

# Legislative Analysis

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Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

## POSTHUMOUS ADOPTION

**House Bill 5828 as passed by the House**

**Sponsor: Rep. Jeff Mayes**

**Committee: Judiciary (Discharged)**

**First Analysis (7-17-08)**

**BRIEF SUMMARY:** The bill would allow foster parents to complete an adoption that was in process when the child being adopted passed away suddenly.

**FISCAL IMPACT:** The bill would have no fiscal impact on state or local units of government.

### **THE APPARENT PROBLEM:**

Several years ago, on her eighth birthday, a girl in foster care asked her foster parents to adopt her. The foster parents immediately began the adoption process. Tragically, an unexpected delay occurred that stalled the process and shortly before resolution, the child died suddenly. The foster parents are now seeking closure and would like to fulfill their promise to their foster daughter by completing the adoption posthumously.

### **THE CONTENT OF THE BILL:**

The bill would add a new section to the adoption code (MCL 710.56a) that would allow the foster parents of a child who died during the adoption process to complete the adoption under certain circumstances.

Under the bill, if an application for adoption had been filed under Chapter X of the Probate Code and circumstances specified in the bill were met, a probate court would be authorized to enter an order of adoption, even if the adoptee was deceased at the time the order of adoption is entered. The bill would apply retroactively to January 1, 2004.

The order of adoption could be entered if all of the following requirements were met:

- The foster parent or parents had been available for adoption.
- The parental rights of the adoptee's parents had been terminated and the child had been committed to the Michigan Children's Institute by a court that had jurisdiction over the child.
- The foster parents desired to adopt the adoptee.
- The adoption procedures had been initiated under Chapter X.
- The Michigan Children's Institute supervisor would have granted consent to the adoption as required under law after all the appropriate adoption procedures and requirements had been met.

The Department of Human Services would not, under the bill, reimburse the adoptive parent or parents for any medical expenses incurred for, or on behalf of, the deceased

adoptee and would not pay medical assistance to the adoptive parent or parents as described in the provisions of Section 115h of the Social Welfare Act.

Further, Section 56a would be repealed immediately after an order of adoption was issued under the bill.

***ARGUMENTS:***

***For:***

The bill is narrowly crafted to address an unfortunate situation in which a child who was in the process of being adopted by her loving foster parents died suddenly before the process could be completed. Had it not been for some extenuating circumstances, the adoption likely would have been completed before her death. The Department of Human Services has worked closely with the bill sponsor and the family in the wording of the bill so that it would apply only in this one situation. Enactment of the bill would enable one grieving family to experience some closure and to keep their promise of adoption to their beloved child.

***POSITIONS:***

The Department of Human Services supports the bill. (7-17-08)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robert Schneider  
Ben Gielczyk

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