
A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

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

1 SECTION 1. The legislature finds that as of November 2002,
2 forty-one states have passed safe-surrender laws to protect
3 newborn infants who might otherwise be abandoned in an unsafe
4 environment. The enactment of laws establishing a safe haven
5 for newborn infants in Hawaii is long overdue.

6 Current law allows for the prosecution of parents who
7 abandon their newborn infants. These parents are often young
8 mothers who are unable to deal with the harsh reality of
9 parenthood. Their solution is leaving the newborn in a
10 populated area with the hope that someone will find and care for
11 the child. Although the possibility of prosecution was intended
12 to deter mothers from taking such a careless approach, newborn
13 infants have suffered and died as the result of abandonment in
14 life-threatening situations.

15 "Safe-surrender" laws take a different approach by making
16 the child's needs the immediate concern, rather than focusing on
17 the mother's liability. The goal of these laws is to create a
18 system where parents can leave their newborns in a place of



1 safety without fear of being prosecuted for child abandonment.
2 Anonymity, confidentiality, and freedom from prosecution for
3 parents may encourage them to leave a newborn infant at a
4 suitably safe place and thus save the newborn infant's life.
5 While established adoption procedures may be preferable, safe-
6 surrender laws provide an alternative that saves the lives of
7 newborns.

8 In 2003, the governor vetoed House Bill No. 133, Conference
9 Draft 1, because the governor objected to the individual leaving
10 the baby without also leaving medical or genealogical history.
11 This Act is nearly identical to House Bill No. 133, but
12 addresses the governor's objection by providing that the
13 individual is allowed to leave the baby if the individual also
14 leaves any known family medical history of major illnesses or
15 diseases.

16 The purpose of this Act is to establish a safe haven for
17 newborns and provide for their future health and safety by:

18 (1) Providing immunity from prosecution for persons
19 leaving an unharmed newborn at a hospital, fire
20 station, or police station;



1 (2) Providing immunity from liability for hospitals, fire
2 stations, police stations, and their personnel, who
3 receive the newborn; and

4 (3) Requesting that the individual leaving the newborn
5 provide any known written information on the family
6 medical history of the child.

7 SECTION 2. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 "CHAPTER

11 SAFE PLACE FOR NEWBORNS

12 § -1 Definitions. As used in this chapter, unless the
13 context otherwise requires:

14 "Department" means the department of human services.

15 "Emergency services personnel" shall have the same meaning
16 as defined in section 78-52.

17 "Fire station" means a building for fire equipment and
18 firefighters.

19 "Firefighter" means a member of a fire department whose
20 principal duties are to prevent and fight fires.

21 "Health care provider" means an individual licensed,
22 certified, or otherwise authorized or permitted by law to



1 provide health care in the ordinary course of business or
2 practice of a profession.

3 "Hospital" means a facility licensed as a hospital by the
4 department of health and accredited by the Joint Commission on
5 Accreditation of Health Care Organizations.

6 "Law enforcement officer or police officer":

7 (1) Means any public servant, whether employed by the
8 State or any county, or by the United States, vested
9 by law with a duty to maintain public order, to make
10 arrests for offenses, or to enforce the criminal laws,
11 whether that duty extends to all offenses or is
12 limited to a specific class of offenses; and

13 (2) Includes the attorney general, deputy attorneys
14 general, county prosecuting attorneys, and deputy
15 county prosecuting attorneys engaged in the
16 enforcement of criminal law.

17 "Police station" means a facility where police officers
18 report for assignments, paperwork, and other police business.

19 "Unharmful condition" means no evidence of injury to a
20 newborn child's physical or psychological health or welfare, as
21 evidenced in any case where:

22 (1) The newborn child exhibits no:



- 1 (A) Substantial or multiple skin bruising or any
- 2 other internal bleeding;
- 3 (B) Injury to skin causing substantial bleeding;
- 4 (C) Malnutrition;
- 5 (D) Failure to thrive;
- 6 (E) Burn or burns;
- 7 (F) Poisoning;
- 8 (G) Fracture of any bone;
- 9 (H) Subdural hematoma;
- 10 (I) Soft tissue swelling;
- 11 (J) Extreme pain;
- 12 (K) Extreme mental distress;
- 13 (L) Gross degradation; or
- 14 (M) Death;
- 15 (2) The newborn child has not been the victim of:
- 16 (A) Sexual contact or conduct, including but not
- 17 limited to rape, sodomy, molestation, sexual
- 18 fondling, or incest;
- 19 (B) Obscene or pornographic photographing, filming,
- 20 or depiction; or
- 21 (C) Other similar forms of sexual exploitation;



1 (3) Injury does not exist to the psychological capacity of
2 a child as evidenced by a substantial impairment in
3 the child's ability to function;

4 (4) The child has been provided in a timely manner with
5 adequate food, clothing, shelter, psychological care,
6 physical care, medical care, or supervision; and

7 (5) The child has not been provided with dangerous,
8 harmful, or detrimental drugs, as defined by section
9 712-1240; except in cases where a child's family
10 provides the drugs to the child pursuant to the
11 direction or prescription of a practitioner, as
12 defined in section 712-1240.

