194 or abrogate or alter any existing orders duly entered into by  
195 any court of this state, as of the effective date of this act,  
196 which restrict or limit access to any photographs or video or  
197 audio recordings that depict or record the killing of a law  
198 enforcement officer who was acting in accordance with his or her  
199 official duties, the killing of a victim of mass violence, ~~or~~  
200 the killing of a minor, or the suicide of a person.

201           8. This paragraph applies only to such photographs and  
202 video and audio recordings held by an agency.

203           9. This paragraph is subject to the Open Government Sunset  
204 Review Act in accordance with s. 119.15 and shall stand repealed  
205 on October 2, 2029 ~~2028~~, unless reviewed and saved from repeal  
206 through reenactment by the Legislature.

207           Section 2. The Legislature finds that it is a public  
208 necessity that photographs and video and audio recordings that  
209 depict or record the suicide of a person be made confidential  
210 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
211 Article I of the State Constitution and that such exemption be  
212 applied retroactively. The Legislature finds that photographs  
213 and video and audio recordings that depict or record the suicide  
214 of a person render graphic and often disturbing visual or aural  
215 representations of the deceased. Such photographs and video and  
216 audio recordings provide a view of the deceased in the final  
217 moments of life, in which they are often experiencing severe  
218 symptoms of depression or other mental illness, and may depict  
219 graphic and gruesome self-inflicted wounds. As such, photographs  
220 and video and audio recordings that depict or record the suicide  
221 of a person are highly sensitive representations of the deceased  
222 which, if heard, viewed, copied, or publicized, could result in  
223 trauma, sorrow, humiliation, or emotional injury to the  
224 immediate family of the deceased and detract from the memory of  
225 the deceased. The Legislature recognizes that the existence of

226 the Internet and the proliferation of personal computers and  
227 cellular telephones throughout the world encourages and promotes  
228 the wide dissemination of such photographs and video and audio  
229 recordings and that widespread unauthorized dissemination of  
230 such photographs and video and audio recordings would subject  
231 the immediate family of the deceased to continuous injury. The  
232 Legislature further finds that such photographs and video and  
233 audio recordings that depict or record the suicide of a person  
234 are harmful to the public. The release of such photographs and  
235 video and audio recordings may trigger persons who have a mental  
236 illness or who are experiencing severe depression to consider  
237 suicide. The Legislature further finds that the exemption  
238 provided in this act should be given retroactive application  
239 because it is remedial in nature.

240 Section 3. Section 406.135, Florida Statutes, is amended  
241 to read:

242 406.135 Autopsies; confidentiality of photographs and  
243 video and audio recordings; confidentiality of reports of minor  
244 victims of domestic violence; exemption.—

245 (1) As used in this section, the term:

246 (a) "Domestic violence" has the same meaning as in s.  
247 741.28.

248 (b) "Medical examiner" means any district medical  
249 examiner, associate medical examiner, or substitute medical  
250 examiner acting pursuant to this chapter, as well as any

251 employee, deputy, or agent of a medical examiner or any other  
252 person who may obtain possession of a report, photograph, or  
253 audio or video recording of an autopsy in the course of  
254 assisting a medical examiner in the performance of his or her  
255 official duties.

256 (c) "Minor" means a person younger than 18 years of age  
257 who has not had the disability of nonage removed pursuant to s.  
258 743.01 or s. 743.015.

259 (2)(a) A photograph or video or audio recording of an  
260 autopsy held by a medical examiner is confidential and exempt  
261 from s. 119.07(1) and s. 24(a), Art. I of the State  
262 Constitution, except that a surviving spouse may view and copy a  
263 photograph or video recording or listen to or copy an audio  
264 recording of the deceased spouse's autopsy. If there is no  
265 surviving spouse, then the surviving parents shall have access  
266 to such records. If there is no surviving spouse or parent, then  
267 an adult child shall have access to such records.

268 (b) An autopsy report of a minor whose death was related  
269 to an act of domestic violence held by a medical examiner is  
270 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
271 of the State Constitution, except that a surviving parent of the  
272 deceased minor may view and copy the autopsy report if the  
273 surviving parent did not commit the act of domestic violence  
274 which led to the minor's death.

275 (c) An autopsy report of a person whose manner of death

276 was suicide held by a medical examiner is confidential and  
 277 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 278 Constitution, except that a surviving spouse of the deceased may  
 279 view and copy the autopsy report. If there is no surviving  
 280 spouse, the surviving parents must have access to such records.  
 281 If there is no surviving spouse or parent, the adult children  
 282 and siblings must have access to such records.

283 (3) (a) The deceased's surviving relative, with whom  
 284 authority rests to obtain such records, may designate in writing  
 285 an agent to obtain such records.

286 (b) Notwithstanding subsection (2), a local governmental  
 287 entity, or a state or federal agency, in furtherance of its  
 288 official duties, pursuant to a written request, may:

289 1. View or copy a photograph or video recording or may  
 290 listen to or copy an audio recording of an autopsy; ~~and~~

291 2. View or copy an autopsy report of a minor whose death  
 292 was related to an act of domestic violence; ~~and~~

293 3. View or copy an autopsy report of a person whose manner  
 294 of death was determined by a medical examiner to have been by  
 295 suicide.

296  
 297 Unless otherwise required in the performance of official duties,  
 298 the identity of the deceased shall remain confidential and  
 299 exempt.

300 (c) The custodian of the record, or his or her designee,

301 may not permit any other person, except an agent designated in  
302 writing by the deceased's surviving relative with whom authority  
303 rests to obtain such records, to view or copy an autopsy report  
304 of a person whose manner of death was determined by a medical  
305 examiner to have been by suicide, an autopsy report of a minor  
306 whose death was related to an act of domestic violence, or a  
307 photograph or video recording of an autopsy or listen to or copy  
308 an audio recording of an autopsy without a court order.

309 (4) (a) The court, upon a showing of good cause, may issue  
310 an order authorizing any person to view or copy an autopsy  
311 report of a person whose manner of death was determined by a  
312 medical examiner to have been by suicide, an autopsy report of a  
313 minor whose death was related to an act of domestic violence, or  
314 a photograph or video recording of an autopsy or to listen to or  
315 copy an audio recording of an autopsy and may prescribe any  
316 restrictions or stipulations that the court deems appropriate.

317 (b) In determining good cause, the court shall consider  
318 whether such disclosure is necessary for the public evaluation  
319 of governmental performance; the seriousness of the intrusion  
320 into the family's right to privacy and whether such disclosure  
321 is the least intrusive means available; and the availability of  
322 similar information in other public records, regardless of form.

323 (c) In all cases, the viewing, copying, listening to, or  
324 other handling of an autopsy report of a person whose manner of  
325 death was determined by a medical examiner to have been by

326 suicide, an autopsy report of a minor whose death was related to  
327 an act of domestic violence, or a photograph or video or audio  
328 recording of an autopsy must be under the direct supervision of  
329 the custodian of the record or his or her designee.

330 (5) (a) A surviving spouse must be given reasonable notice  
331 of a petition filed with the court to view or copy a photograph  
332 or video recording of an autopsy or a petition to listen to or  
333 copy an audio recording, a copy of such petition, and reasonable  
334 notice of the opportunity to be present and heard at any hearing  
335 on the matter. If there is no surviving spouse, then such notice  
336 must be given to the parents of the deceased, and if there is no  
337 living parent, then to the adult children of the deceased.

338 (b) For an autopsy report of a minor whose death was  
339 related to an act of domestic violence, any surviving parent who  
340 did not commit the act of domestic violence which led to the  
341 minor's death must be given reasonable notice of a petition  
342 filed with the court to view or copy the autopsy report, a copy  
343 of such petition, and reasonable notice of the opportunity to be  
344 present and heard at any hearing on the matter.

345 (c) A surviving spouse must be given reasonable notice of  
346 a petition filed with the court to view or copy an autopsy  
347 report of a person whose manner of death was by suicide, a copy  
348 of such petition, and reasonable notice of the opportunity to be  
349 present and heard at any hearing on the matter. If there is no  
350 surviving spouse, then such notice must be given to the parents

351 of the deceased, and if there is no living parent, then to the  
352 adult children and siblings of the deceased.

353 (6) (a) Any custodian of an autopsy report of a person  
354 whose manner of death was determined by a medical examiner to  
355 have been by suicide, an autopsy report of a minor whose death  
356 was related to an act of domestic violence, or a photograph or  
357 video or audio recording of an autopsy who willfully and  
358 knowingly violates this section commits a felony of the third  
359 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
360 775.084.

361 (b) Any person who willfully and knowingly violates a  
362 court order issued pursuant to this section commits a felony of  
363 the third degree, punishable as provided in s. 775.082, s.  
364 775.083, or s. 775.084.

365 (7) A criminal or administrative proceeding is exempt from  
366 this section but is subject to all other provisions of chapter  
367 119 unless otherwise exempted. This section does not prohibit a  
368 court in a criminal or administrative proceeding upon good cause  
369 shown from restricting or otherwise controlling the disclosure  
370 of an autopsy, crime scene, or similar report, photograph, or  
371 video or audio recording in the manner prescribed herein.

372 (8) The exemptions in this section shall be given  
373 retroactive application.

