

Legislative Analysis



NEWBORN SAFETY DEVICES

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<http://www.house.mi.gov/hfa>

House Bill 4523 as introduced
Sponsor: Rep. Bronna Kahle

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

House Bill 4524 as introduced
Sponsor: Rep. Brenda Carter

House Bill 4525 as introduced
Sponsor: Rep. Daire Rendon

House Bill 4526 as introduced
Sponsor: Rep. Julie Brixie

Committee: Families, Children and Seniors
Complete to 6-6-19

SUMMARY:

House Bills 4523 and 4524 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 4525 and 4526 would amend the Michigan Penal Code and the Public Health Code, respectively, to make complementary changes to those acts.

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 4523 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 a hospital. No later than 180 days after the effective date of the bill, DHHS would have to promulgate rules governing NSDs that 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 elements that do the following:
 - Allow a newborn to be placed in the NSD anonymously from outside the hospital.
 - Lock the NSD after a newborn is placed in it so that a person outside the hospital 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 hospital within 30 seconds after a newborn is placed in the NSD.
- Require the interior wall of the NSD to be transparent so that the inside of the NSD is visible to staff in the hospital.
- Operating policies, supervision, and maintenance requirements for an NSD.
- Qualifications for a person to install an NSD and procedures and forms for registering 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 failure to comply with, NSD requirements.
- A publicly accessible list with the location of all available NSDs.
- An accessible form that allows a surrendering parent the option of supplying the following information and includes a notification that the information will not be published publicly but will 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 can be shared with the child and prospective adoptive parent.
- Any other requirement DHHS considers necessary to ensure the safety and welfare of a newborn placed in an NSD.

An NSD would have to be installed so that its interior is in a safe and secure location visible to staff. Alternatively, the hospital could install, at the security desk, a video and audio feed to capture the NSD, but any camera would have to be placed in a way that protected the anonymity of the parent surrendering the newborn.

The hospital would have to inspect and test the NSD to ensure it is functioning properly at least twice every 24 hours in 12-hour intervals. The hospital staff person would have to initial a form provided by DHHS to confirm that the testing and inspection were done.

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

Finally, 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 DHHS must produce under the Law.

Proposed MCL 712.3a et seq.

House Bill 4524 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 DHHS under House Bill 4523.

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

service 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 DHHS under House Bill 4523.

Currently under the Law, the term *newborn* is defined as a child a physician reasonably believes to be up to 72 hours old. The bill would amend this definition so that, for purposes of the Law, *newborn* would be a child a physician reasonably believes to be up to 10 days old.

MCL 712.1 et seq.

House Bill 4525 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 up to 72 hours old to up to 10 days old.

MCL 750.135

House Bill 4526 would amend Section 2843 of the Public Health Code, concerning death records and related 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 Bills 4523, 4525, and 4526 are tie-barred to HB 4524, and House Bill 4524 is tie-barred to HB 4523. A bill cannot take effect unless any bill it is tie-barred to is also enacted.

Each bill would take effect 90 days after being enacted.

BACKGROUND INFORMATION:

The bill package is similar to House Bills 5750, 5751, 5953, and 5954 of the 2017-18 legislative session. Those bills passed both houses of the legislature and were enrolled, but were vetoed by the governor on December 27, 2018. 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."

FISCAL IMPACT:

House Bills 4523 and 4524 would have a minimal impact on the State of Michigan. Under the provisions of the bills, DHHS would be required to promulgate rules that would govern the newborn safety devices. Any additional cost to 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 affect court caseloads and related administrative costs.

To the extent that under provisions of House Bill 4525 there is 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 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any change in penal fine revenue would affect funding for public libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4526 has no fiscal implications for DHHS or local governments.

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■ 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.