
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 person leaving the
10 baby without also leaving medical or genealogical history. This
11 Act is nearly identical to House Bill No. 133, but addresses the
12 governor's objection by providing that the person is allowed to
13 leave the baby if the person also leaves any known family
14 medical history of major illnesses or diseases.

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

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



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

3 "Health care provider" means an individual licensed,
4 certified, or otherwise authorized or permitted by law to
5 provide health care in the ordinary course of business or
6 practice of a profession.

7 "Hospital" means a facility licensed as a hospital by the
8 department of health and accredited by the Joint Commission on
9 Accreditation of Health Care Organizations.

10 "Police officer" means any public servant, whether employed
11 by the State or any county, or by the United States, vested by
12 law with a duty to maintain public order, to make arrests for
13 offenses, or to enforce the criminal laws, whether that duty
14 extends to all offenses or is limited to a specific class of
15 offenses.

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

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

21 (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 rape,
17 sodomy, molestation, sexual fondling, or incest;
- 18 (B) Obscene or pornographic photographing, filming,
19 or depiction; or
- 20 (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) When a person leaves a newborn child with the

19 personnel of the hospital, fire station, or police station, or

20 emergency services personnel, the personnel:



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



- 1 (2) May provide the person leaving the newborn child with
2 information on how to contact relevant social service
3 agencies; and
- 4 (3) Shall notify appropriate law enforcement agencies that
5 a newborn child was received, for purposes of matching
6 the child with missing children reports.
- 7 (c) If a hospital, fire station, or police station
8 receives a newborn child pursuant to subsection (a), any health
9 care provider, firefighter, police officer, or emergency
10 services personnel receiving the newborn child shall perform any
11 act necessary, in accordance with generally accepted standards
12 of their respective professional practice, to protect, preserve,
13 or aid the physical health or safety of the newborn child during
14 the temporary physical custody.
- 15 § -4 **Reporting.** Within twenty-four hours of receiving
16 a newborn child under section -3, the personnel of the
17 hospital, fire station, or police station, or emergency services
18 personnel shall inform the department that a newborn child has
19 been left at the premises; provided that the department shall
20 not be informed before the person leaving the newborn child
21 leaves the premises.



1 **§ -5 Immunity.** (a) A hospital with responsibility for
2 performing duties under this chapter, any health care provider,
3 or hospital personnel working at the hospital, a fire station
4 and any firefighter or fire personnel, a police station and any
5 police officer or police personnel, and emergency services
6 personnel shall be immune from any criminal liability that
7 otherwise might result from their actions, if they are acting in
8 good faith in receiving a newborn child, and shall be immune
9 from any civil liability that otherwise might result from merely
10 receiving a newborn child.

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

20 **§ -6 Authority to reunite; placement.** (a) Upon
21 receiving custody of a newborn child that has been discharged
22 from a hospital that received the newborn child pursuant to



1 section -3, the department may reunite the newborn child with
2 the newborn's parents.

3 (b) The department may:

4 (1) Search for relatives of the newborn child as a
5 placement or permanency option; or

6 (2) Implement other placement requirements that give a
7 preference to relatives;

8 provided that the department has information as to the identity
9 of the newborn child, the newborn child's mother, or the newborn
10 child's father.

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

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

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



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

4 [~~2~~] (3) Abandonment of a child is a misdemeanor."

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

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2007.



Report Title:

Abandoned Children; Safe Haven; Immunity from Prosecution

Description:

Provides immunity from prosecution to persons who leave an unharmed newborn at a hospital, fire station, or police station, or with emergency services personnel within 72 hours of the child's birth; provides immunity from liability to the hospital, fire station, or police station, or personnel who receive the newborn; requires that the person who leaves a newborn provide written information on the family medical history of the child; and requires the personnel to make a reasonable effort to obtain certain information regarding the child from the person leaving the child. (SD2)

