

HB473 INTRODUCED



1 MZNC1W-1

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6 Yarbrough, Brown, Sorrells, Rehm, Stadthagen, Lipscomb,

7 Oliver, Paschal, DuBose, Shaver

8 RFD: Children and Senior Advocacy

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SYNOPSIS:

Under existing law, a parent may surrender an infant 72 hours or younger to an emergency medical services provider, and the Department of Human Resources assumes legal custody of an infant surrendered to an emergency medical services provider.

Also under existing law, an individual or entity who takes possession of a surrendered infant is not liable to any claim for damages arising from the surrender.

This bill would allow a parent to anonymously surrender an infant 45 days old or younger to certain emergency medical services providers, and would revise the definition of "emergency medical services provider."

This bill would allow a mother, following labor and delivery, to anonymously surrender a newborn infant to the hospital and not be placed on the birth certificate.

This bill would allow an emergency medical services provider to install and maintain a baby safety device, provided that the device meets certain requirements.

This bill would allow the Department of Public Health to adopt rules relating to baby safety devices.



HB473 INTRODUCED

29 This bill would require local law enforcement
30 agencies to investigate whether any surrendered infant
31 is a missing child.

32 Under existing law, a parent who surrenders his
33 or her child is provided an affirmative defense to
34 certain charges.

35 This bill would extend the affirmative defense
36 to individuals acting on behalf of the parent.

37 This bill would also provide that an individual
38 or entity who takes possession of a surrendered infant
39 is immune from civil liability relating to the
40 surrender, unless the individual or entity committed
41 gross negligence or willful misconduct.

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A BILL

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TO BE ENTITLED

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AN ACT

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50 Relating to the surrender of infants; to amend Sections
51 26-25-1, 26-25-2, 26-25-3, and 26-25-5, Code of Alabama 1975,
52 and to add Sections 26-25-1.1 and 26-25-1.2 to the Code of
53 Alabama 1975; to provide for the surrender of an infant to an
54 emergency medical services provider or a hospital; to provide
55 for the surrender of an infant in a baby safety device that
56 meets certain requirements; to authorize the Department of



HB473 INTRODUCED

57 Public Health to adopt rules relating to baby safety devices;
58 to provide for an investigation into whether a surrendered
59 infant is a missing child; to provide an affirmative defense
60 to certain charges to parents who surrender an infant; to
61 further provide for civil immunity for emergency medical
62 services providers who accept surrendered infants; and to
63 repeal Section 26-25-4, Code of Alabama 1975.

64 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

65 Section 1. Sections 26-25-1, 26-25-2, 26-25-3, and
66 26-25-5, Code of Alabama 1975, are amended to read as follows:

67 "§26-25-1

68 (a) For the purposes of this chapter, the following
69 terms have the following meanings:

70 (1) BABY SAFETY DEVICE. A device installed at an
71 emergency medical services provider pursuant to Section
72 26-25-1.2 for the purpose of permitting a parent to
73 anonymously surrender his or her infant.

74 (2) DEPARTMENT. The Department of Public Health.

75 (3) EMERGENCY MEDICAL SERVICES PROVIDER. All of the
76 following entities:

77 a. A licensed hospital, as defined in Section 22-21-20,
78 which operates an emergency department. This term does not
79 include the offices, clinics, surgeries, or treatment
80 facilities of private physicians or dentists.

81 b. Any state or local law enforcement agency, fire
82 station, or ambulance station, provided that it is staffed 24
83 hours a day, seven days a week, 365 days a year with at least
84 one emergency medical services personnel, as defined by



HB473 INTRODUCED

85 Section 22-18-1.

86 (4) INFANT. A child 45 days old or younger.

87 (b) (1) An emergency medical services provider, without
88 a court order, shall take possession of ~~a child~~ an infant who
89 is ~~72 hours~~ 45 days old or younger ~~if the child is voluntarily~~
90 ~~delivered to the provider by the child's parent~~ in each of the
91 following circumstances:

92 a. The infant's parent delivers the infant to an
93 emergency medical services provider.

94 b. The infant's parent places the infant in a baby
95 safety device that meets the requirements of Section
96 26-25-1.1, provided that ~~and~~ the parent did not express an
97 intent to return for the ~~child~~ infant.

98 c. The infant's parent delivers the infant to an
99 employee of an emergency medical services provider, provided
100 that the employee is responding to an emergency call from a
101 parent who expressed an intent to surrender and not return for
102 the infant.

