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BILL



ANALYSIS

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House Bill 5750 (as passed by the House)  
House Bill 5751 (Substitute H-1 as passed by the House)  
House Bills 5953 and 5954 (as passed by the House)  
Sponsor: Representative Bronna Kahle (H.B. 5750, 5953, and 5954)  
Representative Daire Rendon (H.B. 5751)  
House Committee: Families, Children, and Seniors  
Senate Committee: Families, Seniors and Human Services

Date Completed: 9-5-18

### **CONTENT**

**House Bill 5751 (H-1)** would amend the Safe Delivery of Newborns Law to do the following:

- Allow a parent to voluntarily deliver his or her newborn to a newborn safety device provided by an emergency service provider.
- Require a device to meet the requirements provided in rules promulgated under the bill.
- Require the Department of Health and Human Services (DHHS) to promulgate rules governing newborn safety devices.
- Require an emergency service provider or a physician to perform the same functions for a newborn surrendered to a newborn safety device as is required currently for a newborn surrendered to an emergency service provider.
- Require a pamphlet that provides information to the public concerning the Safe Delivery Program to include information regarding newborn safety devices.

**House Bill 5750** would amend the Safe Delivery of Newborns Law to do the following:

- Provide that the Family Division of Circuit Court would have jurisdiction over a newborn who was surrendered to a newborn safety device.
- Define "newborn safety device" as a device provided by an emergency service provider that conformed to the rules promulgated under the Code.

**House Bill 5953** would amend the Public Health Code to require that the death of an infant who was born alive following an attempted abortion, was surrendered to a newborn safety device, and then died to be reported in the same manner as for any death.

**House Bill 5954** would amend the Michigan Penal Code to do the following:

- Specify that it would be an affirmation defense to a prosecution for exposing a child with intent to injure or abandon that the child was 30 days, instead of 72 hours, old and was surrendered to an emergency service provider or a newborn safety device.

- **Specify that a criminal investigation could not be initiated solely on the basis of a newborn being surrendered to an emergency service provider or a newborn safety device.**

House Bill 5750 and House Bill 5751 are tie-barred to each other. House Bills 5953 and 5954 also are tie-barred to House Bill 5750. Each bill would take effect 90 days after its enactment.

House Bill 5751 (H-1), House Bill 5750, and House Bill 5954 are discussed in greater detail below.

### **House Bill 5751 (H-1)**

#### **Promulgation & Subject Matter of Rules**

The bill would add Section 3a to allow a parent to voluntarily deliver his or her newborn to a newborn safety device provided by an emergency service provider. The newborn safety device would have to meet the requirements provided in rules promulgated under the bill.

Within 180 days after the bill's effective date, the DHHS would have to promulgate rules governing newborn safety devices. The rules would have to provide for all of the following:

- Sanitation standards.
- Procedures to provide emergency care for a newborn delivered to a device.
- Manufacturing and manufacturer standards.
- Operating policies, supervision, and maintenance requirements for a device, including requirements that only an emergency service provider supervise the newborn safety device and take custody of a newborn placed in it.
- Qualifications required for a person to install a newborn safety device.
- Procedures and forms for registration of a qualified newborn safety device installer.
- Costs for registering and regulating newborn safety devices and fees to cover those costs.
- Creating and posting signs to be placed near or on a device to provide information about using it.
- Enforcement of and remedies for violations for failure to comply with the requirements governing newborn safety devices.
- Any other requirement the Department considered necessary to ensure the safety and welfare of a newborn placed in a device.
- A publicly accessible list with the location all available newborn safety devices.

The rules would have to provide for an accessible form that allowed a surrendering parent the option to input the following and included notification to the surrendering parent that this information would not be published publicly, but would have to be accessible to a child placing agency: a) the known date and time of surrender of the newborn; b) the address of the location of surrender of the newborn; c) name and contact information; d) family medical information; e) whether or not the information provided could be shared with the child and prospective adoptive parent.

The rules also would have to provide for design and function requirements that included the following:

- Took into account installation at a fire department, hospital, or police station.
- Allowed a newborn to be placed anonymously from the outside of the facility.
- Locked the newborn safety device after a newborn was placed in it so that a person outside the facility would be unable to gain access to the newborn.
- Provided a controlled environment for the care and protection of the newborn.

- Triggered a 9-1-1 call and provided notification to a centralized location in the facility within 30 seconds of a newborn being placed in the device.

#### Surrender of Newborn; Newborn Safety Device

The Law requires an emergency service provider that is not a hospital and that takes a newborn into temporary protective custody to transfer the newborn to a hospital. The hospital must accept the newborn, and take him or her into temporary protective custody. The hospital also must have the newborn examined by a physician. If the physician determines that there is reason to suspect the newborn has experienced child abuse or child neglect, other than being surrendered to an emergency service provider, or comes to a reasonable belief that the child is not a newborn, the physician must immediately report to the DHHS in the same manner required under the Child Protection Law. Under the bill, these requirements also would apply to a newborn surrendered to a newborn safety device. (The Child Protection Law requires individuals in various professions or occupations (referred to as "mandated reporters") to report to the DHHS if they have reasonable cause to suspect child abuse or child neglect).