374 (9) This section is subject to the Open Government Sunset  
375 Review Act in accordance with s. 119.15 and shall stand repealed



376 on October 2, ~~2029~~ ~~2028~~, unless reviewed and saved from repeal  
377 through reenactment by the Legislature.

378 Section 4. The Legislature finds that it is a public  
379 necessity that autopsy reports of a person whose manner of death  
380 was suicide which are held by a medical examiner be made  
381 confidential and exempt from s. 119.07(1), Florida Statutes, and  
382 s. 24(a), Article I of the State Constitution. The Legislature  
383 finds that autopsy reports describe the deceased in a graphic  
384 and often disturbing fashion and that autopsy reports of a  
385 person whose manner of death was suicide may describe the  
386 deceased with graphic and gruesome self-inflicted wounds. As  
387 such, these reports often contain highly sensitive descriptions  
388 of the deceased which if heard, viewed, copied, or publicized  
389 could result in trauma, sorrow, humiliation, or emotional injury  
390 to the immediate family of the deceased and detract from the  
391 memory of the deceased. The Legislature recognizes that the  
392 existence of the Internet and the proliferation of personal  
393 computers and cellular telephones throughout the world  
394 encourages and promotes the wide dissemination of such reports  
395 and that widespread unauthorized dissemination of such reports  
396 would subject the immediate family of the deceased to continuous  
397 injury. The Legislature further finds that the exemption  
398 provided in this act should be given retroactive application  
399 because it is remedial in nature.

400 Section 5. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 677 Organ Donation  
**SPONSOR(S):** Berfield  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Committee		Osborne	Calamas
2) Ways & Means Committee			
3) Infrastructure Strategies Committee			
4) Appropriations Committee			

### SUMMARY ANALYSIS

Organ donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplanting in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the liver, kidneys, pancreas, heart, lung, and intestine. Transplantable tissues include skin, bone, heart valves, tendons, veins, and corneas.

Although most organ donations occur after death of the donor, some donations come from living organ donors. A living-donor transplant is a surgical procedure to remove an organ or portion of an organ from a living person and place it another person whose organ is no longer functioning. Some living organ donors have difficulty obtaining various types of insurances.

HB 677 amends multiple sections of law related to organ donation.

The bill creates a category of administrative leave for organ donation for employees of the state or a political subdivision thereof.

The bill creates a tax credit against corporate income/franchise tax imposed by Ch. 220, F.S., for "employee organ donation expenses."

The bill requires locations where recreational licenses or permits are sold to display and make available to the public educational materials relating to organ donation and registration. The bill requires the Florida Fish and Wildlife Conservation Commission to maintain an integrated link on its website referring a visitor applying for a hunting, fishing, or trapping license to the organ donor registry.

The bill amends the Florida Insurance Code to prohibit preexisting condition exclusions that have the effect of limiting or denying coverage to a living organ donor.

The bill requires certain driver improvement schools and DUI programs provide students with information pertaining to organ donation. The bill directs the Department of Transportation to adopt rules to implement this provision.

The bill requires Donate Life to coordinate with the Department of Business and Professional Regulation to ensure that continuing education topics on organ donation are available to medical professionals.

The bill has an insignificant, negative fiscal impact on state government. The bill has no impact on local governments.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Organ and Tissue Donation

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplanting in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury.<sup>1</sup> Transplantable organs include the liver, kidneys, pancreas, heart, lung, intestine.<sup>2</sup> Transplantable tissue include skin used as a temporary dressing for burns, serious abrasions and other exposed areas; bone is used in orthopedic surgery to facilitate healing of fractures or prevent amputation; heart valves are used to replace defective valves; tendons are used to repair torn ligaments on knees or other joints; veins are used in cardiac by-pass surgery; and corneas can restore sight.<sup>3</sup> A single organ donor can save up to eight lives and over seventy-five more can be improved through organ donation.<sup>4</sup>

Despite advances in medicine and technology, and increased awareness of organ donation and transplantation, more donors are needed to meet the demand for transplants.<sup>5</sup> As of January 2022, 120,000 children and adults are waiting for a life-saving organ transplant, including 5,000 Floridians.<sup>6</sup> In 2021, 41,354 organ transplants were performed in the United States, reflecting an increase of 5.9 percent from 2020.<sup>7</sup> Living donor transplants on the other hand significantly decreased in 2020 due to COVID-19. While they increased in 2021, the numbers remain lower than in previous years. In 2021, a total of 6,541 living donor transplants were performed nationwide

#### *Living Organ Donation*

Although most organ donations occur after the death of the donor, some donations come from living organ donors. A living-donor transplant is a surgical procedure to remove an organ or portion of an organ from a living person and place it in another person whose organ is no longer functioning properly.<sup>8</sup> Kidney and liver transplants are the most common living-organ procedures, though a living organ donor can also donate tissues for transplants such as skin, bone marrow, and stem cells to replace organs or tissue that have been damaged or destroyed by disease, drugs or radiation.<sup>9</sup>

Based on the limited data available on the long-term risks of living organ donors currently available, the overall risks are considered to be low and differ among donors depending on the organ donated.<sup>10</sup> Short-term risks of living organ donation involve risks associated with anesthesia and major surgeries, including pain, infection, blood loss, blood clots, allergic reactions to anesthesia, pneumonia, injury to surrounding tissue or organs, and death.<sup>11</sup>

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<sup>1</sup> Cleveland Clinic, *Organ Donation and Transplantation*. Available at <https://my.clevelandclinic.org/health/articles/11750-organ-donation-and-transplantation#:~:text=Organ%20donation%20is%20the%20process%20of%20surgically%20removing,one%20of%20the%20great%20advances%20in%20modern%20medicine> (last visited January 20, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> Donate Life Florida, *Frequently Asked Questions* Available at <https://www.donateliflorida.org/categories/donation/> (last visited January 20, 2024).

<sup>4</sup> Health Resources and Services Administration, *What Can Be Donated?* Available at <https://www.organdonor.gov/learn/what-can-be-donated> (last visited January 14, 2022). <https://optn.transplant.hrsa.gov/data/> (last visited January 20, 2024).

<sup>5</sup> U.S. Department of Health and Human Services, *Organ Procurement and Transplantation Network*. Available at [All-time records again set in 2021 for organ transplants, organ donation from deceased donors - OPTN \(hrsa.gov\)](https://www.organdonor.gov/all-time-records-again-set-in-2021-for-organ-transplants-organ-donation-from-deceased-donors-optn-hrsa.gov) (last visited January 20, 2024).

<sup>6</sup> *Supra*, note 3.

<sup>7</sup> *Supra*, note 5.

<sup>8</sup> Mayo Clinic, *Living-donor transplant*. Available at <https://www.mayoclinic.org/tests-procedures/living-donor-transplant/about/pac-20384787> (last visited January 20, 2024).

<sup>9</sup> *Id.*

<sup>10</sup> UNOS, *How do I become a living donor?* Available at <https://unos.org/transplant/living-donation/> (last visited January 20, 2024).

<sup>11</sup> *Id.*

## *National Organ Transplant Act of 1984*

The National Organ Transplant Act of 1984, which regulates organ donations including living organ donors, prohibits the buying and selling of organs.<sup>12</sup> Living donation of an organ must be voluntary, and the donor cannot receive payment. While, the organ recipient's health insurance covers medical expenses such as evaluation, surgery, and limited follow-up test and medical appointments depending on the particular insurance, the recipient's insurance will not cover transportation, lodging, childcare, or lost wages.<sup>13</sup> In addition, treatment for conditions discovered during the evaluation portion of the donation process and some post-donation follow-up expenses are not covered.<sup>14</sup>

The United Network for Organ Sharing (UNOS), is a non-profit organization under contract with the federal government to manage the national transplant waiting list and maintaining the databases containing all organ transplant data for every transplant event occurring in the U.S.<sup>15</sup>, UNOS warns prospective donors that some donors report, "difficulty in getting, affording, or keeping health, disability, or life insurance."<sup>16</sup>

### **Regulation of Organ Donation, Procurement, and Transplantation in Florida**

The Agency for Health Care Administration (AHCA) oversees the various organizations and facilities involved in the organ procurement and transplant process in this state. AHCA licenses transplant facilities, contracts with an organization to educate the public on organ donation, sets requirements for training individuals who engage with families whose deceased relatives may be a good candidate for organ donation, and supports the Organ Transplant Advisory Council and the Organ and Tissue Procurement and Transplantation Advisory Board.

#### *Organ Donor Registry*

In 2008,<sup>17</sup> Florida's Legislature found that a shortage of organ and tissue donors existed in Florida. Findings included a need for:

- A statewide donor registry with online donor registration capability; and
- Enhanced donor education, to increase the number of organ and tissue donors.

The online registry would afford more persons who are awaiting organ or tissue transplants the opportunity for a full and productive life.<sup>18</sup> As directed by the legislature, AHCA and the Department of Highway Safety and Motor Vehicles (DHSMV) jointly contracted for the operation of Florida's interactive web-based donor registry that allows for online donor registration and the recording of organ and tissue donation records submitted through the driver license identification program or through other sources. AHCA and the DHSMV selected Donate Life Florida, which is a coalition of Florida's organ, tissue, and eye donor programs, to run the donor registry and maintain donor records.

