

HOUSE BILL No. 5751

March 22, 2018, Introduced by Reps. Rendon, McCready, Leutheuser, Kahle, Hughes, Noble, Miller, Theis, Allor, Frederick, Wentworth, Vaupel, Canfield and Tedder and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 5, 7, 10, 17, and 20 of chapter XII (MCL 712.5, 712.7, 712.10, 712.17, and 712.20), section 5 as added by 2000 PA 232, sections 7 and 10 as amended by 2006 PA 488, section 17 as amended by 2010 PA 348, and section 20 as amended by 2003 PA 245, and by adding section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XII

SEC. 3A. (1) A PARENT MAY VOLUNTARILY DELIVER HIS OR HER NEWBORN TO A NEWBORN SAFETY DEVICE PROVIDED BY AN EMERGENCY SERVICE PROVIDER. THE NEWBORN SAFETY DEVICE MUST MEET THE REQUIREMENTS PROVIDED IN RULES PROMULGATED UNDER THIS SECTION.

(2) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE

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1 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL
2 PROMULGATE RULES GOVERNING NEWBORN SAFETY DEVICES. THE RULES SHALL
3 PROVIDE FOR ALL OF THE FOLLOWING:

4 (A) SANITATION STANDARDS.

5 (B) PROCEDURES TO PROVIDE EMERGENCY CARE FOR A NEWBORN
6 DELIVERED TO A NEWBORN SAFETY DEVICE.

7 (C) MANUFACTURING AND MANUFACTURER STANDARDS.

8 (D) DESIGN AND FUNCTION REQUIREMENTS THAT INCLUDE THE
9 FOLLOWING:

10 (i) TAKE INTO ACCOUNT INSTALLATION AT A FIRE DEPARTMENT,
11 HOSPITAL, OR POLICE STATION.

12 (ii) ALLOW A NEWBORN TO BE PLACED ANONYMOUSLY FROM THE OUTSIDE
13 OF THE FACILITY.

14 (iii) LOCK THE NEWBORN SAFETY DEVICE AFTER A NEWBORN IS PLACED
15 IN IT SO THAT A PERSON OUTSIDE THE FACILITY IS UNABLE TO ACCESS THE
16 NEWBORN.

17 (iv) PROVIDE A CONTROLLED ENVIRONMENT FOR THE CARE AND
18 PROTECTION OF THE NEWBORN.

19 (v) TRIGGER A 9-1-1 CALL AND PROVIDE NOTIFICATION TO A
20 CENTRALIZED LOCATION IN THE FACILITY WITHIN 30 SECONDS OF A NEWBORN
21 BEING PLACED IN THE NEWBORN SAFETY DEVICE.

22 (E) OPERATING POLICIES, SUPERVISION, AND MAINTENANCE
23 REQUIREMENTS FOR A NEWBORN SAFETY DEVICE, INCLUDING REQUIREMENTS
24 THAT ONLY AN EMERGENCY SERVICE PROVIDER SUPERVISE THE NEWBORN
25 SAFETY DEVICE AND TAKE CUSTODY OF A NEWBORN PLACED IN IT.

26 (F) QUALIFICATIONS REQUIRED FOR A PERSON TO INSTALL A NEWBORN
27 SAFETY DEVICE.

1 (G) PROCEDURES AND FORMS FOR REGISTRATION OF A QUALIFIED
2 NEWBORN SAFETY DEVICE INSTALLER.

3 (H) COSTS FOR REGISTERING AND REGULATING NEWBORN SAFETY
4 DEVICES AND FEES TO COVER THOSE COSTS.

5 (I) CREATING AND POSTING SIGNS TO BE PLACED NEAR OR ON A
6 NEWBORN SAFETY DEVICE TO PROVIDE INFORMATION ABOUT USING IT.

7 (J) ENFORCEMENT OF AND REMEDIES FOR VIOLATIONS FOR FAILURE TO
8 COMPLY WITH THE REQUIREMENTS GOVERNING NEWBORN SAFETY DEVICES.

