

MAINE STATE LEGISLATURE

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MS

L.D. 1670

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JUDICIARY

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 539, L.D. 1670, Bill, "An Act Regarding Child Abandonment"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 17-A MRSA §553, sub-§3 is enacted to read:

3. It is an affirmative defense to a prosecution under this section that, at the time the offense occurred:

A. The child was less than 31 days of age; and

B. The child was delivered by the person charged under this section to an individual the person reasonably believed to be:

(1) A law enforcement officer;

(2) Staff at a medical emergency room;

(3) A medical services provider as defined in Title 22, section 4018; or

(4) A hospital staff member at a hospital.

COMMITTEE AMENDMENT

Sec. 2. 22 MRSA §4018 is enacted to read:

§4018. Abandoned child; safe haven provider

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Medical services provider" means an individual certified, registered or licensed in the healing arts, including, but not limited to, a physician, nurse, podiatrist, optometrist, chiropractor, physical therapist, dentist, psychologist, physician's assistant or emergency medical services person.

B. "Safe haven provider" means:

(1) A law enforcement officer;

(2) Staff at a medical emergency room;

(3) A medical services provider; or

(4) A hospital staff member at a hospital.

2. Request for information. A person who voluntarily delivers a child less than 31 days of age to a safe haven provider and who does not express an intent to return for the child may be requested to provide information helpful to the welfare of the child. The person who accepts a child under this section may not detain the person delivering the child to obtain information.

3. Action by safe haven provider; guidelines. A safe haven provider who accepts a child under this section shall promptly notify the department of the delivery of the child, transfer the child to the department at the earliest opportunity and provide to the department all information provided by the person delivering the child to the safe haven provider. The department shall establish guidelines to assist safe haven providers concerning procedures when a child is delivered to a safe haven provider under this section.

4. Confidentiality. All personally identifiable information provided by the person delivering the child to a safe haven provider is confidential and may not be disclosed by the safe haven provider to anyone except to the extent necessary to provide temporary custody of the child until the child is transferred to the department and except as otherwise provided by court order. All health care or other information obtained by a

safe haven provider in providing temporary custody of the child may also be provided to the department upon request.

5. Liability. A person or entity who accepts a child under this section or provides temporary custody of a child accepted under this section is not subject to civil, criminal or administrative liability for accepting the child or providing temporary custody of the child in the good faith belief that the action is required or authorized by this section. This subsection does not affect liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The additional costs associated with establishing guidelines for safe haven providers can be absorbed by the Department of Human Services utilizing existing budgeted resources.'

SUMMARY

This amendment replaces the bill.

This amendment provides simple procedures for a person who wants to abandon a baby in a safe manner. This amendment provides an affirmative defense to the prosecution for the crime of abandonment of a child. The affirmative defense is available for a person who delivers a child less than 31 days old to: a law enforcement officer; staff at a medical emergency room, not limited to a hospital emergency room; a medical services provider; or a hospital staff member.

The amendment defines "safe haven provider" as a law enforcement officer, staff at a medical emergency room, a medical services provider or a hospital staff member at a hospital. The amendment defines "medical services provider" in parallel to the definition of "health care practitioner" of the Maine Health Security Act, except that, for clarification, it adds "emergency medical services persons." The term "emergency medical services person" is defined in the Maine Revised Statutes, Title 32, section 83, and includes emergency medical technicians.

This amendment allows the safe haven provider to request information that would be helpful to the child's welfare, but prohibits the safe haven provider from detaining anyone who is delivering the child in order to collect the information. Information that may be helpful to the welfare of the child may include, but is not limited to, any information about the child's identity or the identity of the child's family, the child's or family's medical history and the identity of the person delivering the child. Any information that is supplied must be provided to the Department of Human Services. Any personally identifiable information is confidential and may not be disclosed by the safe haven provider except as necessary to provide temporary custody of the child. The court may order disclosure of the information.

The Department of Human Services is directed to establish guidelines to assist a safe haven provider concerning procedures to follow when a child is delivered to the safe haven provider. The guidelines will include assistance concerning what information is important to collect, and how to contact the department when a child is abandoned with a safe haven provider.

This amendment provides that the person or entity who accepts a child under this section or provides temporary custody of a child accepted under this section is immune from civil, criminal and administrative liability for acting under this section if the person or entity acts in good faith, believing the action is required or authorized. This immunity provides that the person who accepts the child or provides temporary custody of the child until the child can be delivered to the Department of Human Services is not liable civilly, criminally or administratively for assisting in the abandonment of a child. If the person acts in a good faith belief that the actions are authorized or required by the statute, the immunity applies. This includes immunity for accepting a child who is 31 days or older, or accepting a child from a person who does not actually have lawful physical custody of the child. The immunity applies to the individual who accepted the child as well as the entity for which the individual works.

The immunity does not affect liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

This amendment also adds a fiscal note to the bill.