Floridians who are age 18 or older can join the donor registry either online, at the DHSMV (or their local driver license office), or by contacting Donate Life Florida for a paper application.<sup>19</sup> Children ages 13 to 17 may join the registry, but the final decision on any organ donation of a minor rests with the parent or guardian. The registry collects personal information from each donor including, but not limited to, his or her name, address, date and place of birth, race, ethnicity, and driver's license number.

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<sup>12</sup> National Organ Transplant Act, 42 U.S.C. s. 274.

<sup>13</sup> UNOS, *Financial and Insurance Factors to Consider*. Available at <https://unos.org/transplant/living-donation/> (last visited January 20, 2024).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Ch. 2008-223, Laws of Fla.

<sup>18</sup> S. 765.5155(1), F.S.

<sup>19</sup> Donate Life Florida, *Welcome to the Joshua Abbott Organ and Tissue Donor Registry*. Available at <http://www.donateliflorida.org/> (last visited January 20, 2024)

As of March 3, 2021, there were 11,468,537 people registered in the donor registry.<sup>20</sup>

A person may make an anatomical gift of all or part of his or her body by:<sup>21</sup>

- Signing an organ and tissue donor card;
- Registering online with the donor registry;
- Signifying an intent to donate on his or her driver license or identification card issued by the DHSMV;<sup>22</sup>
- Expressing a wish to donate in a living will or other advance directive;
- Executing a will that includes a provision indicating that the testator wishes to make an anatomical gift;<sup>23</sup> or
- Expressing a wish to donate in a document other than a will.<sup>24</sup>

### *Donor Education*

When a patient dies in a hospital and is not a registered organ donor, but is determined to be a good candidate by the hospital's medical staff and the OPO, a representative of the OPO or a member of the hospital's staff may approach the patient's family about organ donation.<sup>25</sup> AHCA has developed rules for training and guidelines for the person making the request for organ donation.<sup>26</sup> The requestor is trained in explaining the process of organ donation to the patient's family, including their right to allow or refuse donation and for what purpose the organs would be donated (transplantation, research, or education).<sup>27</sup> The requestor is also specifically trained in the different types of approaches to deal with a family's grief and offering them the opportunity for organ donation.<sup>28</sup> The current rules require the requestor to explain the requirements needed to be met under Florida law in order for a donation to be allowed, but not federal regulations relating to organ donation.

### *Organ Donation Fees*

Generally, an organ donor and their family are not charged by a transplant facility for the medical care required to donate an organ.<sup>29</sup> Families pay for medical care and funeral costs, but costs related to living or deceased donation are paid by the recipient, usually through insurance, Medicare, or Medicaid.<sup>30</sup> Typically, any cost that falls outside of the transplant center's donor evaluation or actual surgery, such as travel, lodging, lost wages, and other non-medical expenses, is borne by the living donor or recipient.<sup>31</sup>

## **Living Organ Donors and Insurance**

### *Obtaining and Affording Insurance*

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<sup>20</sup> *Id.*

<sup>21</sup> S. 765.514(1), F.S.

<sup>22</sup> Revocation, suspension, expiration, or cancellation of the driver license or identification card does not invalidate the gift.

<sup>23</sup> The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.

<sup>24</sup> The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor's presence. If the donor cannot sign, the document may be signed for him or her at the donor's direction and in his or her presence and the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

<sup>25</sup> Health Resources and Services Administration, *The Deceased Donation Process*. Available at <https://www.organdonor.gov/about/process/deceased-donation.html#authorize> (last visited January 20, 2024). See also s. 765.522, F.S.

<sup>26</sup> Ch. 59A-3.274, F.A.C.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Health Resources Services Administration, *Organ Donation Frequently Asked Questions*. Available at <https://www.organdonor.gov/about/facts-terms/donation-faqs.html> (last visited January 20, 2024).

<sup>30</sup> *Id.* See also UNOS, *Living Donation Costs*. Available at <https://transplantliving.org/financing-a-transplant/living-donation-costs/> (last visited January 20, 2024).

<sup>31</sup> UNOS, *Living Donation Costs*. Available at <https://transplantliving.org/financing-a-transplant/living-donation-costs/> (last visited January 20, 2024).

A 2014 survey of 1,046 donors who underwent living kidney donation at Johns Hopkins Hospital found that, 25 percent of those who reported attempting to obtain new or revised life insurance policies post-procedure reported difficulty in doing so. The difficulties reported included outright denials in obtaining coverage, higher premiums, and the notation of a pre-existing condition relating to the kidney donation. The same survey also noted that of the donors who reported attempting to obtain new or revised health insurance policies post-procedure, seven percent reported difficulties in doing so.<sup>32</sup>

Another study, which reviewed different studies over a 35-year period concluded that a significant number of living kidney donors encounter difficulties in obtaining or maintaining insurance (with anywhere between three percent to eleven percent of those surveyed reporting difficulties).<sup>33</sup> That same study also found that insurability issues caused significant stress for between 11 percent and 13 percent of kidney donors and that “insurability may negatively influence one’s decision to become a living organ donor.”<sup>34</sup> This same study also found that these insurability issues are not isolated to kidney donors.<sup>35</sup> The National Kidney Foundation also advises potential donors, in assessing the risk of donation, that “some donors have reported difficulty in getting, affording, or keeping disability or life insurance.”

There is some evidence that these increased difficulties and costs in obtaining life insurance is not always based on the actual additional loss risk that organ donation presents. A 2015 study of living kidney donors found that such donation “does not appear to increase long-term mortality compared with controls;” however, the study did advise that it was limited in scope and more research was needed.<sup>36</sup> A study of living kidney donors in Korea, published in 2019, found that, “the risk of all-cause mortality was comparable between live kidney donors and matched non-donor healthy controls with similar health status.”<sup>37</sup> A 2012 study of live liver donors found that while 90-day mortality rates were elevated for such donors, the rates of long-term mortality were essentially the same for live liver donors, for live kidney donors, and for healthy controls.<sup>38</sup>

Florida insurance law does not expressly address insurance discrimination against living organ donors.

### *The Patient Protection and Affordable Care Act*

The federal Patient Protection and Affordable Care Act (PPACA), signed into law in 2010 made sweeping changes to the U.S. health insurance system.<sup>39</sup> The PPACA imposes extensive requirements on health insurance and health insurance policies relating to required benefits, rating and underwriting standards, review of rate increase, and other requirements.<sup>40</sup>

The PPACA prohibits health insurers from denying coverage or increasing health insurance premiums due to a pre-existing condition,<sup>41</sup> which would include having made a living organ donation.

### **Recreational Licenses and Permits**

The Florida Fish and Wildlife Conservation Commission (FWC) regulates hunting and fishing seasons, means of take, bag limits, and areas authorized for hunting or fishing. Florida residents and visitors are required to possess a Florida hunting, freshwater fishing, or saltwater fishing license when engaged in

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<sup>32</sup> B.j. Boyarsky, et al, *Experiences Obtaining Insurance After Live Kidney Donation*, 14(9) AM J Transplant. 2168-72 (2014).

<sup>33</sup> R.C. Yang, et al, *Insurability of Living Organ Donors: A Systematic Review*, 7(6) AM J TRANSPLANT. 1547-48 (2007).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* and Nissing MH & Hayashi PH, *Right hepatic lobe donation adversely affects donor life insurability up to one year after donation*, 11 LIVER TRANSPL 843–847 (2005).

<sup>36</sup> K.L. Lentine & A. Patel, *Risks and outcomes of living donation*, 19(4) ADV CHRONIC KIDNEY DIS. 220-8 (2012).

<sup>37</sup> Y. Kim, et al, *Long-term Mortality Risks Among Living Kidney Donors in Korea*. 75(6) Am J Kidney Dis. 925 (2019).

<sup>38</sup> 1 A.D. Muzaale, et al, *Estimates of early death, acute liver failure, and long-term mortality among live liver donors*, 142(2) *Gastroenterology* 273-80 (2012).

<sup>39</sup> Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, March 23, 2010, 124 Stat 119.

<sup>40</sup> Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), 42 U.S.C. 300gg et seq.

<sup>41</sup> 42 U.S.C.A. § 18001.

fishing and hunting activities.<sup>42</sup> Fees for licenses and permits typically range from \$17 to \$151<sup>43</sup> depending on the type and duration of the license, as well as if the individual is a Florida resident.<sup>44</sup> Certain individuals are exempt from the permitting requirements.<sup>45</sup> Individuals can obtain hunting and fishing permits online,<sup>46</sup> in person at a license agent<sup>47</sup> or tax collector's office, by calling toll-free numbers, and through the FWC Fish|Hunt FL app.<sup>48</sup> Licenses expire a year from the date they are issued.<sup>49</sup>

## **Effect of the Bill**

### **Administrative Leave for Organ Donation**

The bill creates a category of administrative leave for organ donation for employees of the state or a political subdivision thereof.

### **Corporate Tax Credit**

For taxable years beginning on or after January 1, 2025, the bill creates a tax credit against corporate income/franchise tax imposed by Ch. 220, F.S., for "employee organ donation expenses." The bill defines such expenses to include:

- Compensation paid to an employee while the employee is unable to work in preparation for organ donation and while the employee is on leave for such donation; and
- Additional labor expenses incurred by a business while the employee is on leave for organ donation.

