



2025 South Dakota Legislature

House Bill 1044

Introduced by: **Representative** Soye

- 1 **An Act to authorize the use of a newborn safety device for the voluntary surrender**
2 **of a newborn and to make clarifying changes.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 25-5A-27 be AMENDED:**

5 **25-5A-27.** An emergency ~~medical~~ services provider or licensed child placement
6 agency ~~shall take possession~~ must accept physical custody of a child ~~who appears to be~~
7 ~~sixty days of age or younger~~ newborn if the child:

8 (1) The newborn is voluntarily delivered to surrendered by the newborn's parent:

9 (a) To an agent of the provider or agency by the child's parent and the; or

10 (b) In a newborn safety device, as provided in section 2 of this Act; and

11 (2) The parent does not express an intent to return for the child newborn.

12 Any provider or agency ~~who takes possession~~ that accepts physical custody of a
13 ~~child~~ newborn pursuant to this section shall perform any act necessary to protect the
14 physical health and safety of the ~~child~~ newborn.

15 **Section 2. That a NEW SECTION be added to chapter 25-5A:**

16 An emergency services provider or a licensed child placement agency may install
17 and maintain a newborn safety device on its premises, if the premises are staffed twenty-
18 four hours per day, seven days per week. The newborn safety device must:

19 (1) Be in a conspicuous location on the provider's or agency's premises;

20 (2) Have a climate-controlled and padded receptacle that is appropriately sized for a
21 newborn;

22 (3) Have an exterior door that automatically locks upon placement of a newborn inside;
23 and

24 (4) Be equipped with an alarm system that notifies the provider's or agency's staff and
25 a 911 service when:

1 (a) The exterior door of the device is opened; and

2 (b) Movement is detected within the device.

3 A provider or agency that installs a newborn safety device shall test the alarm
4 system weekly.

5 **Section 3. That § 25-5A-28 be AMENDED:**

6 **25-5A-28.** It is not a crime for a parent to ~~deliver~~ surrender a ~~child~~ newborn to an
7 emergency ~~medical~~ services provider or a licensed child placement agency, as provided in
8 § 25-5A-27, if the ~~child~~ newborn has not been harmed prior to being ~~left with the~~
9 ~~emergency medical services provider or a licensed child placement agency~~ surrendered.

10 **Section 4. That § 25-5A-29 be AMENDED:**

11 **25-5A-29.** ~~If a parent of a child relinquishes custody of the child~~ Fourteen days
12 after a parent surrenders a newborn to an emergency ~~medical~~ services provider or a
13 licensed child placement agency, ~~as provided in § 25-5A-27, then, after fourteen days, by~~
14 ~~operation of law:~~

15 (1) ~~All of that~~ The parent's rights with respect to the ~~child~~ newborn are terminated;
16 and

17 (2) ~~The child becomes a ward of the~~ legal and physical custody of the newborn is
18 assumed:

19 (a) By the state; or

20 (b) By the licensed child placement agency, if the newborn was surrendered to
21 an agency.

22 **Section 5. That § 25-5A-30 be AMENDED:**

23 **25-5A-30.** Any emergency ~~medical~~ services provider or licensed child placement
24 agency that accepts physical custody of a ~~child~~ newborn pursuant to § 25-5A-27 may ask
25 the ~~child's~~ newborn's parent for ~~pertinent medical~~ information relating to the ~~child's~~
26 newborn's medical history and the names of the parents. ~~However, the~~ The parent leaving
27 ~~the child~~ is not required to provide any information, ~~including the name of the parents.~~

28 **Section 6. That § 25-5A-31 be AMENDED:**

29 **25-5A-31.** Any emergency ~~medical~~ services provider or licensed child placement
30 agency that accepts physical custody of a ~~child~~ newborn pursuant to § 25-5A-27 is

immune from civil, criminal, and administrative liability for any act of commission or omission in connection with the acceptance of that custody or the provision of care for the child newborn while the ~~child newborn~~ is in the provider's or agency's custody.

Nothing in this section grants any relief for injury caused by a willful, wanton, or reckless act of commission or omission.

Section 7. That § 25-5A-32 be AMENDED:

25-5A-32. ~~The~~ If an emergency medical services provider or a licensed child placement agency shall accepts physical custody of a newborn, pursuant to § 25-5A-27, the provider or agency must immediately notify the Department of Social Services that the provider or agency has taken possession of the child.

~~The~~ Except as otherwise provided in this section, the department or licensed child placement agency shall must assume the care, custody, and control of the child newborn immediately upon receipt of the notice. However, If a licensed child placement agency that has taken possession of a child accepted physical custody, the agency may assume the care, custody, and control of the child newborn.

The department or licensed child placement agency may not attempt to identify, contact, or investigate the parent who ~~voluntarily delivered~~ surrendered the ~~child to an emergency medical services provider or a licensed child placement agency newborn,~~ unless it appears the ~~child newborn~~ newborn has been harmed.

Section 8. That § 25-5A-33 be AMENDED:

25-5A-33. ~~If one parent of a child relinquishes custody of~~ surrenders the ~~child newborn~~ newborn to an emergency medical services provider or a licensed child placement agency, as provided in § 25-5A-27, the ~~other non-surrendering~~ parent may file an action for custody of the ~~child newborn~~ newborn. ~~The nonrelinquishing non-surrendering~~ parent shall file ~~such an~~ the action within thirty days after the provider or agency accepts physical custody of the ~~child newborn~~ newborn from the ~~relinquishing surrendering~~ parent. ~~In such an the~~ action, the ~~nonrelinquishing non-surrendering~~ parent ~~shall must~~ prove ~~the following~~ by a preponderance of the evidence that:

- (1) ~~He or she~~ The non-surrendering parent is the parent of the ~~child newborn~~ newborn; and
- (2) ~~He or she~~ The non-surrendering parent did not consent to ~~relinquishment of the child's custody~~ surrender of the newborn to the provider or agency.

Section 9. That § 25-5A-34 be AMENDED:

1 **25-5A-34.** For the purposes of §§ 25-5A-27 to 25-5A-35, inclusive, ~~an emergency~~
2 ~~medical services provider is a licensed health care facility or a clinic, any agent of a~~
3 ~~licensed health care facility or a clinic, a law enforcement officer, an emergency medical~~
4 ~~technician, or a firefighter~~ the following terms mean:

5 (1) "Emergency services provider":

6 (a) An ambulance service licensed in accordance with chapter 34-11;

7 (b) A fire department;

8 (c) A health care facility licensed in accordance with chapter 34-12; or

9 (d) A law enforcement agency; and

10 (2) "Newborn," a child who appears to be sixty days of age or younger.

11 **Section 10. That § 25-5A-35 be AMENDED:**

12 **25-5A-35.** Sixty days after the emergency ~~medical~~ services provider or licensed
13 ~~child placement agency takes possession~~ accepts physical custody of the ~~child~~ newborn,
14 a hearing ~~shall~~ must be held in circuit court to terminate parental rights.