

SUBSTITUTE FOR
SENATE BILL NO. 1292

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 1, 3, 7, 10, 11, 15, and 17 of chapter XII
(MCL 712.1, 712.3, 712.7, 712.10, 712.11, 712.15, and 712.17),
sections 1, 7, 10, 11, 15, and 17 as added by 2000 PA 232 and
section 3 as amended by 2002 PA 688, and by adding section 2a to
chapter XII; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XII

2 Sec. 1. (1) This chapter shall be known and may be cited as
3 the "safe delivery of newborns law".

4 (2) As used in this chapter:

5 (a) "Child placing agency" means that term as defined in
6 section 1 of 1973 PA 116, MCL 722.111.

1 (b) "Court" means the family division of circuit court.

2 (c) "Department" means the ~~family independence agency~~

3 **DEPARTMENT OF HUMAN SERVICES.**

4 (D) "DNA IDENTIFICATION PROFILE" AND "DNA IDENTIFICATION
5 PROFILING" MEAN THOSE TERMS AS DEFINED IN SECTION 1 OF THE
6 PATERNITY ACT, 1956 PA 205, MCL 722.711.

7 (E) ~~—(d)—~~ "Domestic violence" means that term as defined in
8 section 1 of 1978 PA 389, MCL 400.1501.

9 (F) ~~—(e)—~~ "Emergency service provider" means a uniformed or
10 otherwise identified employee or contractor of a fire department,
11 hospital, or police station when ~~such an~~ **THAT** individual is
12 inside the premises and on duty. **EMERGENCY SERVICE PROVIDER ALSO**
13 **INCLUDES A PARAMEDIC OR AN EMERGENCY MEDICAL TECHNICIAN WHEN EITHER**
14 **OF THOSE INDIVIDUALS IS RESPONDING TO A 9-1-1 EMERGENCY CALL.**

15 (G) ~~—(f)—~~ "Fire department" means an organized fire department
16 as that term is defined in section 1 of the fire prevention code,
17 1941 PA 207, MCL 29.1.

18 (H) ~~—(g)—~~ "Gross negligence" means conduct so reckless as to
19 demonstrate a substantial lack of concern for whether an injury
20 results.

21 (I) ~~—(h)—~~ "Hospital" means a hospital that is licensed under
22 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to
23 333.22260.

24 (J) ~~—(i)—~~ "Lawyer-guardian ad litem" means an attorney
25 appointed under section 2 of this chapter. A lawyer-guardian ad
26 litem represents the newborn, and has the powers and duties, as set
27 forth in section 17d of chapter XIIA.

1 (K) ~~—(j)—~~ "Newborn" means a child who a physician reasonably
2 believes to be not more than 72 hours old.

3 (I) ~~—(k)—~~ "Police station" means that term as defined in
4 section 43 of the Michigan vehicle code, 1949 PA 300, MCL 257.43.

5 (M) ~~—(l)—~~ "Preplacement assessment" means an assessment of a
6 prospective adoptive parent as described in section 23f of chapter
7 X.

8 (N) ~~—(m)—~~ "Surrender" means to leave a newborn with an
9 emergency service provider without expressing an intent to return
10 for the newborn.

11 SEC. 2A. (1) A HEARING UNDER THIS CHAPTER IS CLOSED TO THE
12 PUBLIC. A RECORD OF A PROCEEDING UNDER THIS CHAPTER IS
13 CONFIDENTIAL, EXCEPT THAT THE RECORD IS AVAILABLE TO ANY INDIVIDUAL
14 WHO IS A PARTY TO THAT PROCEEDING.

15 (2) ALL CHILD PLACING AGENCY RECORDS CREATED UNDER THIS
16 CHAPTER ARE CONFIDENTIAL EXCEPT AS OTHERWISE PROVIDED IN THE
17 PROVISIONS OF THIS CHAPTER.

18 (3) AN INDIVIDUAL WHO DISCLOSES INFORMATION MADE CONFIDENTIAL
19 UNDER SUBSECTION (1) OR (2) WITHOUT A COURT ORDER OR SPECIFIC
20 AUTHORIZATION UNDER FEDERAL OR STATE LAW IS GUILTY OF A MISDEMEANOR
21 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
22 NOT MORE THAN \$100.00, OR BOTH. AN INDIVIDUAL WHO DISCLOSES
23 INFORMATION MADE CONFIDENTIAL UNDER SUBSECTION (1) OR (2) WITHOUT A
24 COURT ORDER OR SPECIFIC AUTHORIZATION UNDER FEDERAL OR STATE LAW IS
25 CIVILLY LIABLE FOR DAMAGES PROXIMATELY CAUSED BY DISCLOSURE OF THAT
26 INFORMATION.

