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SFA



BILL ANALYSIS

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House Bills 5994 through 5998 (as passed by the House)
Sponsor: Representative Bruce Patterson (House Bill 5994)
Representative Patricia Birkholtz (House Bill 5995)
Representative Wayne Kuipers (House Bill 5996)
Representative Barb Vander Veen (House Bill 5997)
Representative Doug Bovin (House Bill 5998)
House Committee: Family and Children Services
Senate Committee: Families, Mental Health and Human Services

Date Completed: 12-4-02

CONTENT

House Bill 5994 would create the "Born Alive Infant Protection Act" to do the following:

- Provide that an newborn who survived an attempted abortion would be considered a newborn surrendered under the Safe Delivery of Newborns Law, if the mother refused to authorize life-sustaining medical treatment or release the newborn for adoption.
- Require the attending physician to provide immediate medical care to the newborn and, depending on where the abortion was performed, request transfer to another physician or call 9-1-1 for emergency transfer to a hospital.

House Bill 5995 would amend the Safe Delivery of Newborns Law to specify what an emergency service provider would have to do when it received a newborn under the proposed Born Alive Infant Protection Act.

House Bill 5996 would amend the Michigan Penal Code to specify that the child abandonment felony would not apply to the mother of a newborn surrendered under the proposed Act, but would apply to a physician who delivered a live newborn and failed to comply with that Act.

House Bill 5997 would amend the Child Protection Law to make an exception to the Law's reporting requirements for a

newborn described in the proposed Act.

House Bill 5998 would amend the Public Health Code to add reporting requirements concerning a live birth under the proposed Act.

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

House Bill 5994

The bill provides that a newborn would be considered a newborn who had been surrendered to an emergency service provider under the Safe Delivery of Newborns Law, if an abortion resulted in a live birth and, after being informed of the live birth, the newborn's mother expressed a desire not to assume custody and responsibility for the newborn by refusing to authorize all necessary life-sustaining medical treatment for the newborn or releasing the newborn for adoption. The procedures of the Safe Delivery of Newborns Law would have to be followed in regard to the newborn's custody and care.

(The bill would define "live birth" as "the complete expulsion or extraction of the offspring of a pregnant woman that, after the expulsion or extraction, shows any evidence of life, whether or not the umbilical cord has been cut or the placenta is attached".)

If an abortion performed in a hospital setting resulted in a live birth, the physician attending the abortion would have to provide immediate medical care to the newborn, inform the

mother of the live birth, and request transfer of the newborn to a resident, on-duty, or emergency room physician, who would have to provide medical care to the newborn. If an abortion performed in other than a hospital setting resulted in a live birth, an attending physician would have to provide immediate medical care to the newborn and call 9-1-1 for an emergency transfer of the newborn to a hospital, which would have to provide medical care to the newborn.

The attending physician who transferred care of a live newborn to another physician or a 9-1-1 emergency responder would have to give the newborn's mother any information provided to the attending physician by the emergency service provider who received custody of the newborn under the Safe Delivery of Newborns Law.

If a newborn were considered a newborn who had been surrendered to an emergency service provider under the Safe Delivery of Newborns Law, as provided in the bill, the identity of the newborn's mother and father would become confidential and could not be revealed orally or in writing.

A live birth described in the bill would have to be reported as required in Section 2822 of the Public Health Code (which House Bill 5998 would amend).

The bill contains the following legislative findings:

- "The state has a paramount interest in protecting all individuals."
- "If an abortion results in the live birth of a newborn, the newborn is a legal person for all purposes under the law."
- "A woman's right to terminate pregnancy ends when the pregnancy is terminated. It is not 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 occurs as the result of an abortion."

House Bill 5995

The Safe Delivery of Newborns Law provides for the parental surrender of a newborn (not over 72 hours old) to an emergency service provider. An emergency service provider is required to take certain steps when a parent surrenders a newborn (leaves a newborn with

the provider without expressing an intent to return for the child). Without a court order, the provider immediately must accept the newborn, taking him or her into protective custody. The provider must make a reasonable effort to take action necessary to protect the newborn's physical health and safety, give the parent certain information, and comply with other requirements related to the parent. (The Law defines "emergency service provider" as a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when the individual is inside the premises and on duty.)

The bill specifies that a newborn whose birth was described in the proposed Born Alive Infant Protection Act and who was in a hospital setting or transferred to a hospital under that Act, would be a newborn surrendered as provided in the Safe Delivery of Newborns Law. An emergency service provider who received a newborn pursuant to the proposed Act would have to do all of the following:

- Comply with the requirements of the Safe Delivery of Newborns Law to obtain information from or supply information to the surrendering parent by requesting the information from or supplying it to the attending physician who delivered the newborn.
- Make no attempt to contact directly the newborn's parent or parents.
- Provide humane comfort care if the newborn were determined to have no chance of survival due to gestational immaturity in light of available neonatal medical treatment or other condition incompatible with life.