9 (K) ANY OTHER REQUIREMENT THE DEPARTMENT CONSIDERS NECESSARY
10 TO ENSURE THE SAFETY AND WELFARE OF A NEWBORN PLACED IN A NEWBORN
11 SAFETY DEVICE.

12 Sec. 5. (1) An emergency service provider that is not a
13 hospital and that takes a newborn into temporary protective custody
14 under section 3 **OR 3A** of this chapter shall transfer the newborn to
15 a hospital. The hospital shall accept a newborn who an emergency
16 service provider transfers to the hospital in compliance with this
17 chapter, taking the newborn into temporary protective custody.

18 (2) A hospital that takes a newborn into temporary protective
19 custody under this chapter shall have the newborn examined by a
20 physician. If a physician who examines the newborn either
21 determines that there is reason to suspect the newborn has
22 experienced child abuse or child neglect, other than being
23 surrendered to an emergency service provider under section 3 of
24 this chapter **OR SURRENDERED TO A NEWBORN SAFETY DEVICE UNDER**
25 **SECTION 3A OF THIS CHAPTER**, or comes to a reasonable belief that
26 the child is not a newborn, the physician shall immediately report
27 to the department as required by section 3 of the child protection

1 law, 1975 PA 238, MCL 722.623.

2 (3) If a physician is not required to report to the department
3 as provided in subsection (2), the hospital shall notify a child
4 placing agency that the hospital has taken a newborn into temporary
5 protective custody under this chapter.

6 Sec. 7. Upon receipt of notice from a hospital under section 5
7 of this chapter, the child placing agency shall do all of the
8 following:

9 (a) Immediately assume the care, control, and temporary
10 protective custody of the newborn.

11 (b) If a parent is known and willing, immediately meet with
12 the parent.

13 (c) Unless otherwise provided in this subdivision, make a
14 temporary placement of the newborn with a prospective adoptive
15 parent who has an approved preplacement assessment. If a petition
16 for custody is filed under section 10 of this chapter, the child
17 placing agency may make a temporary placement of the newborn with a
18 licensed foster parent.

19 (d) Unless the birth was witnessed by the emergency service
20 provider, immediately request assistance from law enforcement
21 officials to investigate and determine, through the missing
22 children information clearinghouse, the ~~national center for missing~~
23 ~~and exploited children,~~ **NATIONAL CENTER FOR MISSING AND EXPLOITED**
24 **CHILDREN**, and any other national and state resources, whether the
25 newborn is a missing child.

26 (e) Not later than 48 hours after a transfer of physical
27 custody to a prospective adoptive parent, petition the court in the

1 county in which the prospective adoptive parent resides to provide
2 authority to place the newborn and provide care for the newborn.

3 The petition shall include all of the following:

4 (i) The date of the transfer of physical custody.

5 (ii) The name and address of the emergency service provider to
6 whom the newborn was surrendered **OR THE NAME AND ADDRESS OF THE**
7 **LOCATION OF THE NEWBORN SAFETY DEVICE TO WHICH THE NEWBORN WAS**
8 **SURRENDERED.**

9 (iii) Any information, either written or verbal, that was
10 provided by and to the parent who surrendered the newborn. The
11 emergency service provider that originally accepted the newborn as
12 required by section 3 of this chapter shall provide this
13 information to the child placing agency. **THIS SUBPARAGRAPH DOES NOT**
14 **APPLY TO A NEWBORN SURRENDERED TO A NEWBORN SAFETY DEVICE UNDER**
15 **SECTION 3A OF THIS CHAPTER IF THERE WAS NO INFORMATION LEFT WITH**
16 **THE NEWBORN.**

17 (f) Within 28 days, make reasonable efforts to identify,
18 locate, and provide notice of the surrender of the newborn to the
19 nonsurrendering parent. The child placing agency shall file a
20 written report with the court that issued the order placing the
21 child. The report shall state the efforts the child placing agency
22 made in attempting to identify and locate the nonsurrendering
23 parent and the results of those efforts. If the identity and
24 address of the nonsurrendering parent are unknown, the child
25 placing agency shall provide notice of the surrender of the newborn
26 by publication in a newspaper of general circulation in the county
27 where the newborn was surrendered.

