

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: H1/23/23  
**A Bill**

HOUSE BILL 1098

By: Representatives J. Mayberry, Barker, Bentley, K. Brown, Burkes, Cavanaugh, Crawford, Duke, C. Fite, Haak, D. Hodges, Lundstrum, McAlindon, Vaught, *Duffield*

By: Senators Irvin, B. Davis, J. English

### **For An Act To Be Entitled**

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

### **Subtitle**

TO CLARIFY THAT A VOLUNTEER FIRE DEPARTMENT MAY OPERATE A NEWBORN SAFETY DEVICE UNDER CERTAIN CONDITIONS UNDER THE SAFE HAVEN ACT.

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

SECTION 1. Arkansas Code § 5-27-205(c), concerning the affirmative defense to the offense of endangering the welfare of a minor in the first degree, is amended to read as follows:

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



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

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

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

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

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

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

(ii) An improvement districts, district;

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

(iv) A volunteer fire departments department; and

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

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

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

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

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

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

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

(2) In a newborn safety device that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

(C) The newborn safety device is:

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

(ii) Equipped with:

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

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

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

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

*/s/J. Mayberry*