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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.

6 Current law allows for the prosecution of parents who 7 abandon their newborn infants. These parents are often young 8 mothers who are unable to deal with the harsh reality of 9 parenthood. Their solution is leaving the newborn in a 10 populated area with the hope that someone will find and care for 11 the child. Although the possibility of prosecution was intended 12 to deter mothers from taking such a careless approach, newborn 13 infants have suffered and died as the result of abandonment in 14 life-threatening situations.

15 "Safe-surrender" laws take a different approach by making 16 the child's needs the immediate concern, rather than focusing on 17 the mother's liability. The goal of these laws is to create a 18 system where parents can leave their newborns in a place of HB1830 CD1 HMS 2007-4065



1 safety without fear of being prosecuted for child abandonment.
2 Anonymity, confidentiality, and freedom from prosecution for
3 parents may encourage them to leave a newborn infant at a
4 suitably safe place and thus save the newborn infant's life.
5 While established adoption procedures may be preferable, safe6 surrender laws provide an alternative that saves the lives of
7 newborns.

8 The purpose of this Act is to establish a safe haven for9 newborns and provide for their future health and safety by:

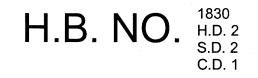
10 (1) Providing immunity from prosecution for persons
11 leaving an unharmed newborn at a hospital, fire
12 station, or police station, or with emergency medical
13 services personnel;

14 (2) Providing immunity from liability to the hospital,

15 fire station, police station, or personnel who receive 16 the newborn; and

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





3

1	SECTION 2. The Hawaii Revised Statutes is amended by		
2	adding a new chapter to be appropriately designated and to read		
3	as follows:		
4	"CHAPTER		
5	SAFE PLACE FOR NEWBORNS		
6	§ -1 Definitions. As used in this chapter, unless the		
7	context otherwise requires:		
8	"Department" means the department of human services.		
9	"Emergency services personnel" shall have the same meaning		
10	as defined in section 78-52.		
11	"Fire station" means a building for fire equipment and		
12	firefighters.		
13	"Firefighter" means a member of a fire department whose		
14	principal duties are to prevent and fight fires.		
15	"Health care provider" means an individual licensed,		
16	certified, or otherwise authorized or permitted by law to		
17	provide health care in the ordinary course of business or		
18	practice of a profession.		
19	"Hospital" means a facility licensed as a hospital by the		
20	department of health and accredited by the Joint Commission on		

21 Accreditation of Health Care Organizations.

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1	"Police officer" means any public servant, whether employed
2	by the State or any county, or by the United States, vested by
3	law with a duty to maintain public order, to make arrests for
4	offenses, or to enforce the criminal laws, whether that duty
5	extends to all offenses or is limited to a specific class of
6	offenses.
7	"Police station" means a facility where police officers
8	report for assignments, paperwork, and other police business.
9	"Unharmed condition" means no evidence of injury to a
10	newborn child's physical or psychological health or welfare, as
11	evidenced in any case where:
12	(1) The newborn child is alive and exhibits no:
13	(A) Substantial or multiple skin bruising or any
14	other internal bleeding;
15	(B) Injury to skin causing substantial bleeding;
16	(C) Malnutrition;
17	(D) Failure to thrive;
18	(E) Burn or burns;
19	(F) Poisoning;
20	(G) Fracture of any bone;
21	(H) Subdural hematoma;
22	(I) Soft tissue swelling;



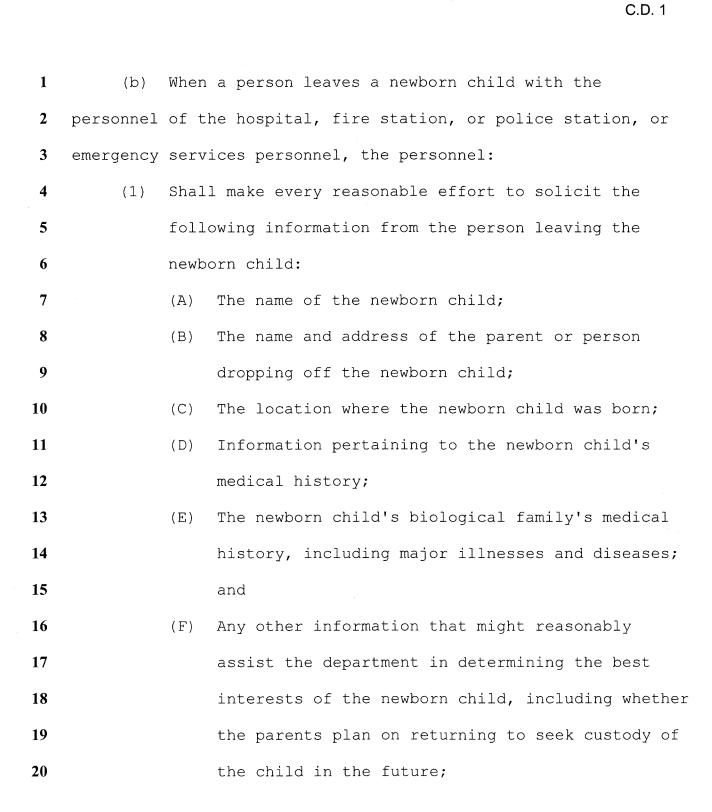
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		C.D. 1
1		(J) Extreme pain;
2		(K) Extreme mental distress; or
3		(L) Gross degradation;
4	(2)	The newborn child has not been the victim of:
5	(- /	(A) Sexual contact or conduct, including rape,
6		sodomy, molestation, sexual fondling, or incest;
7		
		(B) Obscene or pornographic photographing, filming,
8		or depiction; or
9		(C) Other similar forms of sexual exploitation;
10	(3)	Injury does not exist to the psychological capacity of
11		a child as evidenced by a substantial impairment in
12		the child's ability to function;
13	(4)	The child has been provided in a timely manner with
14		adequate food, clothing, shelter, psychological care,
15		physical care, medical care, and supervision; or
16	(5)	The child has not been provided with dangerous,
17		harmful, or detrimental drugs, as defined by section
18		712-1240; except in cases where a child's family
19		provides the drugs to the child pursuant to the
20		direction or prescription of a practitioner, as
21		defined in section 712-1240.