1 Sec. 10. (1) If a surrendering parent wants custody of a
2 newborn who was surrendered under section 3 **OR 3A** of this chapter,
3 the parent shall, within 28 days after the newborn was surrendered,
4 file a petition with the court for custody. Not later than 28 days
5 after notice of surrender of a newborn has been published, an
6 individual claiming to be the nonsurrendering parent of that
7 newborn may file a petition with the court for custody. The
8 surrendering parent or nonsurrendering parent shall file the
9 petition for custody in 1 of the following counties:

10 (a) If the parent has located the newborn, the county where
11 the newborn is located.

12 (b) If subdivision (a) does not apply and the parent knows the
13 location of the emergency service provider **OR NEWBORN SAFETY DEVICE**
14 to whom the newborn was surrendered, the county where the emergency
15 service provider **OR NEWBORN SAFETY DEVICE** is located.

16 (c) If neither subdivision (a) nor (b) applies, the county
17 where the parent is located.

18 (2) If the court in which the petition for custody is filed
19 did not issue the order placing the newborn, the court in which the
20 petition for custody is filed shall locate and contact the court
21 that issued the order and shall transfer the proceedings to that
22 court.

23 (3) Before holding a custody hearing on a petition filed under
24 this section and not later than 7 days after a petition for custody
25 under this section has been filed, the court shall conduct a
26 hearing to make the determinations of paternity or maternity as
27 described in section 11.

1 Sec. 17. (1) A parent who surrenders a newborn under section 3
2 **OR 3A** of this chapter and who does not file a custody action under
3 section 10 of this chapter is presumed to have knowingly released
4 his or her parental rights to the newborn.

5 (2) If the surrendering parent has not filed a petition for
6 custody of the newborn within 28 days of the surrender, the child
7 placing agency with authority to place the newborn shall
8 immediately file a petition with the court to determine whether the
9 release shall be accepted and whether the court shall enter an
10 order terminating the rights of the surrendering parent.

11 (3) If the nonsurrendering parent has not filed a petition for
12 custody of the newborn within 28 days of notice of surrender of a
13 newborn under section 10 of this chapter, the child placing agency
14 with authority to place the newborn shall immediately file a
15 petition with the court to determine whether the court shall enter
16 an order terminating the rights of the nonsurrendering parent.

17 (4) The court shall schedule a hearing on the petition from
18 the child placing agency within 14 days of receipt of that
19 petition. At the hearing, the child placing agency shall present
20 evidence that demonstrates that the surrendering parent released
21 the newborn and that demonstrates the efforts made by the child
22 placing agency to identify, locate, and provide notice to the
23 nonsurrendering parent.

24 (5) If the court finds by a preponderance of the evidence that
25 the surrendering parent has knowingly released his or her rights to
26 the child and that reasonable efforts were made to locate the
27 nonsurrendering parent and a custody action has not been filed, the

1 court shall enter an order terminating parental rights of the
2 surrendering parent and the nonsurrendering parent under this
3 chapter.

4 Sec. 20. The department ~~of community health in conjunction~~
5 ~~with the department~~ shall establish a safe delivery program. The
6 safe delivery program shall include, but is not limited to, both of
7 the following:

8 (a) A toll-free, 24-hour telephone line. The information
9 provided with this telephone line shall include, but is not limited
10 to, all of the following:

11 (i) Information on prenatal care and the delivery of a
12 newborn.

13 (ii) Names of health agencies that can assist in obtaining
14 services and supports that provide for the pregnancy-related health
15 of the mother and the health of the baby.

16 (iii) Information on adoption options and the name and
17 telephone number of a child placing agency that can assist a parent
18 or expecting parent in obtaining adoption services.