13 § -2 Unharmed newborn children left at hospitals, fire
14 stations, or police stations; avoidance of prosecution. A
15 person may leave a newborn child with the personnel of a
16 hospital, a fire station, or a police station without being
17 subject to prosecution for abandonment of a child pursuant to
18 section 709-902; provided that:

19 (1) The newborn child was born within seventy-two hours of
20 being left at the hospital, fire station, or police
21 station, as determined within a reasonable degree of
22 medical certainty;



1 (2) The newborn child is left in an unharmed condition;
2 and

3 (3) The newborn child is accompanied by written
4 information concerning any known family medical
5 history, including major illnesses and diseases.

6 **§ -3 Safe place for newborns.** (a) The personnel of a
7 hospital, fire station, or police station, or emergency services
8 personnel may receive a newborn child; provided that:

9 (1) The newborn child was born within seventy-two hours of
10 being left at the hospital, fire station, or police
11 station, as determined within a reasonable degree of
12 medical certainty;

13 (2) The newborn child is left in an unharmed condition;
14 and

15 (3) The newborn child is accompanied by written
16 information concerning any known family medical
17 history, including major illnesses and diseases.

18 (b) The personnel of the hospital, fire station, or police
19 station, or emergency services personnel:

20 (1) Shall make every reasonable effort to solicit the
21 following information from the person leaving the
22 newborn child:



- 1 (A) The name of the newborn child;
- 2 (B) The name and address of the parent or person
3 dropping off the newborn child;
- 4 (C) The location the newborn child was born;
- 5 (D) Information pertaining to the newborn child's
6 medical history;
- 7 (E) The newborn child's biological family's medical
8 history; and
- 9 (F) Any other information that might reasonably
10 assist the department in determining the best
11 interests of the newborn child, including whether
12 the parents plan on returning to seek custody of
13 the child in the future;
- 14 provided that the newborn child is unharmed when
15 presented to the hospital, fire station, or police
16 station; provided further that refusal of the person
17 leaving the newborn child to provide such information
18 shall not prevent personnel from accepting the newborn
19 child;
- 20 (2) May provide the person leaving the newborn child with
21 information on how to contact relevant social service
22 agencies; and



1 (3) Shall notify appropriate law enforcement agencies that
2 a newborn child was received, for purposes of matching
3 the child with missing children reports.

4 (c) If a hospital, fire station, or police station
5 receives a newborn child pursuant to subsection (a), any health
6 care provider, firefighter, police officer, or emergency
7 services personnel receiving the newborn child shall perform any
8 act necessary, in accordance with generally accepted standards
9 of their respective professional practice, to protect, preserve,
10 or aid the physical health or safety of the newborn child during
11 the temporary physical custody.

12 § -4 **Reporting.** Within twenty-four hours of receiving
13 a newborn child under section -3, the personnel of the
14 hospital, fire station, or police station, or emergency services
15 personnel shall inform the department that a newborn child has
16 been left at the premises; provided however, that the department
17 shall not be informed before the person leaving the newborn
18 child leaves the premises.

19 § -5 **Immunity.** (a) A hospital with responsibility for
20 performing duties under this chapter, any health care provider,
21 or hospital personnel working at the hospital, a fire station
22 and any firefighter or fire personnel, a police station and any



1 police officer or police personnel, and emergency services
2 personnel shall be immune from any criminal liability that
3 otherwise might result from their actions, if they are acting in
4 good faith in receiving a newborn child, and shall be immune
5 from any civil liability that otherwise might result from merely
6 receiving a newborn child.

7 (b) A hospital performing duties under this chapter and
8 any health care provider or hospital personnel working at the
9 hospital, a fire station and any firefighter or fire personnel,
10 a police station and any police officer or police personnel, and
11 any emergency services personnel who are mandated reporters
12 under section 350-1.1 shall be immune from any criminal or civil
13 liability that otherwise might result from the failure to make a
14 report under section 350-1.1 if the person is acting in good
15 faith in complying with this chapter.

16 § -6 Authority to reunite; placement. (a) Upon
17 receiving custody of a newborn child that has been discharged
18 from a hospital that received the newborn child pursuant to
19 section -3, the department may reunite the newborn child with
20 the newborn's parents.

21 (b) The department may:



1 (1) Search for relatives of the newborn child as a
2 placement or permanency option; or
3 (2) Implement other placement requirements that give a
4 preference to relatives;
5 provided that the department has information as to the identity
6 of the newborn child, the newborn child's mother, or the newborn
7 child's father.

8 § -7 **Status of child.** Except as otherwise provided in
9 section 709-902, for purposes of proceedings under this chapter
10 and adoption proceedings, a newborn child left at a hospital,
11 fire station, or police station under section -2 shall be
12 considered an abandoned child."

13 SECTION 3. Section 709-902, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§709-902 **Abandonment of a child.** (1) A person commits
16 the offense of abandonment of a child if, being a parent,
17 guardian, or other person legally charged with the care or
18 custody of a child less than fourteen years old, the person
19 deserts the child in any place with intent to abandon it.

20 (2) Leaving a newborn child at a hospital, fire station,
21 or police station pursuant to section -2 shall not constitute
22 a violation of this section.



1 [~~(2)~~] (3) Abandonment of a child is a [~~misdemeanor~~] class
2 C felony."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Abandoned Children; Safe Haven; Immunity from Prosecution

Description:

Provides immunity from prosecution for leaving an unharmed newborn at certain safe havens within 72 hours of birth. Provides immunity from liability for personnel at the safe havens for receiving a newborn. Requires safe haven personnel to make an effort to obtain information on the infant. (HB1830 HD1)