If a physician is not required to report to DHHS, the hospital must notify a child placing agency that the hospital has taken a newborn into temporary protective custody. After receiving the notice, the agency, unless otherwise provided, must make a temporary placement of the newborn with a prospective adoptive parent who has an approved preplacement assessment.

Within 48 hours after that transfer, the agency must petition the court in the county in which the prospective adoptive parent resides to provide authority to place and provide care for the newborn. The date of transfer and the petition must include the name and address of the emergency service provider to whom the newborn was surrendered. The bill would require the petition to include the name and address of the location of the newborn safety device to which the newborn was surrendered.

The Law also requires the petition to include any information that was provided by and to the parent who surrendered the newborn. The emergency service provider that accepted the newborn must provide this information to the child placing agency. Under the bill, this requirement would not apply to a newborn surrendered to a newborn safety device if there were no information left with the newborn.

#### Surrendering Parent; Custody of Newborn

The Law requires a surrendering parent who wants custody of the surrendered newborn to file a petition with the court for custody. If the parent has located the newborn, the petition must be filed in the county where the newborn is located. If the parents has not located the newborn, but knows the location of the emergency service provider to whom the newborn was surrendered, the petition must be filed in the county where the provider is located. Under the bill, if the parent had not located the newborn but knew the location of the newborn safety device to whom the newborn was surrendered, the petition would have to be filed in the county where the device was located.

A parent who surrenders a newborn to an emergency service provider and who does not filed a custody action is presumed to have knowingly released his or her parental rights to the child. Under the bill, this would apply to a child surrendered to a newborn safety device.

#### Safe Delivery Program Pamphlet

The Law requires the DHHS to establish a safe delivery program. The program must include

a toll-free, 24-hour telephone line with certain information, and a pamphlet that provides information to the public concerning the safe delivery program. The bill would require the pamphlet to include information regarding newborn safety devices.

The bill would also require the pamphlet to include information regarding newborn safety devices.

### **House Bill 5750**

The Law provides that the Family Division and Circuit Court has jurisdiction over a newborn who is surrendered to an emergency service provider. The bill specifies that the court also could have jurisdiction over a newborn who was surrendered to a newborn safety device. "Newborn safety device" would mean a device provided by an emergency service provider that conforms to the rules promulgated under Section 3a of the Act (which House Bill 5751 (H-1) would add.) The Law defines "newborn" as a child who a physician reasonably believes to be not more than 72 hours old. Under the bill, that term would mean a child who a physician reasonably believes to be not more than 30 days old.

The Law specifies that, except as otherwise provided for a physician who suspects that a newborn has experienced child abuse or neglect or has a reasonable belief that the child is not a newborn, the reporting requirements under the Child Protection Law do not apply to a newborn surrendered to an emergency service provider. Under the bill, those reporting requirements also would not apply to a child surrendered to a newborn safety device.

Under the Law, if a parent surrenders a child who may be a newborn to an emergency service provider, the provider must immediately accept the newborn and take it into temporary protective custody. The emergency service provider also must comply with other requirements prescribed under the Law. Under the bill, if a parent surrendered a child who could be a newborn to a newborn safety device, the emergency service provider would have to proceed as described in the rules for newborn safety devices promulgated under Section 3a.

### **House Bill 5954**

Under the Penal Code, except as otherwise provided for the mother of a newborn who is surrendered under the Born Alive Infant Protection Act (which prescribes responsibilities and procedures for newborns whose live births result from an abortion), a father or mother of a child under the age of six years, or another individual, who exposes the child in any street, field, house, or other place, with intent to injure or wholly to abandon the child, is guilty of a felony, punishable by up to 10 years' imprisonment.

Except for a situation involving actual or suspected child abuse or child neglect, it is an affirmative defense to a prosecution that the child was not more than 72 hours old and was surrendered to an emergency service provider. A criminal investigation may not be initiated solely on the basis of a newborn being surrendered to an emergency service provider under the Safe Delivery of Newborns Act.

Under the bill, except for a situation involving actual or suspected child abuse or child neglect, it would be an affirmative defense to a prosecution that the child was not more than 30 days old and was surrendered to an emergency service provider or a newborn safety device. A criminal investigation could not be initiated solely on the basis of a newborn being surrendered to an emergency service provider or a newborn safety device.

333.2843 (H.B. 5953)  
750.135 (H.B. 5954)

## **FISCAL IMPACT**

### **House Bills 5750 & 5751 (H-1)**

The bills would have minimal fiscal impact on the State and no fiscal impact on local government. The Michigan Department of Health and Human Services (DHHS) currently employs program staff within the Department's Children's Services Agency to promulgate rules specific to child welfare. Any marginal increase in cost would be due to an increase in staffing to the extent that developing rules specific to newborn safety devices could not be covered by existing resources.

### **House Bill 5953**

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

### **House Bill 5954**

The bill could have a positive fiscal impact on the State and local government. Fewer felony arrests and convictions could decrease resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown in the absence of this legislation how many people would be prosecuted under current law relating to child abandonment. For any decrease in prison intakes, in the short term, the marginal cost to State government is approximately \$5,315 per prisoner per year. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year.

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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.