

**SUBSTITUTE FOR
HOUSE BILL NO. 5751**

As amended December 18, 2018

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 5, 7, 10, 17, and 20 of chapter XII (MCL
712.5, 712.7, 712.10, 712.17, and 712.20), section 5 as added by
2000 PA 232, sections 7 and 10 as amended by 2006 PA 488, section
17 as amended by 2010 PA 348, and section 20 as amended by 2003 PA
245, and by adding section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XII

**SEC. 3A. (1) A PARENT MAY VOLUNTARILY DELIVER HIS OR HER
NEWBORN TO A NEWBORN SAFETY DEVICE PROVIDED BY AN EMERGENCY SERVICE
PROVIDER. <<IN ORDER TO RECEIVE A NEWBORN USING A NEWBORN SAFETY
DEVICE, THE EMERGENCY SERVICE PROVIDER MUST HAVE 24-HOUR, 7 DAYS PER WEEK
EMERGENCY RESPONDER STAFF OR MUST BE A HOSPITAL.>> THE NEWBORN SAFETY
DEVICE MUST MEET THE REQUIREMENTS
PROVIDED IN RULES PROMULGATED UNDER THIS SECTION.
(2) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE**

1 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL
2 PROMULGATE RULES GOVERNING NEWBORN SAFETY DEVICES. THE RULES SHALL
3 PROVIDE FOR ALL OF THE FOLLOWING:

4 (A) SANITATION STANDARDS.

5 (B) PROCEDURES TO PROVIDE EMERGENCY CARE FOR A NEWBORN
6 DELIVERED TO A NEWBORN SAFETY DEVICE.

7 (C) MANUFACTURING AND MANUFACTURER STANDARDS.

8 (D) DESIGN AND FUNCTION REQUIREMENTS THAT INCLUDE THE
9 FOLLOWING:

10 (i) TAKE INTO ACCOUNT INSTALLATION AT A FIRE DEPARTMENT,
11 HOSPITAL, OR POLICE STATION.

12 (ii) ALLOW A NEWBORN TO BE PLACED ANONYMOUSLY FROM THE OUTSIDE
13 OF THE FACILITY.

14 (iii) LOCK THE NEWBORN SAFETY DEVICE AFTER A NEWBORN IS PLACED
15 IN IT SO THAT A PERSON OUTSIDE THE FACILITY IS UNABLE TO ACCESS THE
16 NEWBORN.

17 (iv) PROVIDE A CONTROLLED ENVIRONMENT FOR THE CARE AND
18 PROTECTION OF THE NEWBORN.

19 (v) TRIGGER A 9-1-1 CALL AND PROVIDE NOTIFICATION TO A
20 CENTRALIZED LOCATION IN THE FACILITY WITHIN 30 SECONDS OF A NEWBORN
21 BEING PLACED IN THE NEWBORN SAFETY DEVICE.

22 (E) OPERATING POLICIES, SUPERVISION, AND MAINTENANCE
23 REQUIREMENTS FOR A NEWBORN SAFETY DEVICE, INCLUDING REQUIREMENTS
24 THAT ONLY AN EMERGENCY SERVICE PROVIDER SUPERVISE THE NEWBORN
25 SAFETY DEVICE AND TAKE CUSTODY OF A NEWBORN PLACED IN IT.

26 (F) QUALIFICATIONS REQUIRED FOR A PERSON TO INSTALL A NEWBORN
27 SAFETY DEVICE.

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1 (G) PROCEDURES AND FORMS FOR REGISTRATION OF A QUALIFIED
2 NEWBORN SAFETY DEVICE INSTALLER.

3 (H) COSTS FOR REGISTERING AND REGULATING NEWBORN SAFETY
4 DEVICES AND FEES TO COVER THOSE COSTS.

5 (I) CREATING AND POSTING SIGNS TO BE PLACED NEAR OR ON A
6 NEWBORN SAFETY DEVICE TO PROVIDE INFORMATION ABOUT USING IT.

