

Act No. 488  
Public Acts of 2006  
Approved by the Governor  
December 28, 2006  
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**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Senators Johnson, Hammerstrom, Toy, McManus, Birkholz, George, Emerson, Stamas, Garcia, Cropsey, Brown, Hardiman, Jelinek, Patterson, Gilbert, Van Woerkom, Goschka, Kuipers, Cherry, Allen, Bishop, Barcia, Sikkema, Prusi, Jacobs and Whitmer**

# **ENROLLED SENATE BILL No. 1292**

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties," 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:*

## CHAPTER XII

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

(2) As used in this chapter:

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

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

(c) "Department" means the department of human services.

(d) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 1 of the paternity act, 1956 PA 205, MCL 722.711.

(e) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(f) "Emergency service provider" means a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when that individual is inside the premises and on duty. Emergency service provider also includes a paramedic or an emergency medical technician when either of those individuals is responding to a 9-1-1 emergency call.

(g) "Fire department" means an organized fire department as that term is defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

(h) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(i) "Hospital" means a hospital that is licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

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

(k) "Newborn" means a child who a physician reasonably believes to be not more than 72 hours old.

(l) "Police station" means that term as defined in section 43 of the Michigan vehicle code, 1949 PA 300, MCL 257.43.

(m) "Preplacement assessment" means an assessment of a prospective adoptive parent as described in section 23f of chapter X.

(n) "Surrender" means to leave a newborn with an emergency service provider without expressing an intent to return for the newborn.

Sec. 2a. (1) A hearing under this chapter is closed to the public. A record of a proceeding under this chapter is confidential, except that the record is available to any individual who is a party to that proceeding.

(2) All child placing agency records created under this chapter are confidential except as otherwise provided in the provisions of this chapter.

(3) An individual who discloses information made confidential under subsection (1) or (2) without a court order or specific authorization under federal or state law is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both. An individual who discloses information made confidential under subsection (1) or (2) without a court order or specific authorization under federal or state law is civilly liable for damages proximately caused by disclosure of that information.

Sec. 3. (1) If a parent surrenders a child who may be a newborn to an emergency service provider, the emergency service provider shall comply with the requirements of this section under the assumption that the child is a newborn. The emergency service provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody. The emergency service provider shall make a reasonable effort to do all of the following:

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

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

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

(d) Provide the parent with written material approved by or produced by the department that includes, but is not limited to, all of the following statements:

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

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

(iii) After the 28-day period to petition for custody elapses, there will be a hearing to determine and terminate parental rights.

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

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

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

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

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

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

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

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

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

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

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

(g) Inform the parent that the parent may sign a release for the newborn that may be used at the parental rights termination hearing under this chapter.

(3) A newborn whose birth is described in the born alive infant protection act, 2002 PA 687, MCL 333.1071 to 333.1073, and who is in a hospital setting or transferred to a hospital under section 3(1) of the born alive infant protection act, 2002 PA 687, MCL 333.1073, is a newborn surrendered as provided in this chapter. An emergency service

provider who has received a newborn under the born alive infant protection act, 2002 PA 687, MCL 333.1071 to 333.1073, shall do all of the following:

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

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

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

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

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

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

(c) Unless otherwise provided in this subdivision, make a temporary placement of the newborn with a prospective adoptive parent who has an approved preplacement assessment. If a petition for custody is filed under section 10 of this chapter, the child placing agency may make a temporary placement of the newborn with a licensed foster parent.

(d) Unless the birth was witnessed by the emergency service provider, immediately request assistance from law enforcement officials to investigate and determine, through the missing children information clearinghouse, the national center for missing and exploited children, and any other national and state resources, whether the newborn is a missing child.

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

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

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

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

(f) Within 28 days, make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent. The child placing agency shall file a written report with the court that issued the order placing the child. The report shall state the efforts the child placing agency made in attempting to identify and locate the nonsurrendering parent and the results of those efforts. If the identity and address of the nonsurrendering parent are unknown, the child placing agency shall provide notice of the surrender of the newborn by publication in a newspaper of general circulation in the county where the newborn was surrendered.

Sec. 10. (1) If a surrendering parent wants custody of a newborn who was surrendered under section 3 of this chapter, the parent shall, within 28 days after the newborn was surrendered, file a petition with the court for custody. Not later than 28 days after notice of surrender of a newborn has been published, an individual claiming to be the nonsurrendering parent of that newborn may file a petition with the court for custody. The surrendering parent or nonsurrendering parent shall file the petition for custody in 1 of the following counties:

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

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

(c) If neither subdivision (a) nor (b) applies, the county where the parent is located.

(2) If the court in which the petition for custody is filed did not issue the order placing the newborn, the court in which the petition for custody is filed shall locate and contact the court that issued the order and shall transfer the proceedings to that court.

(3) Before holding a custody hearing on a petition filed under this section and not later than 7 days after a petition for custody under this section has been filed, the court shall conduct a hearing to make the determinations of paternity or maternity as described in section 11.

Sec. 11. (1) In a petition for custody filed under this chapter, the court shall order the child and each party claiming paternity to submit to blood or tissue typing determinations or DNA identification profiling, as described in section 16 of the paternity act, 1958 PA 205, MCL 722.716.

(2) Unless the birth was witnessed by the emergency service provider and sufficient documentation exists to support maternity, in a petition for custody filed under this chapter, the court shall order the child and each party claiming maternity to submit to blood or tissue typing determinations or DNA identification profiling, as described in section 16 of the paternity act, 1958 PA 205, MCL 722.716.

(3) If the probability of paternity or maternity determined by the blood or tissue typing or DNA identification profiling is 99% or higher and the DNA identification profile and summary report are admissible, paternity or maternity is presumed and the petitioner may move for summary disposition on the issue of paternity or maternity.

(4) The court may order the petitioner to pay all or part of the cost of the paternity or maternity testing.

(5) If the result of the paternity or maternity testing is admissible and establishes that the petitioner could not be the parent of the newborn, the court shall dismiss the petition for custody.

Sec. 15. Based on the court's finding under section 14 of this chapter, the court may issue an order that does 1 of the following:

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

(b) Determines that the best interests of the newborn are not served by granting custody to the petitioner parent and terminates the parent's parental rights and gives a child placing agency custody and care of the newborn.

(c) Dismisses the petition.

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

(2) If the surrendering parent has not filed a petition for custody of the newborn within 28 days of the surrender, the child placing agency with authority to place the newborn shall immediately file a petition with the court to determine whether the release shall be accepted and whether the court shall enter an order terminating the rights of the surrendering parent.

(3) If the nonsurrendering parent has not filed a petition for custody of the newborn within 28 days of notice of surrender of a newborn under section 10 of this chapter, the child placing agency with authority to place the newborn shall immediately file a petition with the court to determine whether the court shall enter an order terminating the rights of the nonsurrendering parent.

(4) The court shall schedule a hearing on the petition from the child placing agency within 14 days of receipt of that petition. At the hearing, the child placing agency shall present evidence that demonstrates that the surrendering parent released the newborn and that demonstrates the efforts made by the child placing agency to identify, locate, and provide notice to the nonsurrendering parent.

(5) If the court finds by a preponderance of the evidence that the surrendering parent has knowingly released his or her rights to the child and that reasonable efforts were made to locate the nonsurrendering parent, the court shall enter an order terminating parental rights of the surrendering parent and the nonsurrendering parent under this chapter.

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

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

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor