

House Bill No. 7007

An act relating to safe haven protection for surrendered newborn infants; amending s. 39.01, F.S.; revising definitions; amending s. 39.201, F.S.; conforming terminology to changes made by the act; amending s. 63.0423, F.S.; providing for presumption of consent to termination of parental rights in cases of surrendered infants; removing a requirement that the child-placing agency conduct a search to identify a parent of a surrendered infant; providing an exception; conforming provisions relating to granting a petition for termination of parental rights; amending s. 383.50, F.S.; increasing the age at which an infant is considered a newborn infant for purposes of treatment after surrender; providing for anonymity of the infant's parents; providing an effective date.

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

Section 1. Subsection (1) and paragraph (e) of subsection (31) of section 39.01, Florida Statutes, are amended to read:

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

(1) “Abandoned” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child’s welfare, while being able, makes no provision for the child’s support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of the parent or legal custodian, or caregiver primarily responsible for the child’s welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. The term “abandoned” does not include a ~~surrendered~~ surrendered newborn infant as described in s. 383.50, a “child in need of services” as defined in chapter 984, or a “family in need of services” as defined in chapter 984. The incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.

(31) “Harm” to a child’s health or welfare can occur when any person:

(e) Abandons the child. Within the context of the definition of “harm,” the term “abandons the child” means that the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the person responsible for the child’s welfare, while being able, makes no provision for the child’s support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligation. If the efforts of the parent or legal custodian or person primarily responsible for the child’s welfare to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the child may be determined to have been abandoned. The term “abandoned”

does not include a surrendered ~~an abandoned~~ newborn infant as described in s. 383.50.

Section 2. Paragraph (g) of subsection (2) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)

(g) Reports involving surrendered ~~abandoned~~ newborn infants as described in s. 383.50 shall be made and received by the department.

1. If the report is of a surrendered ~~an abandoned~~ newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

2. If the caller reports indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.

Section 3. Section 63.0423, Florida Statutes, is amended to read:

63.0423 Procedures with respect to surrendered ~~abandoned~~ infants.—

(1) A licensed child-placing agency that takes physical custody of an infant surrendered ~~abandoned~~ at a hospital, emergency medical services station, or fire station pursuant to s. 383.50, shall assume responsibility for all medical costs and all other costs associated with the emergency services and care of the surrendered ~~abandoned~~ infant from the time the licensed child-placing agency takes physical custody of the surrendered ~~abandoned~~ infant.

(2) The licensed child-placing agency shall immediately seek an order from the circuit court for emergency custody of the surrendered ~~abandoned~~ infant. The emergency custody order shall remain in effect until the court orders preliminary approval of placement of the surrendered ~~abandoned~~ infant in the prospective home, at which time the prospective adoptive parents become guardians pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parents shall remain subject to the right of the

licensed child-placing agency to remove the surrendered ~~abandoned~~ infant from the placement during the pendency of the proceedings if such removal is deemed by the licensed child-placing agency to be in the best interest of the child. The licensed child-placing agency may immediately seek to place the surrendered ~~abandoned~~ infant in a prospective adoptive home.

(3) The licensed child-placing agency that takes physical custody of the surrendered ~~abandoned~~ infant shall, within 24 hours thereafter, request assistance from law enforcement officials to investigate and determine, through the Missing Children Information Clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resources, whether ~~or not~~ the surrendered ~~abandoned~~ infant is a missing child.