7 (J) ENFORCEMENT OF AND REMEDIES FOR VIOLATIONS FOR FAILURE TO
8 COMPLY WITH THE REQUIREMENTS GOVERNING NEWBORN SAFETY DEVICES.

9 (K) ANY OTHER REQUIREMENT THE DEPARTMENT CONSIDERS NECESSARY
10 TO ENSURE THE SAFETY AND WELFARE OF A NEWBORN PLACED IN A NEWBORN
11 SAFETY DEVICE.

12 (L) A PUBLICLY ACCESSIBLE LIST WITH THE LOCATION OF ALL
13 AVAILABLE NEWBORN SAFETY DEVICES.

14 (M) AN ACCESSIBLE FORM THAT ALLOWS A SURRENDERING PARENT THE
15 OPTION TO INPUT THE FOLLOWING AND INCLUDES NOTIFICATION TO THE
16 SURRENDERING PARENT THAT THIS INFORMATION SHALL NOT BE PUBLISHED
17 PUBLICLY, BUT SHALL BE ACCESSIBLE TO A CHILD PLACING AGENCY:

18 (i) THE KNOWN DATE AND TIME OF SURRENDER OF THE NEWBORN.

19 (ii) THE ADDRESS OF THE LOCATION OF SURRENDER OF THE NEWBORN.

20 (iii) NAME AND CONTACT INFORMATION.

21 (iv) FAMILY MEDICAL INFORMATION.

22 (v) WHETHER OR NOT THE INFORMATION PROVIDED MAY BE SHARED WITH
23 THE CHILD AND PROSPECTIVE ADOPTIVE PARENT.

<<(3) THE MANUFACTURER IS LIABLE FOR ANY DAMAGES FOR PERSONAL
INJURY, INCLUDING DEATH, THAT RESULT FROM THE USE OF OR A MALFUNCTION OF
A NEWBORN SAFETY DEVICE.>>

24 Sec. 5. (1) An emergency service provider that is not a
25 hospital and that takes a newborn into temporary protective custody
26 under section 3 OR 3A of this chapter shall transfer the newborn to
27 a hospital. The hospital shall accept a newborn who an emergency

1 service provider transfers to the hospital in compliance with this
2 chapter, taking the newborn into temporary protective custody.

3 (2) A hospital that takes a newborn into temporary protective
4 custody under this chapter shall have the newborn examined by a
5 physician. If a physician who examines the newborn either
6 determines that there is reason to suspect the newborn has
7 experienced child abuse or child neglect, other than being
8 surrendered to an emergency service provider under section 3 of
9 this chapter **OR SURRENDERED TO A NEWBORN SAFETY DEVICE UNDER**
10 **SECTION 3A OF THIS CHAPTER**, or comes to a reasonable belief that
11 the child is not a newborn, the physician shall immediately report
12 to the department as required by section 3 of the child protection
13 law, 1975 PA 238, MCL 722.623.

14 (3) If a physician is not required to report to the department
15 as provided in subsection (2), the hospital shall notify a child
16 placing agency that the hospital has taken a newborn into temporary
17 protective custody under this chapter.

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

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

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

25 (c) Unless otherwise provided in this subdivision, make a
26 temporary placement of the newborn with a prospective adoptive
27 parent who has an approved preplacement assessment. If a petition

1 for custody is filed under section 10 of this chapter, the child
2 placing agency may make a temporary placement of the newborn with a
3 licensed foster parent.

4 (d) Unless the birth was witnessed by the emergency service
5 provider, immediately request assistance from law enforcement
6 officials to investigate and determine, through the missing
7 children information clearinghouse, the ~~national center for missing~~
8 ~~and exploited children,~~ **NATIONAL CENTER FOR MISSING AND EXPLOITED**
9 **CHILDREN**, and any other national and state resources, whether the
10 newborn is a missing child.