19 (iv) Information that, in order to safely provide for the
20 health of the mother and her newborn, the best place for the
21 delivery of a child is in a hospital, hospital-based birthing
22 center, or birthing center that is accredited by the commission for
23 the accreditation of birth centers.

24 (v) An explanation that, to the extent of the law, prenatal
25 care and delivery services are routinely confidential within the
26 health care system, if requested by the mother.

27 (vi) Information that a hospital will take into protective

1 custody a newborn that is surrendered as provided for in this
2 chapter and, if needed, provide emergency medical assistance to the
3 mother, the newborn, or both.

4 (vii) Information regarding legal and procedural requirements
5 related to the voluntary surrender of a child as provided for in
6 this chapter.

7 (viii) Information regarding the legal consequences for
8 endangering a child, including child protective service
9 investigations and potential criminal penalties.

10 (ix) Information that surrendering a newborn for adoption as
11 provided in this chapter is an affirmative defense to charges of
12 abandonment as provided in section 135 of the Michigan penal code,
13 1931 PA 328, MCL 750.135.

14 (x) Information about resources for counseling and assistance
15 with crisis management.

16 (b) A pamphlet that provides information to the public
17 concerning the safe delivery program, **INCLUDING INFORMATION**
18 **REGARDING NEWBORN SAFETY DEVICES**. The department ~~of community~~
19 ~~health and the department~~ shall ~~jointly~~ publish and distribute the
20 pamphlet. The pamphlet shall prominently display the toll-free
21 telephone number prescribed by subdivision (a).

22 Enacting section 1. This amendatory act takes effect 90 days
23 after the date it is enacted into law.

24 Enacting section 2. This amendatory act does not take effect
25 unless Senate Bill No. ____ or House Bill No. 5750 (request no.
26 04198'17) of the 99th Legislature is enacted into law.

Legislative Analysis



NEWBORN SAFETY DEVICES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5750, 5953, and 5954 as introduced
Sponsor: Rep. Bronna Kahle

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5751 as introduced
Sponsor: Rep. Daire Rendon

Committee: Families, Children, and Seniors
Complete to 5-10-18

BRIEF SUMMARY:

House Bill 5751 would amend the Safe Delivery of Newborns Law to define and regulate newborn safety devices. The bill would outline procedures and operating policies for the surrender of newborns using the devices and would require the Department of Health and Human Services to promulgate rules regarding the devices.

DETAILED SUMMARY:

The Safe Delivery of Newborns Law, chapter XII of the Probate Code of 1939, was enacted in 2000 to allow the parental surrender of a newborn to an emergency service provider (a uniformed employee of a fire department, hospital, or police station) and to prescribe the procedures to be followed in those circumstances. Among other things, the Law provides that surrendering a newborn under its provisions is an affirmative defense to a charge of child abandonment, provides for the emergency service provider to take temporary protective custody and transfer the newborn to a hospital, and prescribes procedures to be followed by a child placing agency in placing the newborn for adoption if certain conditions are met.

House Bill 5751 would amend the Safe Delivery of Newborns Law to allow a parent to voluntarily deliver his or her newborn to a newborn safety device (NSD) provided by an emergency service provider. No later than 180 days after the effective date of the bill, the Department of Health and Human Services (DHHS) would have to promulgate rules governing the devices. The rules would have to provide for all of the following:

- Sanitation standards.
- Procedures to provide emergency care for a newborn delivered to a NSD.
- Manufacturing and manufacturer standards.
- Design and function requirements that do the following:
 - Take into account the NSD's installation at a fire department, hospital, or police station.
 - Allow a newborn to be placed in the NSD anonymously from the outside of the facility.
 - Lock the NSD after a newborn is placed in it so that a person outside the facility is unable to access the newborn.
 - Provide a controlled environment for the care and protection of the newborn.