The proposed tax credit is for previously paid corporate income taxes equal to 100 percent of employee organ donation expenses during the tax year the employee donated an organ. The credit may only be taken as a deduction on the taxpayer's corporate income tax return and may not be received as a refund.

The bill requires the taxpayer apply to the Department of Revenue (DOR) for the tax credit and establishes requirements for the application and related procedures. The bill authorizes DOR to adopt rules to administer the provisions of this section.

### **Recreational Licenses and Permits**

The bill requires FWC to maintain an integrated link on its website referring a visitor applying for a hunting, fishing, or trapping license to the organ donor registry. It also requires locations where recreational licenses or permits are sold to display and make available to the public educational materials relating to organ donation and registration. The bill allows applicants for recreational licenses

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<sup>42</sup> This includes individuals who are aiding in the take. FWC, *Exemptions*, <https://myfwc.com/license/recreational/do-i-need-one/> (last visited Jan. 8, 2024).

<sup>43</sup> Outside of this range, FWC offers a five-year resident gold sportsman's license that includes freshwater fishing, hunting, and saltwater fishing licenses and wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, Florida waterfowl, snook, and lobster permits for \$494.

<sup>44</sup> See, FWC, *Recreational Freshwater Licenses & Permits*. Available at <https://myfwc.com/license/recreational/freshwater-fishing/> (last visited January 8, 2024); FWC, *Recreational Saltwater Licenses & Permits*. Available at <https://myfwc.com/license/recreational/saltwater-fishing/> (last visited January 8, 2024); FWC, *Recreational Hunting Licenses & Permits*. Available at <https://myfwc.com/license/recreational/hunting/> (last visited January 8, 2024).

<sup>45</sup> See s. 379.353, F.S., for a list of individuals who are exempt from permitting requirements. See also, FWC, *Exemptions*. Available at <https://myfwc.com/license/recreational/do-i-need-one/> (last visited January 8, 2024).

<sup>46</sup> FWC, *Go Outdoors Florida – The official Licensing and Permitting site of the FWC!* Available at <https://license.gooutdoorsflorida.com/Licensing/CustomLookup.aspx> (last visited January 8, 2024).

<sup>47</sup> Licensing agents often include bait-and-tackle shops and sports retailers like Wal-Mart and Bass Pro Shop. FWC, *FAQs: Recreational Licenses*. Available at <https://myfwc.com/license/recreational/faqs/> (last visited January 8, 2024). Individuals can look up local agents through FWC's locate an agent portal. FWC, *Locate an Agent*. Available at <https://license.gooutdoorsflorida.com/Licensing/LocateAgent.aspx> (last visited January 8, 2024).

<sup>48</sup> FWC, *How to Order*. Available at <https://myfwc.com/license/recreational/how-to-order/> (last visited January 8, 2024).

<sup>49</sup> FWC, *FAQs: Recreational Licenses*. Available at <https://myfwc.com/license/recreational/faqs/> (last visited January 8, 2024)



and permits to sign up to make anatomical gifts and requires a notation that the licensee is an organ donor on such license.

### **Driver Improvement Schools or DUI Programs**

The bill requires certain driver improvement schools and DUI programs provide students with information pertaining to organ donation. The bill directs the Department of Transportation to adopt rules to implement this provision.

### **State Regulation of Health Insurance**

The bill amends the Florida Insurance Code to prohibit preexisting condition exclusions that have the effect of limiting or denying coverage to a living organ donor.

### **Continuing Medical Education**

The bill requires Donate Life to coordinate with the Department of Business and Professional Regulation to ensure that continuing education topics on organ donation are available to medical professionals.

The bill provides an effective date of July 1, 2021.

#### **B. SECTION DIRECTORY:**

- Section 1:** Creates s. 110.1185, F.S., relating to administrative leave for organ donation.
- Section 2:** Creates s. 220.197, F.S., relating to tax credit for expenses related to employee organ donation.
- Section 3:** Amends s. 322.291, F.S., relating to driver improvement schools or DUI programs.
- Section 4:** Amends s. 379.352, F.S., relating to recreational licenses, permits, and authorization numbers to take wild animal life, freshwater aquatic life, and marine life; issuance; costs; reporting.
- Section 5:** Amends s. 627.6045, F.S., relating to preexisting condition.
- Section 6:** Amends s. 765.5155, F.S., relating to donor registry; education program.
- Section 7:** Amends s. 765.521, F.S., relating to donations as part of driver license or identification card process.
- Section 8:** Provides an effective date of July 1, 2024.

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

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

##### **1. Revenues:**

None.

##### **2. Expenditures:**

Government agencies would need to update their employee leave policies to include the administrative leave for organ donation. This will have an insignificant, negative fiscal impact on state government.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on certain private businesses qualifying for the corporate tax credit established under the bill.

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:

Current law and the bill provide sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR identified several technical deficiencies in Section 2 of the bill, relating to tax credit for expenses related to employee organ donation.<sup>50</sup>

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>50</sup> Department of Revenue, Agency Analysis for HB 677 (2024). On file with the Health & Human Services Committee.  
**STORAGE NAME:** h0677.HHS  
**DATE:** 1/22/2024



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26 ensure the availability of certain continuing  
27 education topics; amending s. 765.521, F.S.; revising  
28 the requirements for certain programs encouraging  
29 anatomical gifts to include the process of issuing and  
30 renewing recreational licenses and permits; providing  
31 an effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Section 110.1185, Florida Statutes, is created  
36 to read:

37 110.1185 Administrative leave for organ donation.—An  
38 employee of the state or political subdivision thereof shall be  
39 granted administrative leave for organ donation.

40 Section 2. Section 220.197, Florida Statutes, is created  
41 to read:

42 220.197 Tax credit for expenses related to employee organ  
43 donation.—

44 (1) As used in this section, the term "employee organ  
45 donation expenses" means:

46 (a) Compensation paid to an employee while the employee is  
47 unable to work in preparation for organ donation and while the  
48 employee is on leave for such donation.

49 (b) Additional labor expenses incurred by a business while  
50 the employee is on leave for organ donation.

51        (2) For taxable years beginning on or after January 1,  
52 2025, a qualified business shall receive a tax credit for  
53 previously paid corporate income taxes equal to 100 percent of  
54 employee organ donation expenses during the tax year the  
55 employee donated an organ. The credit may be taken only as a  
56 deduction on a corporate income tax return and may not be  
57 received as a refund of taxes previously paid.

58        (3) To qualify for the credit under this section, a  
59 business must apply to the department on a form approved by the  
60 department. The application must include all information  
61 required by the department to verify organ donation expenses the  
62 taxpayer claims to have incurred.

63        (4) Within 30 business days after receipt of the  
64 application, the department shall notify the applicant in  
65 writing as to whether the application has been approved or  
66 deemed insufficient to support the credit. The department shall  
67 identify any insufficiency in the written notice. If the  
68 application is deemed insufficient, the applicant may reapply  
69 for the credit within 90 calendar days after receipt of the  
70 written notice.

71        (5) The department may adopt rules to administer this  
72 section.

73        Section 3. Section 322.291, Florida Statutes, is amended  
74 to read:

75        322.291 Driver improvement schools or DUI programs;

76 | required in certain suspension and revocation cases.—  
 77 |     (1) Except as provided in s. 322.03(2), any person:  
 78 |     ~~(a)(1)~~ Whose driving privilege has been revoked:  
 79 |     1.(a) Upon conviction for:  
 80 |         ~~a.1.~~ Driving, or being in actual physical control of, any  
 81 | vehicle while under the influence of alcoholic beverages, any  
 82 | chemical substance set forth in s. 877.111, or any substance  
 83 | controlled under chapter 893, in violation of s. 316.193;  
 84 |         ~~b.2.~~ Driving with an unlawful blood- or breath-alcohol  
 85 | level;  
 86 |         ~~c.3.~~ Manslaughter resulting from the operation of a motor  
 87 | vehicle;  
 88 |         ~~d.4.~~ Failure to stop and render aid as required under the  
 89 | laws of this state in the event of a motor vehicle crash  
 90 | resulting in the death or personal injury of another;  
 91 |         ~~e.5.~~ Reckless driving; or  
 92 |     ~~2.(b)~~ As a habitual offender;  
 93 |     ~~3.(e)~~ Upon direction of the court, if the court feels that  
 94 | the seriousness of the offense and the circumstances surrounding  
 95 | the conviction warrant the revocation of the licensee's driving  
 96 | privilege; or  
 97 |     ~~(b)(2)~~ Whose license was suspended under the point system,  
 98 | was suspended for driving with an unlawful blood-alcohol level  
 99 | of 0.10 percent or higher before January 1, 1994, was suspended  
 100 | for driving with an unlawful blood-alcohol level of 0.08 percent

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101 or higher after December 31, 1993, was suspended for a violation  
102 of s. 316.193(1), or was suspended for refusing to submit to a  
103 lawful breath, blood, or urine test as provided in s. 322.2615  
104  
105 shall, before the driving privilege may be reinstated, present  
106 to the department proof of enrollment in a department-approved  
107 advanced driver improvement course operating pursuant to s.  
108 318.1451 or a substance abuse education course conducted by a  
109 DUI program licensed pursuant to s. 322.292, which shall include  
110 a psychosocial evaluation and treatment, if referred.  
111 Additionally, for a third or subsequent violation of  
112 requirements for installation of an ignition interlock device, a  
113 person must complete treatment as determined by a licensed  
114 treatment agency following a referral by a DUI program and have  
115 the duration of the ignition interlock device requirement  
116 extended by at least 1 month up to the time period required to  
117 complete treatment. If the person fails to complete such course  
118 or evaluation within 90 days after reinstatement, or  
119 subsequently fails to complete treatment, if referred, the DUI  
120 program shall notify the department of the failure. Upon receipt  
121 of the notice, the department shall cancel the offender's  
122 driving privilege, notwithstanding the expiration of the  
123 suspension or revocation of the driving privilege. The  
124 department may temporarily reinstate the driving privilege upon  
125 verification from the DUI program that the offender has

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126 completed the education course and evaluation requirement and  
127 has reentered and is currently participating in treatment. If  
128 the DUI program notifies the department of the second failure to  
129 complete treatment, the department shall reinstate the driving  
130 privilege only after notice of completion of treatment from the  
131 DUI program.

