

State of Arkansas

As Engrossed: S2/22/23

94th General Assembly

A Bill

Regular Session, 2023

SENATE BILL 195

By: Senators K. Hammer, *Irvin*

By: Representatives C. Fite, *J. Mayberry*

For An Act To Be Entitled

AN ACT TO AMEND AND UPDATE LAWS REGARDING *NEWBORN SURRENDERS*; TO CLARIFY WHEN PARENTS' RIGHTS NO LONGER ATTACH REGARDING SAFE HAVEN INFANTS; TO *AMEND AND EXPAND* DEFINITIONS UNDER THE LAWS REGARDING SAFE HAVEN; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY WHEN PARENTS' RIGHTS NO LONGER ATTACH REGARDING SAFE HAVEN INFANTS AND TO AMEND DEFINITIONS UNDER THE LAWS REGARDING SAFE HAVEN.

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

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

The General Assembly finds that:

(1) Acts 2001, No. 236, § 9-34-201 et seq., otherwise known as the "Safe Haven Act", allows a medical provider, such as an emergency department of a hospital, a law enforcement agency, or a fire department to take possession of a newborn child thirty (30) days old or younger without adverse legal consequences to the parent if the parent voluntarily leaves the child with the medical provider, law enforcement agency, or fire department;

(2) There is a heightened need to encourage safe, voluntary surrenders of newborns whose parents determine they cannot care for them, even when the letter of the law is not followed;



1 (3) The more places that newborns can be safely
2 relinquished for adoption without the fear of adverse legal outcomes to the
3 birth parents, the better;

4 (4) There is a need to clarify that if a parent or child's
5 identity is inadvertently released to the Department of Human Services, the
6 same protections from liability shall be afforded to the parents when a
7 surrender is made under this section;

8 (5) Currently, the Safe Haven Act does not address
9 parental rights and recently, several recent cases have revealed issues
10 resulting from ambiguous statutory language and no clear procedure existing
11 to ensure due process protections; and

12 (6) There is a need to clarify when and how parental
13 rights are terminated when a surrender is made under this section in an
14 effort to expedite permanency for surrendered newborns while also ensuring
15 the parents' constitutional rights are protected.

16
17 SECTION 2. Arkansas Code § 9-34-201(3), concerning the definition of
18 "medical provider", is amended to read as follows:

19 (3) "Medical provider" means any ~~emergency~~ medically staffed
20 department of a hospital licensed under § 20-9-214.

21
22 SECTION 3. Arkansas Code § 9-34-202(b), concerning the protocol
23 followed when a medical provider, law enforcement agency, or fire department
24 that takes possession of a child in accordance with the Safe Haven Act, is
25 amended to add an additional subdivision to read as follows:

26 (3)(A) If the identity of a parent or child is released or made
27 known to the Department of Human Services in violation of subsection (b)(2)
28 of this section, the case shall proceed as a dependency-neglect action as
29 defined under § 9-27-303, but with the same protections from liability as if
30 an anonymous surrender was made under this section.

31 (B)(i) If the child is relinquished at a location defined
32 in § 9-34-201, the parent shall not be held criminally liable for the
33 relinquishment or have a true finding of maltreatment or abandonment entered
34 against the parent if the parent's identity is known and the Department of
35 Human Services proceeds under § 9-27-341.

36 (ii) The department shall not subsequently use a

1 resulting termination of parental rights against a parent who surrendered his
2 or her child under this section.

3
4 SECTION 4. Arkansas Code § 9-34-203 is amended to read as follows:

5 9-34-203. Care of the child and permanency plan.

6 (a) Upon delivery of the child to a medical provider, law enforcement
7 agency, or fire department, the law enforcement officer, an appropriate
8 employee of the fire department, or an appropriate employee of the hospital
9 shall take the child into protective custody for seventy-two (72) hours under
10 the Child Maltreatment Act, § 12-18-101 et seq.

11 (b)(1) The law enforcement officer, employee of the fire department,
12 or employee of the hospital shall immediately notify the Division of Children
13 and Family Services, which shall initiate a dependency-neglect petition under
14 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., and shall proceed
15 under § 9-27-341.

16 (2)(A) Within fourteen (14) days of filing a dependency-neglect
17 petition, the Department of Human Services shall publish a notification by
18 warning order to be published weekly for two (2) consecutive weeks in a
19 newspaper having general circulation in the county where the action is filed.

20 (B) The notification shall contain:

21 (i) The caption of the pleadings in the dependency-
22 neglect case;

23 (ii) The location where the child was delivered;

24 (iii) The date the child was delivered;

25 (iv) Notice that a dependency-neglect proceeding has
26 been filed, and that any parent claiming rights to the child must file a
27 responsive pleading or motion and appear before the court hearing the case to
28 defend the parent's claim within thirty (30) days from the date of first
29 publication; and

30 (C) If the identity of a parent or child is released
31 or made known to the Department of Human Services in violation of § 9-34-
32 202(b)(2), the case shall proceed as a dependency-neglect action as defined
33 under § 9-27-303, but with the same protections from liability as if an
34 anonymous surrender was made under this section.

35 (D) If no responsive pleadings are filed by the parent
36 within thirty (30) days from the date of first publication and there are

1 prospective adoptive parents seeking to adopt the child, the Department of
2 Human Services may proceed with the filing of an adoption petition without
3 further notice.

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5 /s/K. Hammer
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