

Legislative Analysis



CONFIDENTIALITY UNDER SAFE DELIVERY OF NEWBORNS LAW

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House Bill 4311 (reported from committee w/o amendment)

Sponsor: Rep. Hank Vaupel

Committee: Health Policy

Complete to 4-14-17

(Enacted as Public Act 142 of 2017)

BRIEF SUMMARY: House Bill 4311 would amend the Public Health Code (MCL 333.2822) to protect the confidentiality of the parents who surrender their child under the Safe Delivery of Newborns Law.

FISCAL IMPACT: House Bill 4311 would have no fiscal impact on state or local governments.

THE APPARENT PROBLEM:

This bill is understood to address a concern that parents might not take advantage of the Safe Delivery Law if they believe they might not remain anonymous. The bill would alleviate fear of exposure as a barrier to the surrender of a child.

The Safe Delivery of Newborns Law, otherwise known as the Baby Drop-off Act, is part of the Probate Code of 1939 (MCL 712.1-712.20) and, generally speaking, allows parents safely to surrender their newborn child no more than 72 hours old to an employee who is inside and on duty at any hospital, fire department, police station, or by calling 911. According to the Michigan Department of Health and Human Services (MDHHS), the program is intended to provide a safe, legal alternative to abandonment.¹ Under the Act, by surrendering the child, the parent is releasing the child to a child placing agency to be placed for adoption, and has 28 days after surrender to petition the court to regain custody.

Enacted in 2001, the Safe Delivery Law had resulted in 175 surrenders of newborns in the state as of May 9, 2016. All 50 states have laws permitting the safe surrender of an infant.

THE CONTENT OF THE BILL:

House Bill 4311 would amend the Public Health Code (MCL 333.2822) to protect the confidentiality of the parents who surrender their child under the Safe Delivery of Newborns Law.

Under the Public Health Code, certain information must be gathered, certified, and filed. For instance, if the birth occurs in an institution or en route to an institution, the institution must obtain the personal data, prepare the certificate of birth (including obtaining medical information from the physician), and file the certificate of birth with the local registrar or as otherwise directed by the state registrar within five days of the birth.

¹ MDHHS Safe Delivery webpage: http://www.michigan.gov/mdhhs/0,5885,7-339-71548_7200---,00.html

The bill would provide that if a newborn is surrendered under the Safe Delivery Law this same procedure would apply but the *parents would be listed as "unknown" and the newborn as "Baby Doe."*

It would also adopt the definition for *surrender* that is provided in the Safe Delivery Law (described below): to leave a newborn with an emergency service provider without expressing an intent to return for the newborn.

Finally, it would remove a reference to the term "abortion"; currently the section uses the definition of *abortion* defined in Section 17015 of the Code: the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

ARGUMENTS:

For:

The bill seeks to reassure parents who may have need of the Safe Delivery of Newborns Law, but fear exposure if their family, friends, or community find out that they have given birth to and relinquished a child. In too many cases, immature and frightened parents fear the social stigma, financial burden, and other consequences associated with parenthood, and abandon the child in dumpsters or public restrooms. Instead, the bill would ensure that the far preferable option of surrendering the child to an emergency service provider would still guarantee the parents' anonymity.

Against:

No one testified or voted against the bill, but committee members raised the following concerns:

- Some questioned whether maintaining the parents' confidentiality could present problems for the child's health—for instance, a family medical history can be useful in determining whether the child has a genetic predisposition to developing certain diseases. In response, a representative of the Michigan Department of Health and Human Services (MDHHS) stated that parents are encouraged to share helpful information when they utilize the Safe Delivery Law,² and that would not change.
- When others asked whether the MDHHS anticipated a problem where adoptive parents were unable to produce a birth certificate for a child surrendered under the law—for example, when travelling—the MDHHS representative replied that an adoption file will create a replacement birth certificate which lists the child's and adoptive parents' names, so there would not be a problem.

² The Safe Delivery Law (MCL 712.3) states that an emergency service provider must make a reasonable attempt to "encourage the parent to provide any relevant family or medical information[.]" in addition to other required notifications.

POSITIONS:

A representative of the Michigan Department of Health and Human Services (MDHHS) testified in support of the bill. (3-22-17)

The following organization support the bill:

- Michigan Family Forum (3-22-17)
- Michigan Catholic Conference (3-22-17)
- Michigan Academy of Pediatrics (3-22-17)
- Right to Life of Michigan (3-22-17)
- Michigan Council for Maternal and Child Health (3-29-17)

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