

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL NO. 82
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 3 through 13, inclusive, and substitute:

“FOR the purpose of establishing certain exemptions from prosecution for certain persons who abandon a newborn under certain circumstances; requiring the approval of a certain person to abandon a newborn under certain circumstances; providing certain immunity for certain persons and entities under certain circumstances; establishing that a claim against certain persons and entities shall be governed by certain provisions of law; establishing that a certain provision of this Act does not create a new cause of action or substantive legal right and does not affect certain immunities or defenses; and generally relating to the abandonment of a newborn.”;

and strike in their entirety lines 14 through 19, inclusive, and substitute:

“BY adding to

Article - Courts and Judicial Proceedings
Section 5-621.1
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY repealing and reenacting, with amendments,

Article - Courts and Judicial Proceedings
Section 3-831
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY repealing and reenacting, with amendments,

Article - Family Law

Section 10-219
Annotated Code of Maryland
(1999 Replacement Volume and 2000 Supplement)".

AMENDMENT NO. 2

On pages 2 through 4, strike in their entirety the lines beginning with line 1 on page 2 through line 28 on page 4, inclusive, and substitute:

"Article - Courts and Judicial Proceedings

3-831.

(a) [It] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, IT is unlawful for an adult wilfully to contribute to, encourage, cause or tend to cause any act, omission, or condition which results in a violation, renders a child delinquent, in need of supervision, or in need of assistance.

(b) A person may be convicted under this section even if the child has not been found to have committed a violation, adjudicated delinquent, in need of supervision, or in need of assistance. However, the court may expunge a delinquent adjudication from the child's record and enter it as a finding in the adult's case.

(c) An adult convicted under this section is subject to a fine of not more than \$2,500 or imprisonment for not more than 3 years, or both. The court may suspend sentence and place the adult on probation subject to the terms and conditions it deems to be in the best interests of the child and the public.

(D) (1) THIS SECTION DOES NOT APPLY WHEN A PERSON LEAVES AN UNHARMED NEWBORN WITH A HOSPITAL, LAW ENFORCEMENT, SOCIAL SERVICES, OR FIRE AND RESCUE EMPLOYEE WITHIN 3 DAYS OF THE BIRTH OF THE NEWBORN, AS DETERMINED WITHIN A REASONABLE DEGREE OF MEDICAL CERTAINTY, AND THE PERSON DOES NOT EXPRESS AN INTENT TO RETURN FOR THE NEWBORN.

(2) WHEN THE PERSON LEAVING A NEWBORN UNDER THIS

SUBSECTION IS NOT THE MOTHER OF THE NEWBORN, THE PERSON SHALL HAVE THE APPROVAL OF THE MOTHER TO DO SO.

(3) A HOSPITAL, LAW ENFORCEMENT, SOCIAL SERVICES, OR FIRE AND RESCUE EMPLOYEE WHO ACCEPTS OR TREATS A NEWBORN UNDER THIS SUBSECTION SHALL HAVE THE IMMUNITY DESCRIBED UNDER § 5-621.1 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE FROM CIVIL LIABILITY OR CRIMINAL PENALTY.

5-621.1.

(A) A HOSPITAL, LAW ENFORCEMENT AGENCY, LOCAL DEPARTMENT OF SOCIAL SERVICES, OR FIRE OR RESCUE COMPANY OR AN EMPLOYEE OF A HOSPITAL, LAW ENFORCEMENT AGENCY, LOCAL DEPARTMENT OF SOCIAL SERVICES, OR FIRE OR RESCUE COMPANY ACTING IN GOOD FAITH SHALL BE IMMUNE FROM CRIMINAL PROSECUTION FOR ANY ACTION TAKEN RELATED TO THE ABANDONMENT OF A NEWBORN UNDER § 3-831(D) OF THIS ARTICLE OR § 10-219(C) OF THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL TREATMENT OF THE NEWBORN.

(B) (1) A HOSPITAL OR AN EMPLOYEE OF A HOSPITAL ACTING IN GOOD FAITH SHALL BE IMMUNE FROM CIVIL LIABILITY FOR ANY ACTION TAKEN RELATED TO THE ABANDONMENT OF A NEWBORN UNDER § 3-831(D) OF THIS ARTICLE OR § 10-219(C) OF THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL TREATMENT OF THE NEWBORN, UNLESS INJURY TO THE NEWBORN WAS CAUSED BY WILLFUL OR WANTON MISCONDUCT OR GROSS NEGLIGENCE.

