



**House
Legislative
Analysis
Section**

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**"BORN ALIVE INFANT PROTECTION
ACT"**

**House Bill 5994 as enrolled
Public Act 687 of 2002
Sponsor: Rep. Bruce Patterson**

**House Bill 5995 as enrolled
Public Act 688 of 2002
Sponsor: Rep. Patricia Birkholz**

**House Bill 5996 as enrolled
Public Act 689 of 2002
Sponsor: Rep. Wayne Kuipers**

**House Bill 5997 as enrolled
Public Act 690 of 2002
Sponsor: Rep. Barb Vander Veen**

**House Bill 5998 as enrolled
Public Act 691 of 2002
Sponsor: Rep. Doug Bovin**

**Second Analysis (1-23-03)
House Committee: Family and Children
Services
Senate Committee: Families, Mental
Health, and Human Services**

House Bills 5994-5998 (1-23-03)

THE APPARENT PROBLEM:

According to information provided by Right to Life of Michigan, in 2000, there were 18 instances in Michigan where an abortion resulted in the delivery of an infant showing evidence of life. According to testimony, these infants were not provided with medical treatment and were allowed to die, despite meeting the definition of a "live birth" under state and federal law. Citing medical advances that have resulted in increased survival rates in premature births as early as 22 to 24 weeks, Right to Life of Michigan has proposed legislation to provide for infants born alive as a result of an abortion to be provided with medical care and to provide that such a birth trigger the provisions of the new "safe infant abandonment" law (Public Act 232 of 2000).

THE CONTENT OF THE BILLS:

House Bill 5994 would create the "Born Alive Infant Protection Act". The bill states that the legislature

finds that the state has a paramount interest in protecting all individuals; that if an abortion results in the live birth of a newborn, the newborn is a legal person for all purposes under the law; and that it would not be an infringement on a woman's right to terminate her pregnancy for the state to assert its interest in protecting a newborn whose live birth occurred as the result of an abortion.

Under the bill, if an abortion resulted in a live birth, and the mother, after being informed of the live birth, expresses a desire to not assume custody or responsibility, by refusing to authorize all necessary life sustaining medical treatment or not releasing the newborn for adoption, the newborn would be considered a newborn who has been surrendered to an emergency service provider under the Safe Delivery of Newborns Law.

In addition, if an abortion performed in a hospital resulted in a live birth, a physician attending the

abortion would be required to provide immediate medical care to the newborn, inform the mother of the live birth, and request medical care for the newborn from a resident on duty or an emergency room physician. If an abortion performed in a setting other than a hospital resulted in a live birth, the attending physician would be required to provide immediate medical care to the newborn and to call 911 to transfer the child to a hospital, which would be required to provide medical care to the newborn. In either case, the attending physician would be required to provide the mother any information that he or she has received from the emergency service provider who received custody under the Safe Delivery of Newborns Law.

Furthermore, if a newborn is considered to be surrendered to an emergency service provider under the Safe Delivery of Newborns Law, the identity of the mother and father would be considered confidential and would not be revealed, either orally or in writing.

House Bill 5995 would amend the Safe Delivery of Newborns Law (Chapter XII of the Probate Code of 1939, MCL 712.3). Under the bill, a newborn born alive as a result of an attempted abortion, as described in the Born Alive Infant Protection Act (proposed in House Bill 5994), would be considered a newborn under the provisions of Chapter XII of the code.

Under the Safe Delivery of Newborns Law, an emergency service provider receiving a newborn is required to inform the parent of the processes leading to the termination of parental rights, adoption of the child, and what the parent can do to regain custody of the child. In addition, the emergency service provider is required to attempt to obtain relevant family and medical information and the identity of the parents (neither of which is made public). The bill states that, in cases under the Born Alive Infant Protection Act, in order for an emergency service provider to provide and obtain the information required under the safe delivery law, the emergency service provider would have to request the required information from, and provide the required information to, the attending physician who delivered the newborn.

In addition, the emergency service provider would provide the child with humane care if it is determined that there is no chance of survival due to the fact that the child was born prematurely. The emergency service provider would be prohibited from attempting to directly contact the parents of the newborn.

House Bill 5996. Under the Michigan Penal Code (MCL 750.135), a father or mother of a child under six years of age, or any other individual, who exposes the child in any street, field, house, or other place, with the intent to injure or abandon the child, is guilty of a felony punishable by imprisonment for not exceeding 10 years. The bill would amend this provision to specify that it would not apply to a mother of a newborn who is born alive as the result of an attempted abortion and surrendered under the Born Alive Infant Protection Act (proposed in House Bill 5994). The provision of the penal code would apply, however, to an attending physician who delivers a live newborn as a result of an attempted abortion and fails to comply with the requirements of the Born Alive Infant Protection Act.

House Bill 5997. Under the Safe Delivery of Newborns Law, a physician who examines a surrendered newborn and who determines that there is reason to suspect the newborn has experienced child abuse or neglect or has reasonable belief that the child is not a newborn is required to report to the Family Independence Agency under the provisions of the Child Protection Law.

Under the Child Protection Law, unless a physician is required to report suspected abuse under the Safe Delivery of Newborns Law, the surrender of a newborn under the safe delivery law is not reasonable grounds to suspect child abuse or neglect, and is not subject to the reporting requirements of the Child Protection Law. House Bill 5997 would amend the Child Protection Law (MCL 722.618) to specify that this provision would also apply to a newborn who was born alive as the result of an attempted abortion and surrendered under the provisions of the Born Alive Infant Protection Act, and who is also considered to be a newborn surrendered under the Safe Delivery of Newborns Law.

