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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 161
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 AND TITLE 16 OF THE DELAWARE CODE RELATING TO SAFE ARMS FOR BABIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 907A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 907A. Safe Arms for Babies.

(a) The General Assembly finds and declares all of the following:

(1) ~~that the~~ The abandonment of a baby is an irresponsible act by a parent ~~or parents~~ and places the baby at risk of injury or death from exposure, actions by other individuals, and harm from animals.

(2) ~~However, the General Assembly does recognize that delivering~~ Delivering a live baby to a safe place is far preferable to a baby being killed or abandoned by ~~the parent or parents.~~ a parent.

(3) ~~The General Assembly further finds and declares that the~~ The purpose of this section is not to circumvent the responsible action of a parent ~~or parents~~ who ~~adhere~~ adheres to the ~~current~~ process of placing ~~the~~ a baby for adoption, but to prevent the unnecessary risk of harm to or death of that baby by a desperate parent ~~or parents~~ who would otherwise abandon or cause the death of that baby.

(4) ~~The General Assembly further finds and declares that medical~~ Medical information about the baby and the baby's ~~parent or~~ parents is critical for the adoptive parents and ~~that~~ every effort should be made, without risking the safe placement of the baby, to obtain that medical information and provide counseling information to ~~those parent or~~ the parents.

(5) ~~The General Assembly further finds and declares that if~~ If this section does not result in the safe placement of ~~such~~ babies or is abused by a parent ~~or parents~~ attempting to circumvent the ~~current~~ process of adoption, it should be repealed.

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(b) ~~A person~~ If a baby is surrendered alive and unharmed, an individual may voluntarily surrender ~~a~~ the baby directly to an employee or volunteer of ~~the emergency department of a Delaware hospital inside of the emergency department, provided that said baby is surrendered alive, unharmed and in a safe place therein.~~ one of the following designated safe havens:

(1) An emergency department of a hospital, inside the emergency department.

(2) A police station, inside the police station. For the purposes of this paragraph (b)(2), "police station" does not include a Delaware State Police station.

(c)(1) ~~A Delaware hospital shall be authorized to~~ A safe haven under subsection (b) of this section may take temporary emergency protective custody of ~~the~~ a baby who is surrendered ~~pursuant to~~ under this section.

(2) ~~The person~~ Except as otherwise required under paragraph (c)(4) of this section, a safe haven under subsection (b) of this section may not ask or require an individual who surrenders the baby ~~shall not be required~~ to provide any information pertaining to ~~his or her identity, nor shall the hospital inquire as to same.~~ the individual's identity.

(3) If the identity of the ~~person~~ individual is known to the ~~hospital, the hospital~~ safe haven under subsection (b) of this section, the safe haven shall keep the identity confidential.

(4) ~~However, the hospital shall either~~ A safe haven under subsection (b) of this section shall do one of the following:

a. ~~make~~ Make reasonable efforts to directly obtain pertinent medical history information pertaining to the baby and the baby's ~~family~~ family.

b. ~~or attempt~~ Attempt to provide the ~~person~~ individual with a postage paid medical history information questionnaire.

(d) ~~The hospital~~ A safe haven under subsection (b) of this section shall attempt to provide ~~the person leaving the baby with the following:~~ the following to an individual surrendering a baby at the safe haven:

(1) Information about the Safe Arms ~~program;~~ program.

(2) Information about adoption and counseling services, including information that confidential adoption services are available and information about the benefits of engaging in a regular, voluntary adoption ~~process; and~~ process.

(3) Brochures with telephone numbers and websites for public or private agencies that provide counseling or adoption services.

(e) ~~The hospital~~ A safe haven under subsection (b) of this section shall attempt to provide ~~the person~~ an individual surrendering ~~the~~ a baby with the number of the baby's identification bracelet to aid in linking the ~~person~~ individual to the baby at a later date, if reunification is sought. ~~Such an~~ The identification number is an identification aid only and does not permit the ~~person~~ individual possessing the identification number to take custody of the baby on demand.

(f) If ~~a person~~ an individual possesses an identification number linking the ~~person~~ individual to a baby surrendered at a ~~hospital under this section~~ safe haven under subsection (b) of this section and parental rights have not already been terminated, possession of the identification number creates a presumption that the ~~person~~ individual has standing to participate in an action. Possession of the identification number does not create a presumption of maternity, ~~paternity~~ paternity, or custody.

(g)(1) ~~Any hospital taking~~ A safe haven under subsection (b) of this section that takes a baby into temporary emergency protective custody ~~pursuant to~~ under this section shall immediately notify the Division and the State Police of ~~its~~ the safe haven's actions.

(2) The Division shall obtain ex parte custody and physically appear at the ~~hospital~~ safe haven under subsection (b) of this section within 4 hours of notification under this subsection unless there are exigent circumstances.