132 (2) Classes required under this section must include  
133 information on organ donation. The department may adopt rules to  
134 administer this subsection.

135 Section 4. Subsections (13) and (14) of section 379.352,  
136 Florida Statutes, are renumbered as subsections (14) and (15),  
137 respectively, and a new subsection (13) is added to that  
138 section, to read:

139 379.352 Recreational licenses, permits, and authorization  
140 numbers to take wild animal life, freshwater aquatic life, and  
141 marine life; issuance; costs; reporting.-

142 (13) At each location at which hunting, fishing, or  
143 trapping licenses or permits are sold, educational materials  
144 regarding organ donation and registration shall be displayed and  
145 made available to the public. Each person who applies for a  
146 hunting, fishing, or trapping license or permit on the Internet  
147 shall be provided a link to the statewide donor registry  
148 operated under s. 765.5155.

149 Section 5. Subsections (3) and (4) of section 627.6045,  
150 Florida Statutes, are renumbered as subsections (4) and (5),



151 respectively, and a new subsection (3) is added to that section,  
 152 to read:

153 627.6045 Preexisting condition.—A health insurance policy  
 154 must comply with the following:

155 (3) A preexisting condition provision may not limit or  
 156 exclude coverage solely on the basis that an insured is a living  
 157 organ donor.

158 Section 6. Paragraph (b) of subsection (3) of section  
 159 765.5155, Florida Statutes, is amended to read:

160 765.5155 Donor registry; education program.—

161 (3) The contractor shall be responsible for:

162 (b) A continuing program to educate and inform medical  
 163 professionals, law enforcement agencies and officers, other  
 164 state and local government employees, high school students,  
 165 minorities, and the public about the laws of this state relating  
 166 to anatomical gifts and the need for anatomical gifts.

167 1. Existing community resources, when available, must be  
 168 used to support the program and volunteers may assist the  
 169 program to the maximum extent possible.

170 2. The contractor shall coordinate with the head of a  
 171 state agency or other political subdivision of the state, or his  
 172 or her designee, to establish convenient times, dates, and  
 173 locations for educating that entity's employees.

174 3. The contractor shall coordinate with the Department of  
 175 Business and Professional Regulation to ensure that continuing

176 education topics on organ donation are available to medical  
 177 professionals.

178 Section 7. Section 765.521, Florida Statutes, is amended  
 179 to read:

180 765.521 Donations as part of driver license, ~~or~~  
 181 identification card, or recreational license and permit  
 182 process.—

183 (1) The agency and the department shall develop and  
 184 implement a program encouraging and allowing persons to make  
 185 anatomical gifts as a part of the process of issuing  
 186 identification cards, and issuing and renewing driver licenses,  
 187 and issuing and renewing recreational licenses and permits. The  
 188 donor registration card distributed by the department shall  
 189 include the information required by the uniform donor card under  
 190 s. 765.514 and such additional information as determined  
 191 necessary by the department. The department shall also develop  
 192 and implement a program to identify donors which includes  
 193 notations on identification cards, driver licenses, ~~and~~ driver  
 194 records, and recreational licenses or permits or such other  
 195 methods as the department develops to clearly indicate the  
 196 individual's intent to make an anatomical gift. A notation on an  
 197 individual's driver license, ~~or~~ identification card, or  
 198 recreational license or permit that the individual intends to  
 199 make an anatomical gift satisfies all requirements for consent  
 200 to organ or tissue donation. The agency shall provide the

201 necessary supplies and forms from funds appropriated from  
 202 general revenue or contributions from interested voluntary,  
 203 nonprofit organizations. The department shall provide the  
 204 necessary recordkeeping system from funds appropriated from  
 205 general revenue. The department and the agency shall incur no  
 206 liability in connection with the performance of any acts  
 207 authorized herein.

208 (2) The department shall maintain an integrated link on  
 209 its website which refers ~~referring~~ a visitor renewing a driver  
 210 license or recreational license or permit or conducting other  
 211 business to the donor registry operated under s. 765.5155.

212 (3) The department, after consultation with and  
 213 concurrence by the agency, shall adopt rules to implement ~~the~~  
 214 ~~provisions of~~ this section in accordance with ~~according to the~~  
 215 ~~provisions of~~ chapter 120.

216 (4) The agency may not use funds appropriated for patient  
 217 care ~~Funds expended by the agency to carry out the intent of~~  
 218 ~~this section may not be taken from funds appropriated for~~  
 219 ~~patient care.~~

220 Section 8. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                        (Y/N)  
ADOPTED AS AMENDED                        (Y/N)  
ADOPTED W/O OBJECTION                    (Y/N)  
FAILED TO ADOPT                            (Y/N)  
WITHDRAWN                                    (Y/N)  
OTHER                                                

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1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Committee

3 Representative Berfield offered the following:

4  
5        **Amendment (with title amendment)**

6        Remove lines 40-72

7  
8  
9        -----

10                                    **T I T L E   A M E N D M E N T**

11        Remove lines 4-12 and insert:

12        certain employees; amending s. 322.291, F.S.; requiring

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>    </u>	

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1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Committee

3 Representative Berfield offered the following:

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

**Amendment**

Remove lines 174-175 and insert:

3. The contractor shall coordinate with the Department of  
Health to ensure that continuing



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 775 Surrendered Infants  
**SPONSOR(S):** Canady  
**TIED BILLS:** IDEN./SIM. BILLS: SB 790

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	17 Y, 0 N	Clenord	McElroy
2) Health & Human Services Committee		Clenord	Calamas

**SUMMARY ANALYSIS**

Florida law allows parents who are unwilling or unable to care for their newborn infants to safely relinquish them at hospitals, fire stations, and emergency medical services stations. This 'safe haven law' currently allows parents to anonymously surrender newborn infants up to 7 days old and grants the parents immunity from criminal prosecution unless there is actual or suspected child abuse or neglect.

HB 775 increases the age that an infant may be surrendered from 7 days old to 30 days old, preventing unsafe abandonment by allowing more time for parents to decide whether to surrender a child. The bill changes the term "newborn infant" to "infant" to reflect the extended age.

The bill authorizes a parent, after delivery of an infant in a hospital, to leave the infant with hospital medical staff. The parent of the infant must notify the staff that the parent is voluntarily surrendering the infant and does not intend to return. The bill also authorizes a parent to call 911 and request that an emergency medical services provider meet the surrendering parent at a specified location for the purpose of surrendering the infant.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2024.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Safe Haven Laws**

Safe haven laws allow parents or agents of parents to safely relinquish babies at designated locations while remaining anonymous, and confer immunity from criminal liability and prosecution for child endangerment, abandonment or neglect.<sup>1</sup> The purpose of safe haven laws is to ensure that abandoned infants are left with those who can provide immediate care necessary for the children's safety and well-being.<sup>2</sup>

In 1999, Texas was the first state to enact safe haven legislation.<sup>3</sup> Today, all 50 states, the District of Columbia, and Puerto Rico have variations of safe haven laws which designate the places or personnel authorized to accept an infant.<sup>4</sup>

Policy choices vary among the states. For example, thirty-five states and the District of Columbia expressly allow the person relinquishing an infant to remain anonymous.<sup>5</sup> Eight states and Puerto Rico<sup>6</sup> require infants be 72 hours old or younger to be relinquished at a designate safe haven,<sup>7</sup> while 19 states include infants up to 30 days old.<sup>8</sup> The District of Columbia and 46 states authorize health care providers, such as hospitals or health clinic employees, to accept an infant, and 43 states authorize emergency services personnel, including emergency medical technicians, firefighters and law enforcement officers, to accept an infant or allow relinquishment through the 911 emergency system.<sup>9</sup>

##### Florida Safe Haven Law

In 2000, Florida enacted safe haven legislation in response to tragedies<sup>10</sup> concerning newborn abandonment at unsafe locations, such as public restrooms or trash receptacles.<sup>11</sup> Current law authorizes parents to surrender a newborn infant up to 7 days old at a hospital, fire station, or emergency medical service station.

