

1 State of Arkansas
2 94th General Assembly
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4

As Engrossed: H1/23/23

A Bill

HOUSE BILL 1098

5 By: Representatives J. Mayberry, Barker, Bentley, K. Brown, Burkes, Cavanaugh, Crawford, Duke, C.
6 Fite, Haak, D. Hodges, Lundstrum, McAlindon, Vaught, *Duffield*
7 By: Senators Irvin, B. Davis, J. English
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE SAFE HAVEN ACT; TO CLARIFY THAT A
11 PARENT MAY LEAVE A NEWBORN CHILD WITH MEDICAL
12 PROVIDER STAFF FOLLOWING DELIVERY OF THE CHILD UNDER
13 THE SAFE HAVEN ACT; TO CLARIFY THAT A VOLUNTEER FIRE
14 DEPARTMENT MAY OPERATE A NEWBORN SAFETY DEVICE UNDER
15 CERTAIN CONDITIONS UNDER THE SAFE HAVEN ACT; AND FOR
16 OTHER PURPOSES.

Subtitle

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19 TO CLARIFY THAT A VOLUNTEER FIRE
20 DEPARTMENT MAY OPERATE A NEWBORN SAFETY
21 DEVICE UNDER CERTAIN CONDITIONS UNDER THE
22 SAFE HAVEN ACT.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code § 5-27-205(c), concerning the affirmative
29 defense to the offense of endangering the welfare of a minor in the first
30 degree, is amended to read as follows:

31 (c)(1) It is an affirmative defense to a prosecution under this
32 section that a parent voluntarily delivered a child to and left the child
33 with or in, or voluntarily arranged for another person to deliver a child to
34 and leave the child with or in, a medical provider, law enforcement agency,
35 ~~or~~ fire department, or a newborn safety device as provided in § 9-34-201 et
36 seq.



1 (2)(A) Subdivision (c)(1) of this section does not create a
2 defense to any prosecution arising from any conduct other than the act of
3 delivering a child as described in subdivision (c)(1) of this section.

4 (B) Subdivision (c)(1) of this section specifically does
5 not constitute a defense to any prosecution arising from an act of abuse or
6 neglect committed before the delivery of a child to a medical provider, law
7 enforcement agency, ~~or fire department,~~ or a newborn safety device as
8 provided in § 9-34-201 et seq.

9
10 SECTION 2. Arkansas Code § 9-34-201(1), concerning the definition of
11 "fire department" as it relates to the voluntary delivery of a child to a
12 medical provider, law enforcement agency, or fire department, is amended to
13 read as follows:

14 (1) "Fire department" means any organization that ~~is~~ staffed
15 ~~twenty-four (24) hours a day and established~~

16 (A) Is established for the prevention or extinguishment of
17 fires, including, ~~but not limited to,~~ without limitation:

18 (i) A fire departments department organized under a
19 municipal or county ~~ordinances,~~ ordinance;

20 (ii) An improvement districts, district;

21 (iii) A membership fee-based private fire
22 ~~departments,~~ department; and

23 (iv) A volunteer fire departments department; and

24 (B)(i) Except as provided in subdivision (1)(B)(ii) of
25 this section, is staffed twenty-four (24) hours per day by a medical services
26 provider.

27 (ii) "Fire department" includes an organization
28 under subdivision (1)(A) of this section that has a dual alarm system that
29 will dispatch the nearest first responder affiliated with the fire department
30 to retrieve a child voluntarily delivered to the fire department under this
31 chapter in the event that all first responders affiliated with the fire
32 department are dispatched for a separate emergency;

33
34 SECTION 3. Arkansas Code § 9-34-202 is amended to read as follows:

35 9-34-202. Delivery to a medical provider, law enforcement agency, ~~or~~
36 fire department, or in newborn safety device.

1 (a) Any medical provider, law enforcement agency, or fire department
2 shall take possession of a child who is thirty (30) days old or younger
3 without a court order if the parent of the child, without expressing an
4 intent to return for the child, leaves the child:

5 (1) With or voluntarily delivers the child to the medical
6 provider, law enforcement agency, or fire department, including without
7 limitation when:

8 (A) A parent leaves a newborn child with a medical
9 provider staff member after delivery of the newborn child; or

10 (2) In a newborn safety device that is:

11 (A) Voluntarily installed by the medical provider, law
12 enforcement agency, or fire department;

13 (B) Physically located on a structured wall of or inside a
14 hospital, law enforcement agency, or fire department ~~that is staffed twenty-~~
15 ~~four (24) hours a day by a medical services provider;~~ and

16 (C) Located in an area that is conspicuous and visible to
17 the employees of the hospital, law enforcement agency, or fire department.

18 (b)(1) A medical provider, law enforcement agency, or fire department
19 that takes possession of a child under subsection (a) of this section shall
20 perform any act necessary to protect the physical health and safety of the
21 child.

22 (2) A medical provider, law enforcement agency, or fire
23 department shall:

24 (A) Keep the identity of a parent who relinquishes a child
25 under this section confidential; and

26 (B) Not release or otherwise make the identity of the
27 parent available except to a:

28 (i) Law enforcement agency investigating abuse or
29 neglect of the child that was committed before the child was delivered to the
30 medical provider or law enforcement agency; or

31 (ii) Prosecuting attorney pursuing charges against a
32 parent for abuse or neglect of the child that was committed before the child
33 was delivered to the medical provider, law enforcement agency, or fire
34 department.

35 (c) A medical provider, law enforcement agency, or fire department
36 shall:

1 (1) Not be held criminally or civilly liable for any good faith
2 acts or omissions performed under this section; and

3 (2) Have an affirmative defense against any civil or criminal
4 claim arising out of any act or omission performed under this section.

5 (d)(1) A medical provider, law enforcement agency, or fire department
6 other than a volunteer fire department that voluntarily installs a newborn
7 safety device shall:

8 ~~(1)~~(A) Be responsible for the cost of the installation; and

9 ~~(2)~~(B) Install an adequate dual alarm system connected to the
10 physical location of the newborn safety device that is:

11 ~~(A)~~(i) Tested at least one (1) time per week to ensure the
12 alarm system is in working order; and

13 ~~(B)~~(ii) Visually checked at least two (2) times per day to
14 ensure the alarm system is in working order.

15 (2) A volunteer fire department may install a newborn safety
16 device if:

17 (A) The volunteer fire department complies with
18 subdivision (d)(1) of this section;

19 (B) The first responders at the volunteer fire department
20 are able to respond to the placement of an infant in the newborn safety
21 device within the shorter of the following:

22 (i) The response time established by the county in
23 which the volunteer fire department is located; or

24 (ii) A time frame not to exceed four (4) minutes;
25 and

26 (C) The newborn safety device is:

27 (i) Located within one (1) mile of a medical
28 provider or law enforcement agency; and

29 (ii) Equipped with:

30 (a) An alert system that, when the newborn
31 safety device is opened, automatically connects to the 911 system and
32 transmits a request for immediate dispatch of an emergency medical services
33 provider to the location of the newborn safety device; and

34 (b) A video surveillance system that allows
35 members of the volunteer fire department to monitor the inside of the newborn
36 safety device twenty-four (24) hours per day and that:

1 (1) Has at least two (2) firefighters
2 who are responsible for monitoring the inside of the newborn safety device
3 twenty-four (24) hours per day; and

4 (2) Is a surveillance system independent
5 from the alert system described in subdivision (d)(2)(C)(ii)(a).

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7 */s/J. Mayberry*
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