(3) Immediately after being notified of the surrender, the State Police shall submit an inquiry to the ~~Delaware~~ Missing Children Information ~~Clearinghouse.~~ Clearinghouse established under Subchapter III of Chapter 85 of Title 11.

(h) The Division shall notify the ~~community~~ public that a baby has been abandoned and taken into temporary emergency protective custody by placing notice prominently on the Division's website and publishing notice to that effect in a newspaper of statewide circulation.

(1) The notice must be published at least 3 times over a 3-week period immediately following the surrender of the baby unless the Division has relinquished custody.

(2) The notice, at a minimum, ~~shall~~ must contain the place, ~~date~~ date, and time where the baby was ~~surrendered,~~ surrendered; the baby's sex, race, approximate age, identifying marks, and any other information the Division deems necessary for the baby's ~~identification, and a statement that such abandonment shall be:~~ identification.

(3) The notice must include a statement that unless the surrendering individual manifests an intent to exercise parental rights and responsibilities within 30 days of the abandonment, both of the following apply:

~~(1)~~a. The abandonment of the baby is the surrendering ~~person's~~ individual's irrevocable consent to the termination of all parental rights, if any, of ~~such person~~ the individual on the ground of ~~abandonment; and~~ abandonment.

~~(2)~~b. The abandonment of the baby is the surrendering ~~person's~~ individual's irrevocable waiver of any right to notice of or opportunity to participate in any termination of parental rights proceeding involving ~~such child, unless such surrendering person manifests an intent to exercise parental rights and responsibilities within 30 days of such abandonment.~~ the baby.

(i) When ~~the person~~ an individual who surrenders a baby ~~pursuant to~~ under this section manifests a desire to remain anonymous, the Division ~~shall neither~~ may not initiate ~~nor~~ or conduct an investigation to determine the identity of ~~such person, and no court shall order such~~ the individual, and a court may not order an investigation unless there is good cause to suspect child abuse or neglect other than the act of surrendering ~~such~~ the baby.

(j) The Department of Health and Social Services shall do all of the following:

(1) Establish a public information program to promote safe placement alternatives for babies, the confidentiality offered to birth parents, and information regarding adoption procedures. This program must include the use of a 24-hour, toll free hotline to assist in making information about the intent, purposes, and operation of this section as widely available as possible.

(2) Adopt a handout to be distributed to a safe haven under subsection (b) of this section. The handout must be furnished to an individual who surrenders the care or custody of a baby to the safe haven. The handout must advise the individual of the availability of counseling services and must elicit from the individual via a postage prepaid questionnaire relevant health history of the baby and the baby's parents.

(3) Provide a safe haven under subsection (b) of this section with information about relevant social service agencies to be made available to an individual who voluntarily surrenders a baby under this section.

Section 2. Amend § 902, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 902. Definitions.

As used in this chapter:

(2) "Baby" means a child not more than 14 days old, except that for ~~hospitals~~ a safe haven under § 907A(b) of this title and ~~their~~ the safe haven's employees and volunteers, "baby" means a child reasonably believed to be not more than 14 days old.

Section 3. Amend § 908, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 908. Immunity from liability, and special reimbursement to ~~hospitals~~ safe havens for expenses related to certain babies.

(b)(1) ~~A hospital, hospital employee or hospital volunteer which~~ Except for negligence or intentional acts, a safe haven under § 907A(b) of this title that, or an employee or volunteer of the safe haven who, accepts temporary emergency protective custody of a baby ~~pursuant to~~ under § 907A of this title is absolutely immune from civil and administrative liability for any act of commission or omission in connection with the acceptance of that temporary emergency protective custody or the provision of care for the baby ~~when left at the hospital while said~~ while the baby is in the ~~hospital's~~ safe haven's temporary emergency protective ~~custody except for negligence or intentional acts.~~ custody.

(2) If a ~~hospital~~ safe haven under § 907A(b) of this title accepts temporary emergency protective custody of a baby ~~pursuant to~~ under § 907A of this title, the State shall reimburse the ~~hospital~~ safe haven for eligible, medically necessary costs under the Medicaid Fee for Service Program.

Section 4. Amend § 1102A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1102A. Abandonment of a baby at a ~~hospital~~ safe haven as defense.

(a) For purposes of this section, "baby" means as defined in § 902 of Title 16.

(b) In any prosecution for an offense ~~set forth in~~ under § 1101 or § 1102 of this title, it is a defense if the person surrendered care or custody of a baby directly to an employee or volunteer of a ~~hospital emergency department~~ safe haven under § 907A(b) of Title 16, ~~inside of the emergency department, provided that said~~ if the baby is surrendered alive, ~~unharmed~~ unharmed, and is in a safe place ~~therein.~~ in the safe haven. ~~For the purposes of this section "baby" means a child not more than 14 days old.~~