House Bill 5998. The Public Health Code (MCL333.2822 and 333.2843) requires certain individuals to report a live birth or death that occurs within the state. The code sets different reporting procedures for live births depending on whether or not the birth occurred in an institution.

The bill would add reporting requirements for a live birth that occurs during an attempted abortion and when the mother of the newborn has expressed a desire not to assume custody and responsibility for the newborn by refusing to authorize the necessary life-sustaining medical treatment. Live births that occurred during an attempted abortion would be treated in the same manner as other live births,

depending on whether or not the attempted abortion took place in an institution. However, for births that resulted from an attempted abortion, the parents would be listed as “unknown” and the newborn would be listed as “Baby Doe”.

The Public Health Code also requires a funeral director who first assumes custody of a dead body to report the death, obtain the necessary personal data, and obtain medical certification. Under the bill, “dead body” would include, but wouldn’t be limited to, the body of an infant who survived an attempted abortion but died within 12 hours.

The bill would delete a requirement that the state or local registrar provide to certain individuals or a court of competent jurisdiction a certificate of registration containing the newborn’s name, the place of birth, date of birth, and date of filing, or a certified copy of documentary evidence on file in the office of the state registrar that is not sealed under the Public Health Code and that served as the basis for a change of a live birth record. Rather, the bill would require the registrar to provide an affidavit of parentage filed after June 1, 1997 or a record of stillbirth filed after June 1, 2003 to certain individuals or a court of competent jurisdiction.

In addition, the Public Health Code requires each newborn to be tested for phenylketonuria, galactosemia, hypothyroidism, maple syrup urine disease, biotinidase deficiency, sickle cell anemia, congenital adrenal hyperplasia, and other treatable but otherwise disabling conditions as designated by the department. The bill would, in addition, require that tests be performed for medium-chain acyl-coenzyme a dehydrogenase deficiency. The act permits the Department of Community Health to charge a fee not exceeding \$39 (set in statute with the enactment of Public Act 33 of 2002), annually adjusted for inflation. The bill would increase the maximum amount of the fee to \$53.71, annually adjusted for inflation. The provision of the bill pertaining to testing would take effect on April 1, 2003.

Tie-bars. House Bills 5995-5998 are tie-barred to House Bill 5994.

BACKGROUND INFORMATION:

On August 5, 2002, President Bush signed the federal Born Alive Infants Protection Act of 2002 (H.R. 2175/P.L. 107-207). Under the act, in determining the meaning of any act of Congress or of any ruling, regulation, or interpretation of the various U.S.

administrative bureaus and agencies, the words “person”, “human being”, “child”, and “individual” shall include every infant member of the species homo sapiens who is born alive at any stage of development. The act does not explicitly require that appropriate treatment be given to a child.

Ostensibly, the act was an outgrowth of recent federal court decisions that struck down several state bans on partial-birth abortions. As the report of the House Committee on the Judiciary states, those decisions stated, in essence, that “once a child is marked for abortion, it is wholly irrelevant whether that child emerges from the womb as a live baby” and that such a child “would not have any rights under the law - no right to receive medical care, to be sustained in life, or to receive any care at all” (see Report 107-186). As such, one of the chief purposes of the act, as stated in the committee report, is to affirm that every child who is born alive - as a result of an induced abortion, natural labor, or caesarean section - is entitled to receive the full protections of the law.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bills 5994 and 5995 may have undetermined state fiscal implications for medical treatment in some circumstances.

According to the House Fiscal Agency, House Bill 5996 would likely have no significant impact on state or local correctional costs. Further, the agency reports that House Bill 5997 would have no fiscal impact.

The HFA reports that House Bill 5998 would result in increased state costs, as follows. The bill’s requirement for increased newborn screening tests would result in expenses that exceed revenue by \$96,800. In addition, because Medicaid provides coverage for 35-40 percent of Michigan births, the state will bear a portion of the newborn screening fee increase. The state must pay 44.58 percent of Medicaid costs, and therefore the Medicaid cost increase due to the bill is estimated conservatively at \$611,500 and the state share of that cost at \$272,600. (1-23-03)

ARGUMENTS:

For:

The package of bills seeks to ensure that, in cases where an abortion results in an infant showing signs of life, that infant receives humane, appropriate

medical treatment, and then is cared for under the provisions of the “Safe Delivery of Newborns Law”. That law, enacted in 2000, provides an alternative to abandonment of an unwanted newborn, allowing the mother to surrender the infant to a person on duty at a hospital, police station, or fire station without fear of prosecution. In the case of a failed abortion, where medical treatment can prolong or save an infant’s life, the bills would provide a procedure for ensuring that the infant is cared for, while the mother surrenders parental rights and is able to keep her identity confidential. The bills would also require the physician who performed the abortion to transfer the infant to the care of another physician, or to call 911.

Response:

The legislation is unnecessary; under current federal and state law, an infant that “shows any evidence of life” after expulsion from the womb is considered to be a “live birth”. This is an issue that is appropriately addressed by the medical community, especially neonatologists and hospitals.

For:

House Bill 5998 would add another test to be performed on newborns. MCAD, a rare genetic disorder that occurs in about one in 10,000 births, is caused by the lack of an enzyme that is required to convert fat into energy. While some infants with MCAD may not exhibit any signs of the disorder at birth, brain damage, hypoglycemia, cardiac arrest, seizures, and other serious illnesses may occur rapidly and eventually lead to mental impairment and death. Early screening and detection of MCAD allows for early treatment; thus, an infant can be saved from possible mental retardation and other serious complications.

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