27 Sec. 3. (1) If a parent surrenders a child who may be a

1 newborn to an emergency service provider, the emergency service
2 provider shall comply with the requirements of this section under
3 the assumption that the child is a newborn. The emergency service
4 provider shall, without a court order, immediately accept the
5 newborn, taking the newborn into temporary protective custody. The
6 emergency service provider shall make a reasonable effort to do all
7 of the following:

8 (a) Take action necessary to protect the physical health and
9 safety of the newborn.

10 (b) Inform the parent that by surrendering the newborn, the
11 parent is releasing the newborn to a child placing agency to be
12 placed for adoption.

13 (c) Inform the parent that the parent has 28 days to petition
14 the court to regain custody of the newborn.

15 (d) Provide the parent with written material approved by or
16 produced by the ~~family independence agency~~ **DEPARTMENT** that
17 includes, but is not limited to, all of the following statements:

18 (i) By surrendering the newborn, the parent is releasing the
19 newborn to a child placing agency to be placed for adoption.

20 (ii) The parent has 28 days after surrendering the newborn to
21 petition the court to regain custody of the newborn.

22 (iii) After the 28-day period to petition for custody elapses,
23 there will be a hearing to **DETERMINE AND** terminate parental rights.

24 (iv) There will be public notice of this hearing, and the
25 notice will not contain the parent's name.

26 (v) The parent will not receive personal notice of this
27 hearing.

1 (vi) Information the parent provides to an emergency service
2 provider will not be made public.

3 (vii) A parent can contact the safe delivery line established
4 under section 20 of this chapter for more information.

5 (2) After providing a parent with the information described in
6 subsection (1), an emergency service provider shall make a
7 reasonable attempt to do all of the following:

8 (a) Encourage the parent to provide any relevant family or
9 medical information.

10 (b) Provide the parent with the pamphlet produced under
11 section 20 of this chapter and inform the parent that he or she can
12 receive counseling or medical attention.

13 (c) Inform the parent that information that he or she provides
14 will not be made public.

15 (d) Ask the parent to identify himself or herself.

16 (e) Inform the parent that in order to place the newborn for
17 adoption the state is required to make a reasonable attempt to
18 identify the other parent, and then ask the parent to identify the
19 other parent.

20 (f) Inform the parent that the child placing agency that takes
21 temporary protective custody of the newborn can provide
22 confidential services to the parent.

23 (g) Inform the parent that the parent may sign a release for
24 the newborn ~~which~~ **THAT** may be used at the parental rights
25 termination hearing **UNDER THIS CHAPTER**.

26 (3) A newborn whose birth is described in the born alive
27 infant protection act, **2002 PA 687, MCL 333.1071 TO 333.1073**, and

1 who is in a hospital setting or transferred to a hospital under
 2 section 3(1) of the born alive infant protection act, **2002 PA 687,**
 3 **MCL 333.1073,** is a newborn surrendered as provided in this ~~act~~
 4 **CHAPTER.** An emergency service provider who has received a newborn
 5 ~~pursuant to~~ **UNDER** the born alive infant protection act, **2002 PA**
 6 **687, MCL 333.1071 TO 333.1073,** shall do all of the following:

7 (a) Comply with the requirements of subsections (1) and (2) to
 8 obtain information from or supply information to the surrendering
 9 parent by requesting the information from or supplying the
 10 information to the attending physician who delivered the newborn.

11 (b) Make no attempt to directly contact the parent or parents
 12 of the newborn.

13 (c) Provide humane comfort care if the newborn is determined
 14 to have no chance of survival due to gestational immaturity in
 15 light of available neonatal medical treatment or other condition
 16 incompatible with life.

17 Sec. 7. Upon receipt of notice from a hospital under section 5
 18 of this chapter, the child placing agency shall do all of the
 19 following:

20 (a) Immediately assume the care, control, and temporary
 21 protective custody of the newborn.

22 (b) If a parent is known and willing, immediately meet with
 23 the parent.

