

HOUSE BILL NO. 200

INTRODUCED BY S. ESSMANN, D. BEDEY, S. KERNS, G. NIKOLAKAKOS, B. MITCHELL, P. FIELDER, L. REKSTEN, K. SEEKINS-CROWE, F. NAVE, D. LENZ, J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA SAFE HAVEN NEWBORN PROTECTION ACT TO CLARIFY THAT A NEWBORN MAY BE SURRENDERED VIA A NEWBORN SAFETY DEVICE OR BY PLACING AN EMERGENCY CALL; PROVIDING THAT PARENTS BE INFORMED OF THE RIGHT TO REMAIN ANONYMOUS; REVISING DEFINITIONS; AMENDING SECTIONS 40-6-402 AND 40-6-405, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-6-402, MCA, is amended to read:

"40-6-402. Definitions. As used in this part, the following definitions apply:

- (1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.
- (2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Emergency services provider" means:
 - (a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency or is on duty responding to an emergency call; or
 - (b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.
- (5) "Fire department" means a governmental fire agency organized under Title 7, chapter 33.
- (6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

1 (7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter

2 3.

3 (8) "Hospital" has the meaning provided in 50-5-101.

4 (9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as
5 defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

6 (10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days
7 old.

8 (11) "Newborn safety device" means a medical device that meets the following requirements:

9 (a) provides a controlled environment for the care and protection of a newborn;

10 (b) includes an adequate dual alarm system connected to the newborn safety device:

11 (i) that is tested at least one time a month to ensure the alarm system is in working order; and

12 (ii) that dispatches the nearest emergency services provider to retrieve a newborn placed in the
13 device;

14 (c) is physically located on an exterior structural wall of the premises of a fire department, hospital,
15 or law enforcement agency that is staffed 24 hours a day, except that all emergency services providers located
16 at the premises may be dispatched to an emergency; and

17 (d) is located in an area that is conspicuous and visible to an emergency services provider.

18 ~~(11)~~(12) (a) "Surrender" means to leave a newborn with an emergency services provider without
19 expressing an intent to return for the newborn.

20 (b) The term includes but is not limited to:

21 (i) leaving a newborn in a newborn safety device; or

22 (ii) placing an emergency call and remaining with a newborn until an emergency services provider
23 arrives to accept the newborn."

24

25 **Section 2.** Section 40-6-405, MCA, is amended to read:

26 **"40-6-405. Surrender of newborn to emergency services provider -- temporary protective**

27 **custody.** (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the

28 emergency services provider shall comply with the requirements of this section under the assumption that the

1 infant is a newborn. The emergency services provider shall, without a court order, immediately accept the
2 newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the
3 physical health and safety of the newborn.

4 (2) ~~The~~ If a newborn is surrendered face to face, the emergency services provider shall make a
5 reasonable effort to do all of the following:

6 (a) if possible, inform the parent that the parent may remain anonymous;

7 (b) if possible, inform the parent that by surrendering the newborn, the parent is releasing the
8 newborn to the department to be placed for adoption according to law;

9 ~~(b)(c)~~ if possible, inform the parent that the parent has 60 days to petition the court to regain custody
10 of the newborn;

11 ~~(c)(d)~~ if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant
12 information pertaining to any Indian heritage of the newborn;

13 ~~(d)(e)~~ provide the parent with written material approved by or produced by the department, which
14 includes but is not limited to all of the following statements:

15 (i) by surrendering the newborn, the parent is releasing the newborn to the department to be
16 placed for adoption and the department shall initiate court proceedings according to law to place the newborn
17 for adoption, including proceedings to terminate parental rights;

18 (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of
19 the newborn;

20 (iii) the parent may not receive personal notice of the court proceedings begun by the department;

21 (iv) information that the parent provides to an emergency services provider will not be made public;

22 (v) a parent may contact the department for more information and counseling; and

23 (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child
24 Welfare Act, 25 U.S.C. 1901, et seq.

25 (3) ~~After~~ If a newborn is surrendered face to face, after providing a parent with the information
26 described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

27 (a) encourage the parent to provide any relevant family or medical information, including
28 information regarding any tribal affiliation;

- 1 (b) provide the parent with information that the parent may receive counseling or medical attention;
- 2 (c) inform the parent that information that the parent provides will not be made public;
- 3 (d) ask the parent for the parent's name;
- 4 (e) inform the parent that in order to place the newborn for adoption, the state is required to make
- 5 a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the
- 6 parent to identify the other parent;
- 7 (f) inform the parent that the department can provide confidential services to the parent; and
- 8 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a
- 9 hearing to terminate parental rights.

10 (4) If a newborn is surrendered in a newborn safety device, the emergency services provider shall

11 make a reasonable effort to provide the parent with the written material described in subsection (2)(e)."

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13 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 2023.

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