



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

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

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

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

7 **25-5A-32.** ~~The~~ If an emergency ~~medical services provider or a licensed child~~
 8 ~~placement agency shall~~ accepts physical custody of a newborn, pursuant to § 25-5A-27,
 9 the provider or agency must immediately notify the Department of Social Services ~~that~~
 10 ~~the provider or agency has taken possession of the child.~~

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

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

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

21 **25-5A-33.** If one parent ~~of a child~~ relinquishes custody of surrenders the ~~child~~
 22 newborn to an emergency ~~medical services provider or a licensed child placement agency,~~
 23 as provided in § 25-5A-27, the ~~other~~ non-surrendering parent may file an action for
 24 custody of the ~~child~~ newborn. The ~~nonrelinquishing non-surrendering~~ parent shall file ~~such~~
 25 ~~an~~ the action within thirty days after the provider or agency accepts physical custody of
 26 the ~~child~~ newborn from the ~~relinquishing surrendering~~ parent. In ~~such an~~ the action, the
 27 ~~nonrelinquishing non-surrendering~~ parent ~~shall~~ must prove ~~the following~~ by a
 28 preponderance of the evidence that:

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

32 **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.