- Trigger a 9-1-1 call and provide notification to a centralized location in the facility within 30 seconds of a newborn's being placed in the NSD.
- Operating policies, supervision, and maintenance requirements for an NSD, including requirements that only an emergency service provider supervise the NSD and take custody of a newborn placed in it.
- Qualifications required for a person to install an NSD and procedures and forms for registration as a qualified NSD installer.
- Costs for registering and regulating NSDs and fees to cover those costs.
- Signs to be placed near or on an NSD to provide information about using it.
- Enforcement of and remedies for violations for failure to comply with the requirements governing NSDs.
- Any other requirement the department considers necessary to ensure the safety and welfare of a newborn placed in an NSD.

The bill would add the ability to surrender a newborn to an NSD to several provisions of the Safe Delivery of Newborns Law that currently refer to the surrender of a newborn to an emergency services provider. It would also require information about NSDs to be included in the pamphlet about the safe delivery program that the DHHS must produce under the Law.

Proposed MCL 712.3a et al.

The bill would take effect 90 days after being enacted.

FISCAL IMPACT:

House Bill 5751 would have a minimal impact on the State of Michigan. Under the provisions of the bill, the Department of Health and Human Services (DHHS) would be required to promulgate rules that would govern the newborn safety devices. Any additional cost to the Department would depend upon any increase in administrative or staff costs concerning the work of researching and creating these new rules.

The bills could have a fiscal impact on local court systems, which would depend on how provisions of the bills affected court caseloads and related administrative costs.

Legislative Analyst: E. Best
 Fiscal Analysts: Viola Bay Wild
 Robin Risko
 Susan Frey

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

ARGUMENTS

Supporting Argument

Proponents of this legislation argue that our society is in need of a way to safely abandon infants because of the situation that young single mothers often find themselves in. This bill would give scared, unprepared mothers an “out”. Rather than abandoning their newborn child in an unsafe environment, this piece of legislation would provide parents of an unwanted newborn up to 3 days of age another method to safely, legally, and anonymously surrender their child to the care of professionals.

On December 28, 2014, a hiker discovered an infant girl abandoned in a wooded area on the northwest side of Indianapolis. The newborn was pronounced dead at the scene. The baby was determined to have been full term with the placenta still attached. The baby was claimed by an organization out of Indiana who buried the infant and gave her the name Amelia Grace Hope. The footprint in the Safe Haven Baby Box logo (right) is Amelia’s actual footprint. This box would serve as an extension of the arms of the first responder in facilitating an anonymous surrender to help eliminate the stigma of dropping off the newborn in-person



This bill would provide a safe and legal alternative to abandonment or infanticide of unwanted newborns. Additionally, it would help to eliminate the stigma of dropping off the newborn in-person. Mothers would now have the option to give up their child anonymously while maintaining their peace of mind. It can be humiliating to admit that you cannot properly care for your new baby. This piece of legislation sends a message that life is, at all cost, worth saving and valuable.

Opposing Argument

Currently, if you live in the United States and cannot care for your newborn, you are allowed to legally and anonymously relinquish the unharmed infant to designated safe haven locations without fear of arrest or prosecution. All 50 states have designated locations where you can safely surrender your unwanted infant. In Michigan, Chapter 12 of Public Act 288 of 1939 is the “Safe Delivery of Newborns Law.” This Act allows parents to safely surrender their newborn child to an employee who is inside the premises and on duty at any hospital, fire station, police station, or by calling 9-1-1. Therefore, those in opposition to this bill argue that this piece of legislation is not needed.

There is also a major concern for the liability of the child. If the baby is injured in any way, the responsibility here is not clear. Due to the fact that there is no way for a woman to officially sign off her parental rights, there is no finality to this major decision. Additionally, these mothers may experience emotional trauma due to having to make this decision alone.

The last thing America needs is a rise in abandonment rates. This box may enable more people to leave their child instead of taking responsibility for it. Those opposed are concerned that abandonment rates may skyrocket.

The bill’s guidelines are also vague. There is no way we can know what parameters will be required after the bill is passed, leaving this an imperfect bill at most.