House Bill 5996

The Michigan Penal Code makes it a felony, punishable by up to 10 years' imprisonment, for a parent of a child under six, or for another individual, to expose the child in any place with intent to injure or wholly abandon the child. It is a defense to a prosecution for this offense that the child was not more than 72 hours old and was surrendered to an emergency service provider under the Safe Delivery of Newborns Law.

Under the bill, the felony provision would not apply to a mother of a newborn who was

surrendered under the proposed Born Alive Infant Protection Act. The felony would apply, however, to an attending physician who delivered a live newborn as a result of an attempted abortion and failed to comply with the requirements of the proposed Act.

House Bill 5997

The Child Protection Law (CPL) requires certain professionals, such as physicians, social workers, and teachers, to report to the Family Independence Agency (FIA) if they have reasonable cause to suspect child abuse or neglect. The FIA then must refer a report to the prosecuting attorney, if certain criteria are met, or begin an investigation of the child and determine whether he or she is abused or neglected.

The CPL states that the surrender of a newborn in compliance with the Safe Delivery of Newborns Law is not reasonable cause to suspect child abuse or neglect and, therefore, is not subject to the CPL's reporting requirement (unless the physician who examines the child determines that there is another reason to suspect abuse or neglect, or believes that the child is not a newborn).

The bill states that this provision, regarding the surrender of a newborn, would apply to a newborn whose birth was described in the proposed Born Alive Infant Protection Act and who was considered to be a newborn surrendered under the Safe Delivery of Newborns Law.

House Bill 5998

The Public Health Code requires certain individuals to file a report with a local registrar when a live birth that occurs in this State. The reporting requirements depend on whether the birth occurs inside of, en route to, or outside of an institution.

Under the bill, if a live birth occurred during an attempted abortion and the newborn's mother had expressed a desire not to assume custody and responsibility for the newborn by refusing to authorize necessary life-sustaining medical treatment, the birth would have to be reported in the manner currently provided for a live birth inside or outside an institution, as applicable, although the parents would have to be listed as "unknown".

Under the Code, if a live birth occurs in an institution, the individual in charge of the institution or his or her designee must obtain the personal data, prepare the certificate of birth, secure the signatures required by the certificate, and file the certificate with the local registrar or as otherwise directed by the State Registrar within five days of the birth. The physician or other individual in attendance must provide the required medical information and certify to the facts of the birth within 72 hours after the birth.

If a live birth occurs outside an institution, the record must be prepared, certified, and filed with the local registrar by one of the following individuals in the following order of priority:

- The physician in attendance at or immediately after the live birth.
- Any other individual in attendance at or immediately after the live birth.
- The father, the mother, or in the absence of the father or the inability of the mother, the individual in charge of the premises where the live birth occurs.

In addition, the Code requires a funeral director or his or her authorized agent who first assumes custody of a dead body, to report the death. The bill specifies that, for this purpose, "dead body" would include the body of an infant who survived an attempted abortion as described in the proposed Born Alive Infant Protection Act, and died later.

MCL 712.3 (H.B. 5995)
750.135 (H.B. 5996)
722.628 (H.B. 5997)
333.2822 & 333.2843 (H.B. 5998)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5994

The bill would have little to no fiscal impact on the Family Independence Agency. However, medical and emergency transport costs would be incurred in some circumstances and could add to the State's Medicaid program costs.

House Bill 5995

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

The bill would have no fiscal impact on State or local government.

House Bill 5996

The bill would have an indeterminate impact on State and local government.

There are no data to indicate how many doctors would be convicted of exposing a child with intent to injure or to abandon for delivering a newborn as a result of an attempted abortion and failing to comply with the requirements of the Born Alive Infant Protection Act. An offender would be guilty of a Class D felony, which has a sentencing guideline minimum range of 0-6 months to 43-76 months. Local units would incur the cost of incarceration in a county jail, which may vary by county from \$27 to \$65 per day. The State would incur the cost of probation at \$4.38 per day as well as the cost of incarceration in a State prison at an average annual cost of \$25,000. In the absence of data, if one assumes that one additional offender would be convicted and would receive the longest allowable minimum sentence, it would cost the State \$158,300.

House Bill 5997

The bill would have an indeterminate fiscal impact on the State and local governments for administrative services associated with an increase in case investigations, as outlined in the Born Alive Infant Protection Act.

House Bill 5998

The bill would have no fiscal impact on State or local government.

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