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<sup>1</sup> *Infant Safe Haven Laws*, Child Welfare Information Gateway (Sept. 2021), [https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/safehaven.pdf?VersionId=G0IedWIFvcxOELUST1S5\\_SUTWdYScIB](https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/safehaven.pdf?VersionId=G0IedWIFvcxOELUST1S5_SUTWdYScIB), (last visited Jan. 3, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> NY Legislative Counsel Bureau, *A Study of Infant Abandonment Legislation*, <https://www.leg.state.nv.us/Division/Research/Publications/Bkground/BP01-03.pdf> (last visited Jan. 3, 2024).

<sup>4</sup> *supra* note 1

<sup>5</sup> *Infant Abandonment*, Guttmacher Institute (Sep. 2023), <https://www.guttmacher.org/state-policy/explore/infant-abandonment> (last visited Jan. 3, 2024)

<sup>6</sup> *supra* note 1

<sup>7</sup> *supra* note 5

<sup>8</sup> *Id.* This data is as of 2023.

<sup>9</sup> *Id.*

<sup>10</sup> The Orlando Sentinel, "Teen Mom Charged with Attempted Murder," March 9, 2000, <https://www.orlandosentinel.com/news/os-xpm-2000-03-09-0003090076-story.html>, (last visited Jan. 3, 2024), See also, Meyer, C. L., Oberman, M., White, K., Rone, M., Batra, P., & Proano, T. C. (2001). *Mothers Who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the "Prom Mom"*. New York: New York University Press.

<sup>11</sup> S. 383.50, F.S.



Since 2000, approximately 380 newborns have been surrendered at a safe haven in Florida.<sup>12</sup> In that time, 63 infants are known to have been unsafely abandoned, of which 31 survived and 32 died.<sup>13</sup>

### *Procedures and Protections for Surrendered Newborn Infants and Parents*

The Florida safe haven law outlines procedures and protections concerning what happens after a baby is surrendered. If the parent surrenders a newborn infant born in a hospital, the hospital registrars must complete the infant's birth certificate without naming the mother, if she requests it and expresses an intent to leave without the infant and not return.<sup>14</sup>

The law requires hospitals, fire stations, and emergency medical services stations that are staffed with full-time firefighters or emergency medical technicians to accept any newborn infant left with a firefighter or emergency medical technician so that the newborn infant can receive any necessary immediate medical treatment, including transport to a hospital, if necessary.<sup>15</sup> The law holds emergency medical technicians, paramedics, and fire department staff accountable for criminal and civil liability for treatment and custody of a surrendered newborn infant, except in situations where the individual has acted in good faith concerning the surrendered infant.<sup>16</sup>

The law expressly grants parents surrendering a newborn infant the right to anonymity and to not be pursued, unless the parent seeks to reclaim the infant. The law also grants surrendering parents immunity from criminal prosecution unless there is actual or suspected abuse or neglect of the infant.

Current law creates a presumption that the parent consents to the termination of their parental rights<sup>17</sup> and to transport and medical treatment for the child.<sup>18</sup> A court may not terminate parental rights solely on the basis that the parent left the infant at a hospital, emergency medical services station, or fire station in accordance with Florida's safe haven provisions.<sup>19</sup>

Florida law also has procedures outlining the process for parents to seek to either claim or reclaim a surrendered newborn infant.<sup>20</sup> A parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station under this section may claim his or her newborn infant up until the court enters a judgment terminating his or her parental rights, and a petition for termination of parental rights may not be filed until 30 days after the date the infant was surrendered.<sup>21</sup>

Current law<sup>22</sup> requires DOH to work in conjunction with the Department of Children and Families to prevent the unsafe abandonment of newborns through a media campaign,<sup>23</sup> funded by a \$300,000 appropriation of recurring General Revenue.<sup>24</sup>

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<sup>12</sup> A Safe Haven for Newborns, *Safe Haven Statistics*, <https://asafehavenfornewborns.com/what-we-do/safe-haven-statistics/> (last visited Jan 21, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> S. 383.50, F.S.

<sup>16</sup> S. 383.50(3), F.S.

<sup>17</sup> S. 63.0423, F.S.

<sup>18</sup> S. 383.50, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 63.0423, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> S. 7, Ch. 2000-188, Laws of Fla.

<sup>23</sup> A Safe Haven for Newborns, *Public Awareness*, <https://asafehavenfornewborns.com/what-we-do/public-awareness-2/>, (last visited Jan. 3, 2024).

<sup>24</sup> Fiscal Year 2023-2024, HB 5001, *General Appropriations Act*, line 542, [http://leagis:8080/sites/2022-2024/2023/Public/Bills/5000-5099/5001/Orig\\_GAA.pdf](http://leagis:8080/sites/2022-2024/2023/Public/Bills/5000-5099/5001/Orig_GAA.pdf), (last visited Jan. 3, 2024).

## **Effect of Proposed Changes**

HB 775 amends s.383.50, F.S., to change the term “newborn infant” to “infant”. The bill increases the age limit for a parent to surrender an infant from 7 days old to 30 days old. This gives parents more time to make a decision, potentially preventing the unsafe abandonment of infants older than 7 days.

The bill authorizes a parent, after delivery of an infant in a hospital, to leave the infant with medical staff or a licensed health care professional. The parent of the infant must notify the medical staff or a licensed health care professional that the parent is voluntarily surrendering the infant and does not intend to return.

The bill also authorizes a parent to call 911 and request that an emergency medical services provider meet the surrendering parent at a specified location. The bill requires the surrendering parent to stay with the infant until the medical services provider arrives to take custody of the infant.

The bill provides an effective date of July 1, 2024.

### **B. SECTION DIRECTORY:**

- Section 1:** Amends s. 383.50, F.S., relating to treatment of surrendered newborn infant.
- Section 2:** Amends s. 39.01, F.S., relating to definitions.
- Section 3:** Amends s. 39.201, F.S., relating to required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.
- Section 4:** Amends s. 63.0423, F.S., relating to procedures with respect to surrendered infants.
- Section 5:** Amends s. 63.167, F.S., relating to state adoption information center.
- Section 6:** Amends s. 383.51, F.S., relating to confidentiality; identification of parent leaving newborn infant at hospital, emergency medical services station, or fire station.
- Section 7:** Amends s. 827.035, F.S., relating to newborn infants.
- Section 8:** Amends s. 827.10, F.S., relating to unlawful desertion of a child.
- Section 9:** Provides an effective date of July 1, 2024.

## **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. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require agency rule making to implement it.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**



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26 approximately 30 7 days old or younger at the time the child is  
27 left at a hospital, an emergency medical services station, or a  
28 fire station.

29 (2) There is a presumption that the parent who leaves the  
30 ~~newborn~~ infant in accordance with this section intended to leave  
31 the ~~newborn~~ infant and consented to termination of parental  
32 rights.

33 (3) Each emergency medical services station or fire  
34 station that is staffed with full-time firefighters, emergency  
35 medical technicians, or paramedics shall accept any ~~newborn~~  
36 infant left with a firefighter, an emergency medical technician,  
37 or a paramedic. The firefighter, emergency medical technician,  
38 or paramedic shall consider these actions as implied consent to  
39 and shall:

40 (a) Provide emergency medical services to the ~~newborn~~  
41 infant to the extent that he or she is trained to provide those  
42 services; ~~and~~

43 (b) Arrange for the immediate transportation of the  
44 ~~newborn~~ infant to the nearest hospital having emergency  
45 services.

46  
47 A licensee as defined in s. 401.23, a fire department, or an  
48 employee or agent of a licensee or fire department may treat and  
49 transport an ~~a newborn~~ infant pursuant to this section. If an ~~a~~  
50 ~~newborn~~ infant is placed in the physical custody of an employee

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51 or agent of a licensee or fire department, such placement is  
52 ~~shall be~~ considered implied consent for treatment and transport.  
53 A licensee, a fire department, or an employee or agent of a  
54 licensee or fire department is immune from criminal or civil  
55 liability for acting in good faith pursuant to this section.  
56 ~~Nothing in~~ This subsection does not limit ~~limits~~ liability for  
57 negligence.

58 (4) (a) After the delivery of an infant in a hospital, a  
59 parent of the infant may leave the infant with medical staff or  
60 a licensed health care professional at the hospital if the  
61 parent notifies such medical staff or licensed health care  
62 professional that the parent is voluntarily surrendering the  
63 infant and does not intend to return.

64 (b) Each hospital of this state subject to s. 395.1041  
65 shall, and any other hospital may, admit and provide all  
66 necessary emergency services and care, as defined in s.  
67 395.002(9), to any ~~newborn~~ infant left with the hospital in  
68 accordance with this section. The hospital or any of its medical  
69 staff or licensed health care professionals shall consider these  
70 actions as implied consent for treatment, and a hospital  
71 accepting physical custody of an ~~a newborn~~ infant has implied  
72 consent to perform all necessary emergency services and care.  
73 The hospital or any of its medical staff or licensed health care  
74 professionals are ~~is~~ immune from criminal or civil liability for  
75 acting in good faith in accordance with this section. ~~Nothing in~~

76 This subsection does not limit ~~limits~~ liability for negligence.

77 (5) Except when there is actual or suspected child abuse  
 78 or neglect, any parent who leaves an ~~a newborn~~ infant with a  
 79 firefighter, an emergency medical technician, or a paramedic at  
 80 a fire station or an emergency medical services station, or  
 81 brings an ~~a newborn~~ infant to an emergency room of a hospital  
 82 and expresses an intent to leave the ~~newborn~~ infant and not  
 83 return, has the absolute right to remain anonymous and to leave  
 84 at any time and may not be pursued or followed unless the parent  
 85 seeks to reclaim the ~~newborn~~ infant. When an infant is born in a  
 86 hospital and the mother expresses intent to leave the infant and  
 87 not return, upon the mother's request, the hospital or registrar  
 88 shall complete the infant's birth certificate without naming the  
 89 mother thereon.