(2) A CLAIM AGAINST A LAW ENFORCEMENT AGENCY OR LOCAL DEPARTMENT OF SOCIAL SERVICES OR AN EMPLOYEE OF A LAW ENFORCEMENT AGENCY OR LOCAL DEPARTMENT OF SOCIAL SERVICES FOR AN ACTION TAKEN RELATED TO THE ABANDONMENT OF A NEWBORN UNDER § 3-831(D) OF THIS ARTICLE OR § 10-219(C) OF THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL TREATMENT OF THE NEWBORN, SHALL BE GOVERNED BY THE MARYLAND TORT CLAIMS ACT UNDER TITLE 12, SUBTITLE 1 OF THE STATE

(Over)

GOVERNMENT ARTICLE OR THE LOCAL GOVERNMENT TORT CLAIMS ACT UNDER TITLE 5, SUBTITLE 3 OF THIS ARTICLE.

(3) A FIRE OR RESCUE COMPANY OR AN EMPLOYEE OF A FIRE OR RESCUE COMPANY SHALL HAVE THE IMMUNITY FROM CIVIL LIABILITY DESCRIBED IN § 5-604 OF THIS SUBTITLE FOR ANY ACTION TAKEN RELATED TO THE ABANDONMENT OF A NEWBORN UNDER § 3-831(D) OF THIS ARTICLE OR § 10-219(C) OF THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL TREATMENT OF THE NEWBORN.

(C) (1) THIS SECTION DOES NOT CREATE, AND MAY NOT BE CONSTRUED AS CREATING, A NEW CAUSE OF ACTION OR SUBSTANTIVE LEGAL RIGHT AGAINST THE STATE, A LOCAL GOVERNMENT, OR ANY PERSON OR ENTITY SPECIFIED IN THIS SECTION.

(2) THIS SECTION DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS AFFECTING, ANY IMMUNITIES FROM CIVIL LIABILITY OR CRIMINAL PROSECUTION OR DEFENSES ESTABLISHED BY ANY OTHER PROVISION OF THE CODE OR AT COMMON LAW, TO WHICH THE STATE, A LOCAL GOVERNMENT, OR ANY PERSON OR ENTITY SPECIFIED IN THIS SECTION MAY BE ENTITLED.

Article - Family Law

10-219.

(a) [An] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN individual who has care, custody, or control of a minor child may not desert the child:

(1) with the intent that the child become a public charge; or

(2) without providing for the child's support for at least 3 years by a responsible individual or a licensed child care facility.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is

subject to a fine not exceeding \$100 or imprisonment not exceeding 1 year.

(C) (1) THIS SECTION DOES NOT APPLY WHEN A PERSON LEAVES AN UNHARMED NEWBORN WITH A HOSPITAL, LAW ENFORCEMENT, SOCIAL SERVICES, OR FIRE AND RESCUE EMPLOYEE WITHIN 3 DAYS OF THE BIRTH OF THE NEWBORN, AS DETERMINED WITHIN A REASONABLE DEGREE OF MEDICAL CERTAINTY, AND THE PERSON DOES NOT EXPRESS AN INTENT TO RETURN FOR THE NEWBORN.

(2) WHEN THE PERSON LEAVING A NEWBORN UNDER THIS SUBSECTION IS NOT THE MOTHER OF THE NEWBORN, THE PERSON SHALL HAVE THE APPROVAL OF THE MOTHER TO DO SO.

(3) A HOSPITAL, LAW ENFORCEMENT, SOCIAL SERVICES, OR FIRE AND RESCUE EMPLOYEE WHO ACCEPTS OR TREATS A NEWBORN UNDER THIS SUBSECTION SHALL HAVE THE IMMUNITY DESCRIBED UNDER § 5-621.1 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE FROM CIVIL LIABILITY OR CRIMINAL PENALTY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only to a person who leaves a newborn on or after the effective date of this Act and only to an act or omission related to the leaving of a newborn that occurs on or after the effective date of this Act.”.