

Legislative Analysis



NEWBORN SAFETY DEVICES

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

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

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

House Bill 5751 as enrolled
Sponsor: Rep. Daire Rendon

(Vetoed by the Governor 12-27-18)

Committee: Families, Children, and Seniors
Complete to 12-28-18

BRIEF SUMMARY:

House Bills 5750 and 5751 would amend the Safe Delivery of Newborns Law to define and regulate newborn safety devices. The bills would outline procedures and operating policies for the surrender of newborns using the devices and would require the Department of Health and Human Services (DHHS) to promulgate rules regarding the devices. The bills would also change the definition of “newborn” for purposes of the Law. House Bills 5953 and 5954 would amend the Public Health Code and the Michigan Penal Code, respectively, to reflect in those acts the changes proposed by House Bills 5750 and 5751.

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 that is a hospital or that has emergency responder staff 24 hours, seven days a week. No later than 180 days after the effective date of the bill, the 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.
- A publicly accessible list with the location of all available newborn safety devices.
- 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.
- A publicly accessible list with the location of all available newborn safety devices.
- An accessible form that allows a surrendering parent the option of inputting the following information and includes a notification that the information would not be published publicly, but would be accessible to a child placing agency:
 - The known date and time of the surrender of the newborn.
 - The address of the location of the surrender of the newborn.
 - Name and contact information.
 - Family medical information.
 - Whether or not the information provided could be shared with the child and prospective adoptive parent.

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.

Finally, the NSD manufacturer would be liable for any damages for personal injury, including death, resulting from the use of, or malfunction of, an NSD.

Proposed MCL 712.3a et al.

House Bill 5750 would amend the Safe Delivery of Newborns Law to define newborn safety device as a device provided by an emergency service provider that conforms to the rules promulgated by the DHHS under House Bill 5751.

The bill would add the ability to surrender a newborn to an NSD to 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 an emergency service provider to proceed, in response to a child surrendered to an NSD, according to the rules promulgated by the DHHS under House Bill 5751.

Currently under the Law, the term *newborn* is defined as a child a physician reasonably believes to be not more than 72 hours old. The bill would amend this definition so that, for purposes of the Law, newborn would be defined as a child a physician reasonably believes to be not more than 30 days old.

MCL 712.1 et al.

House Bill 5953 would amend Section 2843 of the Public Health Code, concerning death records and reporting requirements. Currently under the law, the death of an infant who was born alive following an attempted abortion and died after being surrendered to an emergency service provider under the Safe Delivery of Newborns Law must be reported in the same manner as for any other death, except that the infant's name must be listed as "Baby Doe" and no information that would identify the deceased infant or the deceased infant's parents may be reported. The bill would amend these provisions to include the ability to surrender a newborn to an NSD under the Safe Delivery of Newborns Law.

MCL 333.2843

House Bill 5954 would amend Section 135 of the Michigan Penal Code, regarding child abandonment. Under current law, except for a situation involving child abuse or neglect, having surrendered a newborn under the Safe Delivery of Newborns Law is an affirmative defense to a charge of child abandonment. The bill would amend these provisions to include the ability to surrender a newborn to an NSD. The bill would also change the age of a child that can be so surrendered from 72 hours old to 30 days old.

MCL 750.135

House Bills 5750 and 5751 are tie-barred to one another, meaning that neither could take effect unless the other were also enacted. House Bills 5953 and 5954 are each tie-barred to House Bill 5750, meaning that neither could take effect unless HB 5750 were enacted.

Each bill would take effect 90 days after being enacted.

FISCAL IMPACT:

House Bills 5750 and 5751 would have a minimal impact on the State of Michigan. Under the provisions of the bills, the DHHS would be required to promulgate rules that would govern the newborn safety devices. Any additional cost to the DHHS 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.

House Bill 5953 has no fiscal implications for the DHHS or local governments.

To the extent that House Bill 5954 leads to a reduction in the number of felony convictions, the bill would result in reduced costs for the state. Reduced felony charges would result in reduced costs related to the state correctional system. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs.

Vetoed 12-27-18:

In his veto message, Governor Snyder wrote: “Michigan’s safe haven law has been an important and valuable policy to ensure unwanted newborn babies are not abandoned or harmed by allowing parents to surrender a child to emergency service providers. However, I do not believe it is appropriate to allow for parents to surrender a baby by simply depositing the baby into a device, rather than physically handing the baby to a uniformed police, fire, or hospital employee.”

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