90 (6) A parent of an ~~a newborn~~ infant left at a hospital, an  
 91 emergency medical services station, or a fire station under this  
 92 section may claim his or her ~~newborn~~ infant up until the court  
 93 enters a judgment terminating his or her parental rights. A  
 94 claim to the ~~newborn~~ infant must be made to the entity having  
 95 physical or legal custody of the ~~newborn~~ infant or to the  
 96 circuit court before whom proceedings involving the ~~newborn~~  
 97 infant are pending.

98 (7) Upon admitting an ~~a newborn~~ infant under this section,  
 99 the hospital shall immediately contact a local licensed child-  
 100 placing agency or alternatively contact the statewide central

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101 abuse hotline for the name of a licensed child-placing agency  
102 for purposes of transferring physical custody of the ~~newborn~~  
103 infant. The hospital shall notify the licensed child-placing  
104 agency that an ~~a newborn~~ infant has been left with the hospital  
105 and approximately when the licensed child-placing agency can  
106 take physical custody of the infant ~~child~~. In cases where there  
107 is actual or suspected child abuse or neglect, the hospital or  
108 any of its medical staff or licensed health care professionals  
109 shall report the actual or suspected child abuse or neglect in  
110 accordance with ss. 39.201 and 395.1023 in lieu of contacting a  
111 licensed child-placing agency.

112 (8) An ~~Any newborn~~ infant admitted to a hospital in  
113 accordance with this section is presumed eligible for coverage  
114 under Medicaid, subject to federal rules.

115 (9) An ~~A newborn~~ infant left at a hospital, an emergency  
116 medical services station, or a fire station in accordance with  
117 this section may ~~shall~~ not be deemed abandoned and subject to  
118 reporting and investigation requirements under s. 39.201 unless  
119 there is actual or suspected child abuse or until the Department  
120 of Health takes physical custody of the infant ~~child~~.

121 (10) If the parent of an infant is unable to surrender the  
122 infant in accordance with this section, the parent may call 911  
123 to request that an emergency medical services provider meet the  
124 surrendering parent at a specified location. The surrendering  
125 parent must stay with the infant until the emergency medical



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126 services provider arrives to take custody of the infant.

127 (11) A criminal investigation may ~~shall~~ not be initiated  
128 solely because an ~~a newborn~~ infant is surrendered in accordance  
129 with ~~left at a hospital under~~ this section unless there is  
130 actual or suspected child abuse or neglect.

131 Section 2. Subsection (1) and paragraph (e) of subsection  
132 (34) of section 39.01, Florida Statutes, are amended to read:

133 39.01 Definitions.—When used in this chapter, unless the  
134 context otherwise requires:

135 (1) "Abandoned" or "abandonment" means a situation in  
136 which the parent or legal custodian of a child or, in the  
137 absence of a parent or legal custodian, the caregiver, while  
138 being able, has made no significant contribution to the child's  
139 care and maintenance or has failed to establish or maintain a  
140 substantial and positive relationship with the child, or both.  
141 For purposes of this subsection, "establish or maintain a  
142 substantial and positive relationship" includes, but is not  
143 limited to, frequent and regular contact with the child through  
144 frequent and regular visitation or frequent and regular  
145 communication to or with the child, and the exercise of parental  
146 rights and responsibilities. Marginal efforts and incidental or  
147 token visits or communications are not sufficient to establish  
148 or maintain a substantial and positive relationship with a  
149 child. A man's acknowledgment of paternity of the child does not  
150 limit the period of time considered in determining whether the

151 child was abandoned. The term does not include a surrendered  
152 ~~newborn~~ infant as described in s. 383.50, a "child in need of  
153 services" as defined in chapter 984, or a "family in need of  
154 services" as defined in chapter 984. The absence of a parent,  
155 legal custodian, or caregiver responsible for a child's welfare,  
156 who is a servicemember, by reason of deployment or anticipated  
157 deployment as defined in 50 U.S.C. s. 3938(e), may not be  
158 considered or used as a factor in determining abandonment. The  
159 incarceration, repeated incarceration, or extended incarceration  
160 of a parent, legal custodian, or caregiver responsible for a  
161 child's welfare may support a finding of abandonment.

162 (34) "Harm" to a child's health or welfare can occur when  
163 any person:

164 (e) Abandons the child. Within the context of the  
165 definition of "harm," the term "abandoned the child" or  
166 "abandonment of the child" means a situation in which the parent  
167 or legal custodian of a child or, in the absence of a parent or  
168 legal custodian, the caregiver, while being able, has made no  
169 significant contribution to the child's care and maintenance or  
170 has failed to establish or maintain a substantial and positive  
171 relationship with the child, or both. For purposes of this  
172 paragraph, "establish or maintain a substantial and positive  
173 relationship" includes, but is not limited to, frequent and  
174 regular contact with the child through frequent and regular  
175 visitation or frequent and regular communication to or with the

176 child, and the exercise of parental rights and responsibilities.  
 177 Marginal efforts and incidental or token visits or  
 178 communications are not sufficient to establish or maintain a  
 179 substantial and positive relationship with a child. The term  
 180 "abandoned" does not include a surrendered ~~newborn~~ infant as  
 181 described in s. 383.50, a child in need of services as defined  
 182 in chapter 984, or a family in need of services as defined in  
 183 chapter 984. The incarceration, repeated incarceration, or  
 184 extended incarceration of a parent, legal custodian, or  
 185 caregiver responsible for a child's welfare may support a  
 186 finding of abandonment.

187 Section 3. Paragraph (e) of subsection (3) of section  
 188 39.201, Florida Statutes, is amended to read:

189 39.201 Required reports of child abuse, abandonment, or  
 190 neglect, sexual abuse of a child, and juvenile sexual abuse;  
 191 required reports of death; reports involving a child who has  
 192 exhibited inappropriate sexual behavior.—

193 (3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

194 (e) Surrendered ~~newborn~~ infants.—

195 1. The central abuse hotline must receive reports  
 196 involving surrendered ~~newborn~~ infants as described in s. 383.50.

197 2.a. A report may not be considered a report of child  
 198 abuse, abandonment, or neglect solely because the infant has  
 199 been surrendered in accordance with ~~left at a hospital,~~  
 200 ~~emergency medical services station, or fire station under s.~~

201 383.50.  
 202 b. If the report involving a surrendered ~~newborn~~ infant  
 203 does not include indications of child abuse, abandonment, or  
 204 neglect other than that necessarily entailed in the infant  
 205 having been surrendered ~~left at a hospital, emergency medical~~  
 206 ~~services station, or fire station~~, the central abuse hotline  
 207 must provide to the person making the report the name of an  
 208 eligible licensed child-placing agency that is required to  
 209 accept physical custody of and to place surrendered ~~newborn~~  
 210 infants. The department shall provide names of eligible licensed  
 211 child-placing agencies on a rotating basis.

212 3. If the report includes indications of child abuse,  
 213 abandonment, or neglect beyond that necessarily entailed in the  
 214 infant having been surrendered ~~left at a hospital, emergency~~  
 215 ~~medical services station, or fire station~~, the report must be  
 216 considered as a report of child abuse, abandonment, or neglect  
 217 and, notwithstanding chapter 383, is subject to s. 39.395 and  
 218 all other relevant provisions of this chapter.

219 Section 4. Subsections (1) and (4), paragraph (c) of  
 220 subsection (7), and subsection (10) of section 63.0423, Florida  
 221 Statutes, are amended to read:

222 63.0423 Procedures with respect to surrendered infants.—

223 (1) Upon entry of final judgment terminating parental  
 224 rights, a licensed child-placing agency that takes physical  
 225 custody of an infant surrendered in accordance with ~~at a~~

226 ~~hospital, emergency medical services station, or fire station~~  
227 ~~pursuant to~~ s. 383.50 assumes responsibility for the medical and  
228 other costs associated with the emergency services and care of  
229 the surrendered infant from the time the licensed child-placing  
230 agency takes physical custody of the surrendered infant.

231 (4) The parent who surrenders the infant in accordance  
232 with s. 383.50 is presumed to have consented to termination of  
233 parental rights, and express consent is not required. Except  
234 when there is actual or suspected child abuse or neglect, the  
235 licensed child-placing agency may ~~shall~~ not attempt to pursue,  
236 search for, or notify that parent as provided in s. 63.088 and  
237 chapter 49. For purposes of s. 383.50 and this section, a  
238 surrendered ~~an~~ infant who tests positive for illegal drugs,  
239 narcotic prescription drugs, alcohol, or other substances, but  
240 shows no other signs of child abuse or neglect, shall be placed  
241 in the custody of a licensed child-placing agency. Such a  
242 placement does not eliminate the reporting requirement under s.  
243 383.50(7). When the department is contacted regarding an infant  
244 properly surrendered under this section and s. 383.50, the  
245 department shall provide instruction to contact a licensed  
246 child-placing agency and may not take custody of the infant  
247 unless reasonable efforts to contact a licensed child-placing  
248 agency to accept the infant have not been successful.

