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D. Ennis, Ewing, Fallon, Hudson, Miro,  
Ulbrich, Williams; Sens. Cloutier, Connor,  
Venables

HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 120

AN ACT TO AMEND TITLES 11, 13, AND 16 OF THE DELAWARE CODE RELATING TO SAFE ARMS FOR BABIES.

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

1 Section 1. Amend Title 11 of the Delaware Code by inserting a new section therein as follows:

2 “§1102A. Abandonment of a baby at a hospital as defense.

3 In any prosecution for an offense set forth in §1101 or §1102 of this Title, it is a defense if the person  
4 surrendered care or custody of a baby directly to an employee or volunteer of a hospital emergency department  
5 provided that said baby is surrendered alive, unharmed and in a safe place. For the purposes of this section  
6 ‘baby’ means a child not more than fourteen days old.”.

7 Section 2. Amend §902 of Title 16 of the Delaware Code by redesignating subsections (2) through (13) thereof  
8 as subsections (3) through (14) respectively and by inserting a new subsection therein as follows:

9 “(2) ‘Baby’ shall mean a child not more than fourteen (14) days old except that for hospitals and their  
10 employees and volunteers ‘baby’ shall mean a child reasonably believed to be not more than 14 days old.”.

11 Section 3. Amend Title 16 of the Delaware Code by inserting a new section as follows:

12 “§907A. Safe Arms for Babies.

13 (a) The General Assembly finds and declares that the abandonment of a baby is an irresponsible act by  
14 parent(s) and places the baby at risk of injury or death from exposure, actions by other individuals and harm from  
15 animals. However, the General Assembly does recognize that delivering a live baby to a safe place is far  
16 preferable to a baby killed or abandoned by the parent(s). The General Assembly further finds and declares that  
17 the purpose of this Act is not to circumvent the responsible action of parent(s) who adhere to the current process

18 of placing the baby for adoption, but to prevent the unnecessary risk of harm to or death of that baby by  
19 desperate parent(s) who would otherwise abandon or cause the death of that baby. The General Assembly  
20 further finds and declares that medical information about the baby and his/her parent(s) is critical for the  
21 adoptive parents and that every effort should be made, without risking the safe placement of the baby, to obtain  
22 that medical information and provide counseling information to those parent(s). The General Assembly further  
23 finds and declares that if this Act does not result in the safe placement of such babies or is abused by parent(s)  
24 attempting to circumvent the current process of adoption, it should be repealed.

25 (b) A person may voluntarily surrender a baby directly to an employee or volunteer of the emergency  
26 department of a Delaware hospital, provided that said baby is surrendered alive, unharmed and in a safe place.

27 (c) A Delaware hospital shall be authorized to take temporary emergency protective custody of the baby  
28 who is surrendered pursuant to this section. The person who surrenders the baby shall not be required to provide  
29 any information pertaining to his or her identity nor shall the hospital inquire as to same. If the identity of the  
30 person is known to the hospital, the hospital shall keep the identity confidential. However, the hospital shall  
31 either make reasonable efforts to directly obtain pertinent medical history information pertaining to the baby and  
32 the baby's family or attempt to provide the person with a postage paid medical history information questionnaire.

33 (d) The hospital shall attempt to provide the person leaving the baby with the following:

34 (1) Information about the Safe Arms program;

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

38 (3) brochures with telephone numbers for public or private agencies that provide counseling or adoption  
39 services.

40 (e) The hospital shall attempt to provide the person surrendering the baby with the number of the baby's  
41 identification bracelet to aid in linking the person to the baby at a later date, if reunification is sought. Such an  
42 identification number is an identification aid only and does not permit the person possessing the identification  
43 number to take custody of the baby on demand.

44 (f) If a person possesses an identification number linking the person to a baby surrendered at a hospital  
45 under this section and parental rights have not already been terminated, possession of the identification number

creates a presumption that the person has standing to participate in an action. Possession of the identification number does not create a presumption of maternity, paternity, or custody.