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

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

17 (ii) The name and address of the emergency service provider to
18 whom the newborn was surrendered **OR THE NAME AND ADDRESS OF THE**
19 **LOCATION OF THE NEWBORN SAFETY DEVICE TO WHICH THE NEWBORN WAS**
20 **SURRENDERED.**

21 (iii) Any information, either written or verbal, that was
22 provided by and to the parent who surrendered the newborn. The
23 emergency service provider that originally accepted the newborn as
24 required by section 3 of this chapter shall provide this
25 information to the child placing agency. **THIS SUBPARAGRAPH DOES NOT**
26 **APPLY TO A NEWBORN SURRENDERED TO A NEWBORN SAFETY DEVICE UNDER**
27 **SECTION 3A OF THIS CHAPTER IF THERE WAS NO INFORMATION LEFT WITH**

1 **THE NEWBORN.**

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

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

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

24 (b) If subdivision (a) does not apply and the parent knows the
25 location of the emergency service provider **OR NEWBORN SAFETY DEVICE**
26 to whom the newborn was surrendered, the county where the emergency
27 service provider **OR NEWBORN SAFETY DEVICE** is located.

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

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

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

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

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

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

1 an order terminating the rights of the nonsurrendering parent.

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

9 (5) If the court finds by a preponderance of the evidence that
10 the surrendering parent has knowingly released his or her rights to
11 the child and that reasonable efforts were made to locate the
12 nonsurrendering parent and a custody action has not been filed, the
13 court shall enter an order terminating parental rights of the
14 surrendering parent and the nonsurrendering parent under this
15 chapter.

16 Sec. 20. The department ~~of community health in conjunction~~
17 ~~with the department~~ shall establish a safe delivery program. The
18 safe delivery program shall include, but is not limited to, both of
19 the following:

20 (a) A toll-free, 24-hour telephone line. The information
21 provided with this telephone line shall include, but is not limited
22 to, all of the following:

23 (i) Information on prenatal care and the delivery of a
24 newborn.

25 (ii) Names of health agencies that can assist in obtaining
26 services and supports that provide for the pregnancy-related health
27 of the mother and the health of the baby.

1 (iii) Information on adoption options and the name and
2 telephone number of a child placing agency that can assist a parent
3 or expecting parent in obtaining adoption services.

4 (iv) Information that, in order to safely provide for the
5 health of the mother and her newborn, the best place for the
6 delivery of a child is in a hospital, hospital-based birthing
7 center, or birthing center that is accredited by the commission for
8 the accreditation of birth centers.

9 (v) An explanation that, to the extent of the law, prenatal
10 care and delivery services are routinely confidential within the
11 health care system, if requested by the mother.

12 (vi) Information that a hospital will take into protective
13 custody a newborn that is surrendered as provided for in this
14 chapter and, if needed, provide emergency medical assistance to the
15 mother, the newborn, or both.

16 (vii) Information regarding legal and procedural requirements
17 related to the voluntary surrender of a child as provided for in
18 this chapter.

19 (viii) Information regarding the legal consequences for
20 endangering a child, including child protective service
21 investigations and potential criminal penalties.

22 (ix) Information that surrendering a newborn for adoption as
23 provided in this chapter is an affirmative defense to charges of
24 abandonment as provided in section 135 of the Michigan penal code,
25 1931 PA 328, MCL 750.135.

26 (x) Information about resources for counseling and assistance
27 with crisis management.

1 (b) A pamphlet that provides information to the public
2 concerning the safe delivery program, **INCLUDING INFORMATION**
3 **REGARDING NEWBORN SAFETY DEVICES**. The department ~~of community~~
4 ~~health and the department~~ shall ~~jointly~~ publish and distribute the
5 pamphlet. The pamphlet shall prominently display the toll-free
6 telephone number prescribed by subdivision (a).

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.

9 Enacting section 2. This amendatory act does not take effect
10 unless House Bill No. 5750 of the 99th Legislature is enacted into
11 law.