249 (7) If a claim of parental rights of a surrendered infant  
250 is made before the judgment to terminate parental rights is

251 entered, the circuit court may hold the action for termination  
 252 of parental rights in abeyance for a period of time not to  
 253 exceed 60 days.

254 (c) The court may not terminate parental rights solely on  
 255 the basis that the parent surrendered ~~left~~ the infant ~~at a~~  
 256 ~~hospital, emergency medical services station, or fire station~~ in  
 257 accordance with s. 383.50.

258 (10) Except to the extent expressly provided in this  
 259 section, proceedings initiated by a licensed child-placing  
 260 agency for the termination of parental rights and subsequent  
 261 adoption of an infant surrendered ~~a newborn left at a hospital,~~  
 262 ~~emergency medical services station, or fire station~~ in  
 263 accordance with s. 383.50 shall be conducted pursuant to this  
 264 chapter.

265 Section 5. Paragraph (f) of subsection (2) of section  
 266 63.167, Florida Statutes, is amended to read:

267 63.167 State adoption information center.—

268 (2) The functions of the state adoption information center  
 269 shall include:

270 (f) Maintaining a list of licensed child-placing agencies  
 271 eligible and willing to take custody of and place ~~newborn~~  
 272 infants surrendered in accordance with ~~left at a hospital,~~  
 273 ~~pursuant to~~ s. 383.50. The names and contact information for the  
 274 licensed child-placing agencies on the list shall be provided on  
 275 a rotating basis to the statewide central abuse hotline.

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276 Section 6. Section 383.51, Florida Statutes, is amended to  
 277 read:

278 383.51 Confidentiality; identification of parent  
 279 surrendering ~~leaving newborn infant at hospital, emergency~~  
 280 ~~medical services station, or fire station.~~—The identity of a  
 281 parent who surrenders an ~~leaves a newborn infant at a hospital,~~  
 282 ~~emergency medical services station, or fire station~~ in  
 283 accordance with s. 383.50 is confidential and exempt from s.  
 284 119.07(1) and s. 24(a), Art. I of the State Constitution. The  
 285 identity of a parent surrendering an infant ~~leaving a child~~  
 286 shall be disclosed to a person claiming to be a parent of the  
 287 ~~newborn~~ infant.

288 Section 7. Section 827.035, Florida Statutes, is amended  
 289 to read:

290 827.035 ~~Newborn~~ Infants.—It does ~~shall~~ not constitute  
 291 neglect of a child pursuant to s. 827.03 or contributing to the  
 292 dependency of a child pursuant to s. 827.04, if a parent  
 293 surrenders an ~~leaves a newborn infant in accordance at a~~  
 294 ~~hospital, emergency medical services station, or fire station or~~  
 295 ~~brings a newborn infant to an emergency room and expresses an~~  
 296 ~~intent to leave the infant and not return, in compliance~~ with s.  
 297 383.50.

298 Section 8. Subsection (3) of section 827.10, Florida  
 299 Statutes, is amended to read:

300 827.10 Unlawful desertion of a child.—

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301           (3) This section does not apply to a person who surrenders  
302 an ~~a newborn~~ infant in accordance ~~compliance~~ with s. 383.50.  
303           Section 9. This act shall take effect July 1, 2024.





Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Health & Human Services  
 2 Committee

3 Representative Canady offered the following:

4

5 **Amendment**

6 Remove lines 199-302 and insert:

7 been left at a hospital, emergency medical services station, or  
 8 fire station under s. 383.50.

9 b. If the report involving a surrendered ~~newborn~~ infant  
 10 does not include indications of child abuse, abandonment, or  
 11 neglect other than that necessarily entailed in the infant  
 12 having been left at a hospital, emergency medical services  
 13 station, or fire station, the central abuse hotline must provide  
 14 to the person making the report the name of an eligible licensed  
 15 child-placing agency that is required to accept physical custody  
 16 of and to place surrendered ~~newborn~~ infants. The department

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17 shall provide names of eligible licensed child-placing agencies  
18 on a rotating basis.

19 3. If the report includes indications of child abuse,  
20 abandonment, or neglect beyond that necessarily entailed in the  
21 infant having been left at a hospital, emergency medical  
22 services station, or fire station, the report must be considered  
23 as a report of child abuse, abandonment, or neglect and,  
24 notwithstanding chapter 383, is subject to s. 39.395 and all  
25 other relevant provisions of this chapter.

26 Section 4. Subsections (1) and (4), paragraph (c) of  
27 subsection (7), and subsection (10) of section 63.0423, Florida  
28 Statutes, are amended to read:

29 63.0423 Procedures with respect to surrendered infants.—

30 (1) Upon entry of final judgment terminating parental  
31 rights, a licensed child-placing agency that takes physical  
32 custody of an infant surrendered at a hospital, emergency  
33 medical services station, or fire station pursuant to s. 383.50  
34 assumes responsibility for the medical and other costs  
35 associated with the emergency services and care of the  
36 surrendered infant from the time the licensed child-placing  
37 agency takes physical custody of the surrendered infant.

38 (4) The parent who surrenders the infant in accordance  
39 with s. 383.50 is presumed to have consented to termination of  
40 parental rights, and express consent is not required. Except  
41 when there is actual or suspected child abuse or neglect, the

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42 licensed child-placing agency may ~~shall~~ not attempt to pursue,  
43 search for, or notify that parent as provided in s. 63.088 and  
44 chapter 49. For purposes of s. 383.50 and this section, an  
45 infant who tests positive for illegal drugs, narcotic  
46 prescription drugs, alcohol, or other substances, but shows no  
47 other signs of child abuse or neglect, shall be placed in the  
48 custody of a licensed child-placing agency. Such a placement  
49 does not eliminate the reporting requirement under s. 383.50(7).  
50 When the department is contacted regarding an infant properly  
51 surrendered under this section and s. 383.50, the department  
52 shall provide instruction to contact a licensed child-placing  
53 agency and may not take custody of the infant unless reasonable  
54 efforts to contact a licensed child-placing agency to accept the  
55 infant have not been successful.

56 (7) If a claim of parental rights of a surrendered infant  
57 is made before the judgment to terminate parental rights is  
58 entered, the circuit court may hold the action for termination  
59 of parental rights in abeyance for a period of time not to  
60 exceed 60 days.

61 (c) The court may not terminate parental rights solely on  
62 the basis that the parent left the infant at a hospital,  
63 emergency medical services station, or fire station in  
64 accordance with s. 383.50.

65 (10) Except to the extent expressly provided in this  
66 section, proceedings initiated by a licensed child-placing

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67 agency for the termination of parental rights and subsequent  
68 adoption of an infant ~~a newborn~~ left at a hospital, emergency  
69 medical services station, or fire station in accordance with s.  
70 383.50 shall be conducted pursuant to this chapter.

71 Section 5. Paragraph (f) of subsection (2) of section  
72 63.167, Florida Statutes, is amended to read:

73 63.167 State adoption information center.—

74 (2) The functions of the state adoption information center  
75 shall include:

76 (f) Maintaining a list of licensed child-placing agencies  
77 eligible and willing to take custody of and place ~~newborn~~  
78 infants left at a hospital, pursuant to s. 383.50. The names and  
79 contact information for the licensed child-placing agencies on  
80 the list shall be provided on a rotating basis to the statewide  
81 central abuse hotline.

82 Section 6. Section 383.51, Florida Statutes, is amended to  
83 read:

84 383.51 Confidentiality; identification of parent leaving  
85 ~~newborn~~ infant at hospital, emergency medical services station,  
86 or fire station.—The identity of a parent who leaves an ~~a~~  
87 ~~newborn~~ infant at a hospital, emergency medical services  
88 station, or fire station in accordance with s. 383.50 is  
89 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
90 of the State Constitution. The identity of a parent leaving a

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91 child shall be disclosed to a person claiming to be a parent of  
92 the ~~newborn~~ infant.

93 Section 7. Section 827.035, Florida Statutes, is amended  
94 to read:

95 827.035 ~~Newborn~~ Infants.—It does ~~shall~~ not constitute  
96 neglect of a child pursuant to s. 827.03 or contributing to the  
97 dependency of a child pursuant to s. 827.04, if a parent leaves  
98 an ~~a newborn~~ infant at a hospital, emergency medical services  
99 station, or fire station or brings an ~~a newborn~~ infant to an  
100 emergency room and expresses an intent to leave the infant and  
101 not return, in compliance with s. 383.50.

102 Section 8. Subsection (3) of section 827.10, Florida  
103 Statutes, is amended to read:

104 827.10 Unlawful desertion of a child.—

105 (3) This section does not apply to a person who surrenders  
106 an ~~a newborn~~ infant in compliance with s. 383.50.

107