

ACT 7

H.B. NO. 1830

A Bill for an Act Relating to Child Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that as of April 2007, forty-seven states have passed safe-surrender laws to protect newborn infants who might otherwise be abandoned in an unsafe environment. The enactment of laws establishing a safe haven for newborn infants in Hawaii is long overdue.

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

“Safe-surrender” laws take a different approach by making the child’s needs the immediate concern, rather than focusing on the mother’s liability. The goal of these laws is to create a system where parents can leave their newborns in a place of safety without fear of being prosecuted for child abandonment. Anonymity, confidentiality, and freedom from prosecution for parents may encourage them to leave a newborn infant at a suitably safe place and thus save the newborn infant’s life. While established adoption procedures may be preferable, safe-surrender laws provide an alternative that saves the lives of newborns.

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

- (1) Providing immunity from prosecution for persons leaving an unharmed newborn at a hospital, fire station, or police station, or with emergency medical services personnel;
- (2) Providing immunity from liability to the hospital, fire station, police station, or personnel who receive the newborn; and

- (3) Requiring personnel to make a reasonable effort to obtain certain information pertaining to the child, including the family's medical history, from the person leaving the child.

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

**“CHAPTER
SAFE PLACE FOR NEWBORNS**

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

“Department” means the department of human services.

“Emergency services personnel” shall have the same meaning as defined in section 78-52.

“Fire station” means a building for fire equipment and firefighters.

“Firefighter” means a member of a fire department whose principal duties are to prevent and fight fires.

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

“Hospital” means a facility licensed as a hospital by the department of health and accredited by the Joint Commission on Accreditation of Health Care Organizations.

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

“Police station” means a facility where police officers report for assignments, paperwork, and other police business.

“Unharmful condition” means no evidence of injury to a newborn child’s physical or psychological health or welfare, as evidenced in any case where:

- (1) The newborn child is alive and exhibits no:
 - (A) Substantial or multiple skin bruising or any other internal bleeding;
 - (B) Injury to skin causing substantial bleeding;
 - (C) Malnutrition;
 - (D) Failure to thrive;
 - (E) Burn or burns;
 - (F) Poisoning;
 - (G) Fracture of any bone;
 - (H) Subdural hematoma;
 - (I) Soft tissue swelling;
 - (J) Extreme pain;
 - (K) Extreme mental distress; or
 - (L) Gross degradation;
- (2) The newborn child has not been the victim of:
 - (A) Sexual contact or conduct, including rape, sodomy, molestation, sexual fondling, or incest;
 - (B) Obscene or pornographic photographing, filming, or depiction; or
 - (C) Other similar forms of sexual exploitation;
- (3) Injury does not exist to the psychological capacity of a child as evidenced by a substantial impairment in the child’s ability to function;

- (4) The child has been provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, and supervision; or
- (5) The child has not been provided with dangerous, harmful, or detrimental drugs, as defined by section 712-1240; except in cases where a child's family provides the drugs to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240.

§ -2 Unharmed newborn children left at hospitals, fire stations, or police stations, or with emergency services personnel; avoidance of prosecution.

A person may leave a newborn child with the personnel of a hospital, fire station, or police station or emergency services personnel without being subject to prosecution for abandonment of a child pursuant to section 709-902; provided that:

- (1) The newborn child was born within seventy-two hours of being left at the hospital, fire station, or police station, or with emergency services personnel as determined within a reasonable degree of medical certainty; and
- (2) The newborn child is left in an unharmed condition.

§ -3 Safe place for newborns. (a) The personnel of a hospital, fire station, or police station, or emergency services personnel may receive a newborn child; provided that the newborn child was born within seventy-two hours of being left at the hospital, fire station, or police station, or with emergency services personnel as determined within a reasonable degree of medical certainty.

(b) When a person leaves a newborn child with the personnel of the hospital, fire station, or police station, or emergency services personnel, the personnel:

- (1) Shall make every reasonable effort to solicit the following information from the person leaving the newborn child:
 - (A) The name of the newborn child;
 - (B) The name and address of the parent or person dropping off the newborn child;
 - (C) The location where the newborn child was born;
 - (D) Information pertaining to the newborn child's medical history;
 - (E) The newborn child's biological family's medical history, including major illnesses and diseases; and
 - (F) Any other information that might reasonably assist the department in determining the best interests of the newborn child, including whether the parents plan on returning to seek custody of the child in the future;

provided that refusal of the person leaving the newborn child to provide such information shall not prevent personnel from accepting the newborn child;

- (2) May provide the person leaving the newborn child with information on how to contact relevant social service agencies; and
- (3) Shall notify appropriate law enforcement agencies that a newborn child was received, for purposes of matching the child with missing children reports.

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

§ **-4 Reporting.** Within twenty-four hours of receiving an unharmed newborn child under section -3, the personnel of the hospital, fire station, or police station, or emergency services personnel shall inform the department that a newborn child has been left at the premises; provided that the department shall not be informed until the person leaving the newborn child has left the premises. If the newborn child is received in a harmed condition, the hospital, fire station, police station, or emergency services personnel shall notify appropriate law enforcement agencies, regardless of whether the person or persons leaving the newborn child has left the premises.

§ **-5 Immunity.** (a) A hospital with responsibility for performing duties under this chapter, any health care provider, or hospital personnel working at the hospital, a fire station and any firefighter or fire personnel, a police station and any police officer or police personnel, and emergency services personnel acting in good faith in receiving a newborn child shall be immune from:

- (1) Any criminal liability that otherwise might result from their actions; and
- (2) Any civil liability that otherwise might result from merely receiving a newborn child.

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

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

(b) The department may:

- (1) Search for relatives of the newborn child as a placement or permanency option; or
- (2) Implement other placement requirements that give a preference to relatives;

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

§ **-7 Status of child.** For purposes of proceedings under this chapter and adoption proceedings, a newborn child left at a hospital, fire station, or police station or with emergency services personnel under section -2 shall be considered an abandoned child."

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

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

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

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

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

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

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

(Vetoed by Governor and veto overridden by Legislature on July 10, 2007.)