24 (c) ~~Make~~ **UNLESS OTHERWISE PROVIDED IN THIS SUBDIVISION, MAKE**
 25 a temporary placement of the newborn with a prospective adoptive
 26 parent who has an approved preplacement assessment. ~~and resides~~
 27 ~~within the state.~~ **IF A PETITION FOR CUSTODY IS FILED UNDER SECTION**

1 10 OF THIS CHAPTER, THE CHILD PLACING AGENCY MAY MAKE A TEMPORARY
2 PLACEMENT OF THE NEWBORN WITH A LICENSED FOSTER PARENT.

3 (d) ~~Immediately~~ **UNLESS THE BIRTH WAS WITNESSED BY THE**
4 **EMERGENCY SERVICE PROVIDER, IMMEDIATELY** request assistance from law
5 enforcement officials to investigate and determine, through the
6 missing children information clearinghouse, the national center for
7 missing and exploited children, and any other national and state
8 resources, whether the newborn is a missing child.

9 (e) Not later than 48 hours after a transfer of physical
10 custody to a prospective adoptive parent, petition the court in the
11 county in which the prospective adoptive parent resides to provide
12 authority to place the newborn and provide care for the newborn.
13 The petition shall include all of the following:

14 (i) The date of the transfer of physical custody.

15 (ii) The name and address of the emergency service provider to
16 whom the newborn was surrendered.

17 (iii) Any information, either written or verbal, that was
18 provided by and to the parent who surrendered the newborn. The
19 emergency service provider that originally accepted the newborn as
20 required by section 3 of this chapter shall provide this
21 information to the child placing agency.

22 (f) Within 28 days, make reasonable efforts to identify, ~~and~~
23 locate, ~~a parent who did not surrender the newborn~~ **AND PROVIDE**
24 **NOTICE OF THE SURRENDER OF THE NEWBORN TO THE NONSURRENDERING**
25 **PARENT. THE CHILD PLACING AGENCY SHALL FILE A WRITTEN REPORT WITH**
26 **THE COURT THAT ISSUED THE ORDER PLACING THE CHILD. THE REPORT SHALL**
27 **STATE THE EFFORTS THE CHILD PLACING AGENCY MADE IN ATTEMPTING TO**

1 IDENTIFY AND LOCATE THE NONSURRENDERING PARENT AND THE RESULTS OF
2 THOSE EFFORTS. If the identity and address of ~~that~~ THE
3 NONSURRENDERING parent are unknown, the child placing agency shall
4 provide notice OF THE SURRENDER OF THE NEWBORN by publication in a
5 newspaper of general circulation in the county where the newborn
6 was surrendered.

7 Sec. 10. (1) If a ~~biological~~ SURRENDERING parent wants
8 custody of a newborn who was surrendered under section 3 of this
9 chapter, the parent ~~must~~ SHALL, within 28 days after the newborn
10 was surrendered, file ~~an action~~ A PETITION with the court for
11 custody. ~~The~~ NOT LATER THAN 28 DAYS AFTER NOTICE OF SURRENDER OF
12 A NEWBORN HAS BEEN PUBLISHED, AN INDIVIDUAL CLAIMING TO BE THE
13 NONSURRENDERING PARENT OF THAT NEWBORN MAY FILE A PETITION WITH THE
14 COURT FOR CUSTODY. THE SURRENDERING PARENT OR NONSURRENDERING
15 parent shall file the ~~custody action~~ PETITION FOR CUSTODY in 1 of
16 the following counties:

17 (a) If the parent has located the newborn, the county where
18 the newborn is located.

19 (b) If subdivision (a) does not apply and the parent knows the
20 location of the emergency service provider to whom the newborn was
21 surrendered, the county where the emergency service provider is
22 located.

23 (c) If neither subdivision (a) nor (b) ~~apply~~ APPLIES, the
24 county where the parent is located.

25 (2) IF THE COURT IN WHICH THE PETITION FOR CUSTODY IS FILED
26 DID NOT ISSUE THE ORDER PLACING THE NEWBORN, THE COURT IN WHICH THE
27 PETITION FOR CUSTODY IS FILED SHALL LOCATE AND CONTACT THE COURT

Senate Bill No. 1292 (S-1) as amended December 14, 2006

1 THAT ISSUED THE ORDER AND SHALL TRANSFER THE PROCEEDINGS TO THAT
2 COURT.

3 (3) ~~—(2)—~~ Before holding a custody hearing ~~in an action~~ ON A
4 PETITION filed under this section AND NOT LATER THAN 7 DAYS AFTER A
5 PETITION FOR CUSTODY UNDER THIS SECTION HAS BEEN FILED, the court
6 shall ~~determine whether the individual filing the custody action~~
7 ~~is the newborn's biological parent~~ CONDUCT A HEARING TO MAKE THE
8 DETERMINATIONS [OF PATERNITY OR MATERNITY AS DESCRIBED IN SECTION 11.]

