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Senate Bill 710 (as enrolled)
Sponsor: Senator Shirley Johnson
Committee: Families and Human Services

Date Completed: 10-13-03

RATIONALE

In 2000, the Safe Delivery of Newborns Law was enacted to allow a parent to surrender a newborn up to 72 hours old to an emergency medical service provider without facing the criminal penalties prescribed for child abandonment or being charged with child abuse or neglect. (The Law is described in more detail under **BACKGROUND**.) Under the Law, a public awareness program was established to provide parents with information about prenatal care and newborn delivery; pregnancy-related support and counseling services; adoption options; counseling resources and crisis management assistance; and legal and procedural requirements for voluntarily surrendering a newborn under the Safe Delivery of Newborns Law. The public awareness provisions are scheduled to be repealed on January 1, 2004. Some people believe that the program has been successful and should continue operating.

CONTENT

The bill would amend the Safe Delivery of Newborns Law to delete a January 1, 2004, sunset on Section 20 of the Law, which provides for a safe delivery program.

Section 20 required the Department of Community Health (DCH), in conjunction with the Family Independence Agency (FIA), to establish a safe delivery program. The program must include a toll-free, 24-hour telephone line. The program also must include a pamphlet, published and distributed jointly by the DCH and the FIA, that provides information to the public concerning the safe delivery program and includes the toll-free telephone number.

The information provided with the toll-free telephone line must include at least all of the following:

- Information on prenatal care and the delivery of a newborn.
- Names of health agencies that can assist in obtaining services and supports that provide for the pregnancy-related health of the mother and the health of the baby.
- Information on adoption options and the name and telephone number of a child placing agency that can assist a parent or expecting parent in obtaining adoption services.
- Information that the best place for the delivery of a child is in a hospital, hospital-based birthing center, or birthing center that is accredited by the Commission for the Accreditation of Birth Centers.
- An explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system, if requested by the mother.
- Information that a hospital will take into protective custody a newborn that is surrendered as provided by the Law and, if needed, provide emergency medical assistance to the mother, the newborn, or both.
- Information regarding legal and procedural requirements related to the voluntary surrender of a child as provided for in the Law.
- Information regarding the legal consequences for endangering a child, including child protective service investigations and potential criminal penalties.
- Information about resources for counseling and assistance with crisis management.
- Information that surrendering a newborn

for adoption as provided under the Law is an affirmative defense to charges of abandonment as provided in Section 135 of the Michigan Penal Code.

(Under Section 135 of the Penal Code, any individual who exposes a child under the age of six in any street, field, house, or other place with intent to wholly abandon the child is guilty of a felony punishable by up to 10 years in prison. Except in a situation involving actual or suspected child abuse or neglect, it is an affirmative defense that the child was not more than 72 hours old and was surrendered to an emergency service provider as provided in the Safe Delivery of Newborns Law.)

MCL 712.20

BACKGROUND

Public Act 232 of 2000 added the Safe Delivery of Newborns Law to the Probate Code of 1939. Under the Law, a person may surrender a newborn to an emergency service provider without being charged with child abuse or neglect or child abandonment. (A "newborn" is a child whom a physician reasonably believes to be not more than 72 hours old. "Emergency service provider" means 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. "Surrender" means to leave a newborn with an emergency service provider without expressing an intent to return for the newborn.)

The emergency service provider immediately must take the newborn into temporary protective custody, and make a reasonable effort to do all of the following:

- Take action necessary to protect the newborn's physical health and safety.
- Inform the parent that, by surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.
- Inform the parent that he or she has 28 days to petition the family court to regain custody of the newborn.

The emergency service provider also must make a reasonable effort to give the

surrendering parent written material approved or produced by the FIA, including statements described in the Law. The emergency service provider then must give the surrendering parent the pamphlet produced by the FIA and the DCH, inform the parent that he or she may receive confidential counseling or medical attention, and ask the parent to identify himself or herself and the other parent.

An emergency service provider that is not a hospital must transfer a surrendered newborn to a hospital, which must have the newborn examined by a physician. If the physician either determines that there is reason to suspect the newborn has experienced child abuse or neglect or comes to a reasonable belief that the child is not a newborn, the physician must report to the FIA as required under the Child Protection Law. If the physician is not required to report to the FIA, the hospital must notify a child placing agency that the hospital has taken a newborn into temporary protective custody.

Upon receiving notice from a hospital, a child placing agency must immediately assume the care, control, and temporary protective custody of the newborn; meet with the parent if he or she is known and willing; temporarily place the newborn with a prospective adoptive parent; request assistance from law enforcement officials to investigate and determine whether the newborn is a missing child; within 48 hours after transferring physical custody to a prospective adoptive parent, petition the family court for authority to place and provide care for the newborn; and, within 28 days, make reasonable efforts to identify and locate the parent who did not surrender the newborn.

If a surrendering parent fails to file a custody action within 28 days, he or she is presumed to have knowingly released his or her parental rights to the newborn. In such a case, the child placing agency must petition the family court for termination of parental rights under the juvenile code.

If a biological parent wants custody of a newborn who has been surrendered to an emergency service provider, the parent must file with the family court an action for custody within 28 days after the child was surrendered.

In a custody action under the Law, the family court must determine custody of the newborn based on his or her best interest. The court may issue an order that either 1) grants legal and/or physical custody to the parent, and retains or relinquishes court jurisdiction, or 2) terminates the parent's parental rights and gives a child placing agency custody and care of the newborn.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Safe Delivery of Newborns Law was enacted in response to incidents in which newborn babies were abandoned in unsafe places, including parking lots, public restrooms, and dumpsters, both in this State and across the country. According to the National Conference of State Legislatures, 105 newborns were abandoned in public places and 31,000 were left in hospitals in the United States in 1998. Michigan's law is designed to reduce the risk of death of abandoned babies, protect parents who may not be prepared to care for a child but want to deliver their newborns to a safe shelter without incurring liability, and encourage awareness of the services that are available to women at risk. The Safe Delivery of Newborns Law has been effective, as evidenced by the seven successful surrenders that occurred in 2001. The sunset should be repealed so that the hotline and pamphlet can continue helping to publicize the options parents have under the Law.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Because the program has already been established, there would be no fiscal impact on State or local government.

Fiscal Analyst: Dana Patterson

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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.