(4) ~~The parent who surrenders the infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the licensed child-placing agency shall not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. Within 7 days after accepting physical custody of the abandoned infant, the licensed child-placing agency shall initiate a diligent search to notify and to obtain consent from a parent whose identity is known but whose location is unknown. The diligent search must include, at a minimum, inquiries as provided for in s. 63.088. Constructive notice must also be provided pursuant to chapter 49 in the county where the infant was abandoned. If a parent is identified and located, notice of the hearing on the petition for termination of parental rights shall be provided.~~

(5) A petition for termination of parental rights under this section may not be filed until 30 days after the date the infant was surrendered ~~abandoned~~ in accordance with s. 383.50. A petition for termination of parental rights may not be granted until consent to adoption or an affidavit of nonpaternity has been executed by a parent of the abandoned infant as set forth in ~~s. 63.062~~, a parent has failed to reclaim or claim the surrendered ~~abandoned~~ infant within the time period specified in s. 383.50, ~~or the consent of a parent is otherwise waived by the court.~~

(6) A claim of parental rights of the surrendered ~~abandoned~~ infant must be made to the entity having legal custody of the surrendered ~~abandoned~~ infant or to the circuit court before ~~which~~ ~~whom~~ proceedings involving the surrendered ~~abandoned~~ infant are pending. A claim of parental rights of the surrendered ~~abandoned~~ infant may not be made after the judgment to terminate parental rights is entered, except as otherwise provided by subsection (9).

(7) If a claim of parental rights of a surrendered ~~an abandoned~~ infant is made before the judgment to terminate parental rights is entered, the circuit court may hold the action for termination of parental rights pending subsequent adoption in abeyance for a period of time not to exceed 60 days.

(a) The court may order scientific testing to determine maternity or paternity at the expense of the parent claiming parental rights.

(b) The court shall appoint a guardian ad litem for the surrendered ~~abandoned~~ infant and order whatever investigation, home evaluation, and psychological evaluation are necessary to determine what is in the best interest of the surrendered ~~abandoned~~ infant.

(c) The 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 s. 383.50.

(d) The court shall enter a judgment with written findings of fact and conclusions of law.

(8) Within 7 business days after recording the judgment, the clerk of the court shall mail a copy of the judgment to the department, the petitioner, and the persons whose consent were required, if known. The clerk shall execute a certificate of each mailing.

(9)(a) A judgment terminating parental rights pending adoption is voidable, and any later judgment of adoption of that minor is voidable, if, upon the motion of a birth parent, the court finds that a person knowingly gave false information that prevented the birth parent from timely making known his or her desire to assume parental responsibilities toward the minor or from exercising his or her parental rights. A motion under this subsection must be filed with the court originally entering the judgment. The motion must be filed within a reasonable time, but not later than 1 year after the entry of the judgment terminating parental rights.

(b) No later than 30 days after the filing of a motion under this subsection, the court shall conduct a preliminary hearing to determine what contact, if any, will be permitted between a birth parent and the child pending resolution of the motion. Such contact may be allowed only if it is requested by a parent who has appeared at the hearing and the court determines that it is in the best interest of the child. If the court orders contact between a birth parent and child, the order must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

(c) At the preliminary hearing, the court, upon the motion of any party or upon its own motion, may order scientific testing to determine the paternity or maternity of the minor if the person seeking to set aside the judgment is alleging to be the child's birth parent but has not previously been determined by legal proceedings or scientific testing to be the birth parent. Upon the filing of test results establishing that person's maternity or paternity of the surrendered ~~abandoned~~ infant, the court may order visitation as it deems appropriate and in the best interest of the child.

(d) Within 45 days after the preliminary hearing, the court shall conduct a final hearing on the motion to set aside the judgment and shall enter its written order as expeditiously as possible thereafter.

(10) Except to the extent expressly provided in this section, proceedings initiated by a licensed child-placing agency for the termination of parental rights and subsequent adoption of a newborn left at a hospital, emergency

medical services station, or fire station in accordance with s. 383.50 shall be conducted pursuant to this chapter.

Section 4. Subsections (1) and (5) of section 383.50, Florida Statutes, are amended to read:

383.50 Treatment of surrendered ~~abandoned~~ newborn infant.—

(1) As used in this section, the term “newborn infant” means a child ~~who that a licensed physician reasonably believes is to be~~ approximately 7 3 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

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

Section 5. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.