9 Sec. 11. (1) In a PETITION FOR custody ~~action~~ filed under
10 this chapter, the court shall order ~~that~~ THE CHILD AND each party
11 claiming paternity ~~or maternity and the child~~ TO submit to blood
12 or tissue typing determinations ~~, which may include, but are not~~
13 ~~limited to, determinations of red cell antigens, red cell~~
14 ~~isoenzymes, human leukocyte antigens, serum proteins, or DNA~~
15 ~~identification profiling, to determine whether each party is likely~~
16 ~~to be, or is not, a biological parent of the child. If the court~~
17 ~~orders a blood or tissue typing or DNA identification profiling to~~
18 ~~be conducted and a party refuses to submit to the typing or DNA~~
19 ~~identification profiling, in addition to any other remedies~~
20 ~~available, the court may do either of the following: OR DNA~~
21 IDENTIFICATION PROFILING, AS DESCRIBED IN SECTION 16 OF THE
22 PATERNITY ACT, 1958 PA 205, MCL 722.716.

23 ~~—— (a) Dismiss the custody action in regard to the party who~~
24 ~~refuses.~~

25 ~~—— (b) If a hearing is held, allow the disclosure of the fact of~~
26 ~~the refusal unless good cause is shown for not disclosing the fact~~
27 ~~of refusal.~~

~~1 (2) A blood or tissue typing or DNA identification profiling
2 shall be conducted by a person accredited for paternity or
3 maternity determinations by a nationally recognized scientific
4 organization, including, but not limited to, the American
5 association of blood banks.~~

~~6 (3) The court shall fix the compensation of an expert at a
7 reasonable amount. Except for an individual who the court
8 determines is indigent, the court shall direct each party claiming
9 paternity or maternity to pay the compensation for his or her own
10 testing plus a portion of the compensation for testing the child
11 equal to the total amount divided by the number of parties claiming
12 paternity and maternity. Before blood or tissue typing or DNA
13 identification profiling is conducted, the court may order a part
14 or all of the compensation paid in advance. Documentation of the
15 genetic testing expenses is admissible as evidence of the amount,
16 which evidence constitutes prima facie evidence of the amount of
17 those expenses without third party foundation testimony.~~

18 (2) UNLESS THE BIRTH WAS WITNESSED BY THE EMERGENCY SERVICE
19 PROVIDER AND SUFFICIENT DOCUMENTATION EXISTS TO SUPPORT MATERNITY,
20 IN A PETITION FOR CUSTODY FILED UNDER THIS CHAPTER, THE COURT SHALL
21 ORDER THE CHILD AND EACH PARTY CLAIMING MATERNITY TO SUBMIT TO
22 BLOOD OR TISSUE TYPING DETERMINATIONS OR DNA IDENTIFICATION
23 PROFILING, AS DESCRIBED IN SECTION 16 OF THE PATERNITY ACT, 1958 PA
24 205, MCL 722.716.

25 (3) IF THE PROBABILITY OF PATERNITY OR MATERNITY DETERMINED BY
26 THE BLOOD OR TISSUE TYPING OR DNA IDENTIFICATION PROFILING IS 99%
27 OR HIGHER AND THE DNA IDENTIFICATION PROFILE AND SUMMARY REPORT ARE

1 ADMISSIBLE, PATERNITY OR MATERNITY IS PRESUMED AND THE PETITIONER
2 MAY MOVE FOR SUMMARY DISPOSITION ON THE ISSUE OF PATERNITY OR
3 MATERNITY.

4 (4) THE COURT MAY ORDER THE PETITIONER TO PAY ALL OR PART OF
5 THE COST OF THE PATERNITY OR MATERNITY TESTING.

6 (5) IF THE RESULT OF THE PATERNITY OR MATERNITY TESTING IS
7 ADMISSIBLE AND ESTABLISHES THAT THE PETITIONER COULD NOT BE THE
8 PARENT OF THE NEWBORN, THE COURT SHALL DISMISS THE PETITION FOR
9 CUSTODY.