103 (2) A parent who surrenders an infant pursuant to this
104 subsection may not be required to provide or asked to provide
105 any information relating to his or her identity. If the
106 identity of the parent is known by an emergency medical
107 services provider, he or she shall keep the identity
108 confidential.

109 ~~(b)~~ (3) An emergency medical services provider who takes
110 possession of ~~a child~~ an infant under this section shall
111 perform any act necessary to protect the physical health or
112 safety of the ~~child~~ infant. No court order or other legal



HB473 INTRODUCED

113 document shall be required in order for the emergency medical
114 services provider to take possession of an infant whose parent
115 surrenders custody under this act.

116 (c) An individual health care provider, including a
117 physician, dentist, nurse, physician assistant, or other
118 health care professional who is not otherwise considered an
119 emergency medical services provider under this chapter may
120 voluntarily assumes responsibility for the custody of an
121 infant surrendered at the health care provider pursuant to
122 subdivision (b). If an individual voluntarily assumes
123 responsibility for the custody of an infant pursuant to this
124 subdivision, he or she shall follow the procedures set forth
125 in Section 26-25-2."

126 "§26-25-2

127 (a) No later than the close of the first business day
128 after the date on which an emergency medical services provider
129 takes possession of ~~a child~~ an infant pursuant to ~~Section~~
130 ~~26-25-1~~ this chapter, the provider shall notify the Department
131 of Human Resources that the emergency medical services
132 provider has taken possession of the ~~child~~ infant, and take
133 the infant to a licensed hospital for a medical evaluation.

134 (b) The department shall assume ~~the care, control, and~~
135 legal custody of the ~~child~~ infant immediately on receipt of
136 notice pursuant to subsection (a). The department shall be
137 responsible for all medical and other costs associated with
138 the ~~child~~ infant and shall reimburse ~~the~~ any hospital or
139 emergency medical services provider for any costs incurred
140 prior to the ~~child~~ infant being placed in the care of the



HB473 INTRODUCED

141 department.

142 (c) Immediately after assuming legal custody of an
143 infant, the department shall contact the local law enforcement
144 agency in the municipality or county where the infant was
145 surrendered to determine whether the infant is a missing child
146 in this state or in another state, and the law enforcement
147 agency shall investigate whether the infant has been reported
148 as missing."

149 "§26-25-3

150 (a) It is an affirmative defense to prosecution under
151 Sections 13A-13-4, 13A-13-5, and 13A-13-6, if the parent
152 voluntarily delivers the ~~child~~ infant to an emergency medical
153 services provider or a baby safety device pursuant to ~~Section~~
154 ~~26-25-1~~ this chapter.

155 (b) Nothing in this section shall prohibit the
156 prosecution or investigation of any allegations of abuse or
157 neglect of a surrendered infant."

158 "§26-25-5

159 (a) Except as provided in Section 36-1-12, ~~No person or~~
160 ~~other entity~~ an emergency services provider or an employee or
161 agent of an emergency services provider subject to ~~the~~
162 ~~provisions of~~ this chapter shall be ~~liable to any person~~
163 immune from liability for any civil action ~~claim for damages~~
164 ~~as a result of~~ arising out of any action or omission taken
165 pursuant to the requirements of this chapter.

166 (c) Nothing in this section shall limit an individual's
167 or entity's liability for gross negligence, ~~and no lawsuit~~
168 ~~shall be predicated thereon.~~"



HB473 INTRODUCED

169 Section 2. Sections 26-25-1.1 and 26-25-1.2 are added
170 to the Code of Alabama 1975, to read as follows:

171 §26-25-1.1

172 (a) A woman admitted to a hospital for purposes of
173 labor and delivery may surrender custody of her newborn
174 infant. If a woman expresses a desire to voluntarily surrender
175 custody of her newborn infant after birth, an emergency
176 medical services provider shall take possession of the infant,
177 without any further action by the woman, as if the infant had
178 been surrendered in the same manner as Section 26-25-1.

179 (b) A woman who surrenders a newborn infant pursuant to
180 this section is entitled to the legal protections of anonymity
181 guaranteed under this chapter. If the woman expresses a desire
182 to remain anonymous, identifying information may be obtained
183 only for purposes of securing payment of labor and delivery
184 costs. If the birth mother is a minor, the hospital may use
185 the identifying information to secure payment through
186 Medicaid, but may not notify the minor's parent or guardian
187 without the minor's consent.