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1	§ -2 Unharmed newborn children left at hospitals, fire
2	stations, or police stations, or with emergency services
3	personnel; avoidance of prosecution. A person may leave a
4	newborn child with the personnel of a hospital, fire station, or
5	police station or emergency services personnel without being
6	subject to prosecution for abandonment of a child pursuant to
7	section 709-902; provided that:
8	(1) The newborn child was born within seventy-two hours of
9	being left at the hospital, fire station, or police
10	station, or with emergency services personnel as
11	determined within a reasonable degree of medical
12	certainty; and
13	(2) The newborn child is left in an unharmed condition.
14	§ -3 Safe place for newborns. (a) The personnel of a
15	hospital, fire station, or police station, or emergency services
16	personnel may receive a newborn child; provided that the newborn
17	child was born within seventy-two hours of being left at the
18	hospital, fire station, or police station, or with emergency
19	services personnel as determined within a reasonable degree of
20	medical certainty.





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1 provided that refusal of the person leaving the 2 newborn child to provide such information shall not 3 prevent personnel from accepting the newborn child; 4 (2) May provide the person leaving the newborn child with 5 information on how to contact relevant social service 6 agencies; and

7 (3) Shall notify appropriate law enforcement agencies that
8 a newborn child was received, for purposes of matching
9 the child with missing children reports.

10 If a hospital, fire station, or police station, or (C) 11 emergency services personnel receives a newborn child pursuant to subsection (a), any health care provider, firefighter, police 12 13 officer, or emergency services personnel receiving the newborn 14 child shall perform any act necessary, in accordance with 15 generally accepted standards of their respective professional practice, to protect, preserve, and aid the physical health and 16 17 safety of the newborn child during the temporary physical 18 custody.

19 § -4 Reporting. Within twenty-four hours of receiving
20 an unharmed newborn child under section -3, the personnel of
21 the hospital, fire station, or police station, or emergency
22 services personnel shall inform the department that a newborn HB1830 CD1 HMS 2007-4065



1 child has been left at the premises; provided that the 2 department shall not be informed until the person leaving the 3 newborn child has left the premises. If the newborn child is received in a harmed condition, the hospital, fire station, 4 5 police station, or emergency services personnel shall notify appropriate law enforcement agencies, regardless of whether the 6 7 person or persons leaving the newborn child has left the 8 premises.

9 § -5 Immunity. (a) A hospital with responsibility for
10 performing duties under this chapter, any health care provider,
11 or hospital personnel working at the hospital, a fire station
12 and any firefighter or fire personnel, a police station and any
13 police officer or police personnel, and emergency services
14 personnel acting in good faith in receiving a newborn child
15 shall be immune from:

- 16 (1) Any criminal liability that otherwise might result17 from their actions; and
- 18 (2) Any civil liability that otherwise might result from19 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.

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7 § -6 Authority to reunite; placement. (a) Upon
8 receiving custody of a newborn child who has been discharged
9 from a hospital that received the newborn child pursuant to
10 section -3, the department may reunite the newborn child with
11 the newborn's parents.

12 (b) The department may:

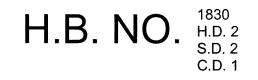
13 (1) Search for relatives of the newborn child as a

14 placement or permanency option; or

15 (2) Implement other placement requirements that give a16 preference to relatives;

17 provided that the department has information as to the identity 18 of the newborn child, the newborn child's mother, or the newborn 19 child's father.

20 § -7 Status of child. For purposes of proceedings
21 under this chapter and adoption proceedings, a newborn child
22 left at a hospital, fire station, or police station or with
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1 emergency services personnel under section -2 shall be considered an abandoned child." 2 3 SECTION 3. Section 709-902, Hawaii Revised Statutes, is 4 amended to read as follows: 5 "§709-902 Abandonment of a child. (1) A person commits the offense of abandonment of a child if, being a parent, 6 quardian, or other person legally charged with the care or 7 8 custody of a child less than fourteen years old, the person 9 deserts the child in any place with intent to abandon it. 10 (2) Leaving a newborn child at a hospital, fire station, or police station or with emergency services personnel pursuant 11 12 to section -2 shall not constitute a violation of this 13 section. $\left[\frac{1}{2}\right]$ (3) Abandonment of a child is a misdemeanor." 14 SECTION 4. This Act does not affect rights and duties that 15 matured, penalties that were incurred, and proceedings that were 16 17 begun before its effective date. SECTION 5. Statutory material to be repealed is bracketed 18 19 and stricken. New statutory material is underscored. SECTION 6. This Act shall take effect on July 1, 2007. 20



H.B. NO. 1830 H.D. 2 S.D. 2 C.D. 1

Report Title:

Abandoned Children; Safe Haven; Immunity from Prosecution

Description:

Provides immunity from prosecution to persons who leave an unharmed newborn at a hospital, fire station, or police station, or with emergency services personnel within 72 hours of the child's birth. Provides immunity from liability to the hospital, fire station, or police station, or personnel who receive the newborn. Requires the personnel to make a reasonable effort to obtain certain information regarding the child from the person leaving the child. (HB1830 CD1)