10 Sec. 15. Based on the court's finding ~~of the newborn's best~~
11 ~~interest~~ under section 14 of this chapter, the court may issue an
12 order that does 1 of the following:

13 (a) Grants legal or physical custody, or both, of the newborn
14 to the parent ~~—~~ and either retains or relinquishes jurisdiction.

15 ~~—— (b) Terminates the parent's parental rights and gives a child~~
16 ~~placing agency custody and care of the newborn.~~

17 (B) DETERMINES THAT THE BEST INTERESTS OF THE NEWBORN ARE NOT
18 SERVED BY GRANTING CUSTODY TO THE PETITIONER PARENT AND TERMINATES
19 THE PARENT'S PARENTAL RIGHTS AND GIVES A CHILD PLACING AGENCY
20 CUSTODY AND CARE OF THE NEWBORN.

21 (C) DISMISSES THE PETITION.

22 Sec. 17. (1) A parent who surrenders a newborn under section 3
23 of this chapter and who does not file a custody action under
24 section 10 of this chapter is presumed to have knowingly released
25 his or her parental rights to the newborn.

26 ~~—— (2) If a custody action is not filed under section 10 of this~~
27 ~~chapter, the child placing agency shall petition the court for~~

1 ~~termination of parental rights under section 19b of chapter XIIA.~~
2 ~~If the agency has complied with section 7(f) of this chapter, the~~
3 ~~notice under that section is the notice to the newborn's parents~~
4 ~~required by section 19b of chapter XIIA.~~

5 (2) IF THE SURRENDERING PARENT HAS NOT FILED A PETITION FOR
6 CUSTODY OF THE NEWBORN WITHIN 28 DAYS OF THE SURRENDER, THE CHILD
7 PLACING AGENCY WITH AUTHORITY TO PLACE THE NEWBORN SHALL
8 IMMEDIATELY FILE A PETITION WITH THE COURT TO DETERMINE WHETHER THE
9 RELEASE SHALL BE ACCEPTED AND WHETHER THE COURT SHALL ENTER AN
10 ORDER TERMINATING THE RIGHTS OF THE SURRENDERING PARENT.

11 (3) IF THE NONSURRENDERING PARENT HAS NOT FILED A PETITION FOR
12 CUSTODY OF THE NEWBORN WITHIN 28 DAYS OF NOTICE OF SURRENDER OF A
13 NEWBORN UNDER SECTION 10 OF THIS CHAPTER, THE CHILD PLACING AGENCY
14 WITH AUTHORITY TO PLACE THE NEWBORN SHALL IMMEDIATELY FILE A
15 PETITION WITH THE COURT TO DETERMINE WHETHER THE COURT SHALL ENTER
16 AN ORDER TERMINATING THE RIGHTS OF THE NONSURRENDERING PARENT.

17 (4) THE COURT SHALL SCHEDULE A HEARING ON THE PETITION FROM
18 THE CHILD PLACING AGENCY WITHIN 14 DAYS OF RECEIPT OF THAT
19 PETITION. AT THE HEARING, THE CHILD PLACING AGENCY SHALL PRESENT
20 EVIDENCE THAT DEMONSTRATES THAT THE SURRENDERING PARENT RELEASED
21 THE NEWBORN AND THAT DEMONSTRATES THE EFFORTS MADE BY THE CHILD
22 PLACING AGENCY TO IDENTIFY, LOCATE, AND PROVIDE NOTICE TO THE
23 NONSURRENDERING PARENT.

24 (5) IF THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT
25 THE SURRENDERING PARENT HAS KNOWINGLY RELEASED HIS OR HER RIGHTS TO
26 THE CHILD AND THAT REASONABLE EFFORTS WERE MADE TO LOCATE THE
27 NONSURRENDERING PARENT, THE COURT SHALL ENTER AN ORDER TERMINATING

Senate Bill No. 1292 (S-1) as amended December 13, 2006

1 **PARENTAL RIGHTS OF THE SURRENDERING PARENT AND THE NONSURRENDERING**
2 **PARENT UNDER THIS CHAPTER.**

3 Enacting section 1. Sections 12 and 13 of chapter XII of the
4 probate code of 1939, 1939 PA 288, MCL 712.12 and 712.13, are
5 repealed.

[Enacting section 2. This amendatory act takes effect January 1,
2007.]