188 (c) Except as required by subsection (b), the identity
189 of a birth mother who surrenders her infant pursuant to this
190 section shall not be placed on the birth certificate or
191 disclosed to any other individual or entity, including state
192 and local agencies.

193 §26-25-1.2

194 (a) (1) An emergency services provider may install,
195 maintain, and monitor a baby safety device, provided that the
196 baby safety device meets all of the requirements of this



HB473 INTRODUCED

197 section. No other individual or entity, including any child
198 placing agency, that is not an emergency services provider may
199 install, maintain, or monitor a baby safety device.

200 (2) a. An emergency services provider may accept
201 donations or grants, and the Legislature may appropriate
202 funds, for the purpose of installing and maintaining a baby
203 safety device. If a specific donation or appropriation is made
204 to an emergency services provider for the purpose of
205 installing and maintaining a baby safety device pursuant to
206 this section, then the emergency services provider shall
207 install and maintain a baby safety device as required by this
208 section, to the extent that the funding allows it to do so. A
209 donor may not be involved in the installation, maintenance, or
210 monitoring of a baby safety device.

211 b. An emergency services provider shall not be required
212 to install, maintain, or monitor a baby safety device if the
213 provider has not received funding under this subdivision.

214 (b) A baby safety device in this state shall be
215 installed by a general contractor licensed pursuant to Chapter
216 8 of Title 34 and shall meet all of the following criteria:

217 (1) Be designed to permit a parent to anonymously place
218 an infant in the device for purposes of surrendering the
219 infant.

220 (2) Be climate controlled.

221 (3) Be installed in a conspicuous location.

222 (4) Be equipped with a dual alarm system connected to
223 the physical location where the device is installed. The dual
224 alarm system shall trigger when an infant is placed into the



HB473 INTRODUCED

225 device, shall be visually inspected twice per day, and shall
226 be tested at least once per week.

227 (5) Have a supporting frame of the device that is
228 anchored to prevent movement of the unit as a whole.

229 (6) Be under 24-hour camera surveillance, provided that
230 the surveillance footage may only be viewed for purposes of
231 investigating alleged child abuse or neglect or other criminal
232 behavior related to the surrender of an infant to a baby
233 safety device.

234 (7) Meet any other requirements adopted by the
235 department.

236 (c) An emergency services provider shall take custody
237 of any infant surrendered in a baby safety device in the same
238 manner as an infant surrendered pursuant to Section 26-25-1,
239 and shall follow the procedures provided in Section 26-25-2.

240 (d) (1) The Department of Public Health shall adopt
241 rules relating to the installation, maintenance, and
242 monitoring of a baby safety device including, but not limited
243 to, the following:

244 a. Rules providing for the purchase and installation of
245 a baby safety device, including designating from where an
246 emergency services provider may purchase a baby safety device.

247 b. Rules providing for the maintenance of a baby safety
248 device.

249 c. Rules providing for training of emergency services
250 providers with baby safety devices installed on its premises.

251 (2) Nothing in this chapter requires the Department of
252 Human Resources to monitor or regulate any baby safety device



HB473 INTRODUCED

253 installed in this state.

254 (e) Any emergency services provider that has a baby
255 safety device installed shall post signage at the site of the
256 device that clearly identifies the device and provides written
257 and pictorial directions to the surrendering individual
258 instructing him or her to open the access door, place the
259 infant inside the device, and close the access door to engage
260 the lock. The signage shall be approved by the department and
261 shall clearly indicate all of the following:

262 (1) That an infant surrendered in a baby safety device
263 may be no more than 45 days old.

264 (2) That the infant may not have previously been
265 subjected to abuse or neglect.

266 (3) That by placing an infant in the baby safety
267 device, a parent is foregoing all parental responsibilities
268 with respect to the infant and is giving consent for the state
269 to take custody of the infant.

270 (4) That damaging a baby safety device may constitute
271 the crime of criminal mischief.

272 Section 3. Section 26-25-4, Code of Alabama 1975,
273 relating to the term "emergency medical services provider," is
274 repealed.

275 Section 4. This act shall become effective on the first
276 day of the third month following its passage and approval by
277 the Governor, or its otherwise becoming law.