(g) Any hospital taking a baby into temporary emergency protective custody pursuant to this section shall immediately notify the Division and the State Police of its actions. The Division shall obtain exparte custody within four hours of notification under this subsection unless there are exigent circumstances. Immediately after being notified of the surrender, the State Police shall submit an inquiry to the Delaware Missing Children Information Clearinghouse.

(h) The Division shall notify the community that a baby has been abandoned and taken into temporary emergency protective custody by publishing notice to that effect in a newspaper of statewide circulation. 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. The notice at a minimum shall contain the place, date and time where the baby was surrendered, the baby's sex, race, approximate age, identifying marks, any other information the Division deems necessary for the baby's identification and a statement that after 30 days the abandonment constitutes a termination of all parental rights of the person who abandoned the baby and a waiver of any notice of a termination of parental rights hearing.

(i) When the person who surrenders a baby pursuant to this section manifests a desire to remain anonymous, the Division shall neither initiate nor conduct an investigation to determine the identity of such person, and no Court shall order such an investigation, unless there is good cause to suspect child abuse or neglect other than the act of surrendering such baby.”.

Section 4. Amend §908 of Title 16 of the Delaware Code inserting immediately before the period “.” as it appears in the heading of said section the following:

“, and special reimbursement to hospitals for expenses related to certain babies”.

Section 5. Amend §908 of Title 16 of the Delaware Code by redesignating the existing text thereof as subsection “(a)” and by adding a new subsection as follows:

“(b) A hospital, hospital employee or hospital volunteer which accepts temporary emergency protective custody of a baby pursuant to §907A of this Title is absolutely immune from civil, criminal, 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 baby is in the

74 hospital's temporary emergency protective custody. If a hospital accepts temporary emergency protective  
75 custody of a baby pursuant to §907A of this Title, the State of Delaware shall reimburse the hospital for eligible,  
76 medically necessary costs under the Medicaid Fee for Service Program.”.

77 Section 6. Amend §1103(a)(2) of Title 13 by adding a new subparagraph thereto as follows:

78 “d. Abandonment of a baby as provided in §907A of Title 16 shall be final thirty days after such  
79 abandonment, and such abandonment shall be: (i) the surrendering person's irrevocable consent to the  
80 termination of all parental rights, if any, of such person on the ground of abandonment; and (ii) the surrendering  
81 person's irrevocable waiver of any right to notice of or opportunity to participate in any termination of parental  
82 rights proceeding involving such child, unless such surrendering person has manifested an intent to exercise  
83 parental rights and responsibilities within thirty days of such abandonment.”.

84 Section 7. The Department of Health and Social Services shall:

85 (a) Establish public information programs to promote safe placement alternatives for babies, the  
86 confidentiality offered to birth parents and information regarding adoption procedures. This campaign shall  
87 include the use of a 24-hour, toll free hotline to assist in making information about the intent, purposes and  
88 operation of this Act as widely available as possible.

89 (b) Promulgate a handout to be distributed to hospitals and which shall be furnished to a person who  
90 surrenders the care or custody of a baby to a hospital. The handout shall advise the person of the availability of  
91 counseling services and shall elicit from the person via a postage prepaid questionnaire relevant health history of  
92 the baby and the baby's parents.

93 (c) Provide hospitals in this State information about relevant social service agencies to be made  
94 available to any person voluntarily surrendering a baby pursuant to Section 3 of this Act.

95 Section 8. The provisions of this Act shall expire five years after its enactment into law, unless extended by the  
96 General Assembly prior to that time.

#### SYNOPSIS

This Bill [Safe Arms for Babies] is designed to save the lives of babies who might otherwise be abandoned in an unsafe place without medical care. The Bill encourages parents who decide to abandon babies to do so to an employee or volunteer at a hospital emergency department. A parent who complies with this Bill will be immunized from prosecution for the crimes of Abandonment of a Child or Endangering the Welfare of a Child. The Department of Health and Social Services shall publicize the provisions of this Act so as to encourage such parents to protect the life of the baby.