

SENATE BILL 688

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D4
HB 252/01 - JUD

2002 Regular Session
2lr0375
CF 2lr0229

By: **Senator Forehand**

Introduced and read first time: February 1, 2002

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Safe Haven Act of 2002**

3 FOR the purpose of establishing certain exemptions from prosecution for certain
4 persons who abandon a newborn under certain circumstances; requiring the
5 approval of a certain person to abandon a newborn under certain circumstances;
6 providing certain immunity for certain persons and entities under certain
7 circumstances; requiring a certain entity to develop certain protocol procedures
8 for certain persons; establishing that a claim against certain persons and
9 entities shall be governed by certain provisions of law; establishing that a
10 certain provision of this Act does not create a new cause of action or substantive
11 legal right and does not affect certain immunities or defenses; providing for the
12 application of this Act; and generally relating to the abandonment of a newborn.

13 BY adding to
14 Article - Courts and Judicial Proceedings
15 Section 5-621.1
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 2001 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Courts and Judicial Proceedings
20 Section 3-828
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 2001 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Family Law
25 Section 10-219
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 2001 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**

2 3-828.

3 (a) [An] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
4 adult may not wilfully contribute to, encourage, cause or tend to cause any act,
5 omission, or condition that renders a child in need of assistance.

6 (b) A person may be convicted under this section even if the child is not
7 adjudicated a CINA.

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

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

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

21 (4) THE MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES
22 SYSTEMS SHALL DEVELOP AND ESTABLISH APPROPRIATE PROTOCOL PROCEDURES
23 FOR FIRE AND RESCUE EMPLOYEES WHO ACCEPT OR TREAT A NEWBORN UNDER
24 THIS SUBSECTION.

25 [(c)] (D) An adult who violates this section is guilty of a misdemeanor and on
26 conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 3
27 years or both.

28 [(d)] (E) A petition alleging a violation of this section shall be prepared and
29 filed by the State's Attorney.

30 [(e)] (F) If an adult is charged under this section, the allegations shall be
31 proved beyond a reasonable doubt.

32 5-621.1.

33 (A) A HOSPITAL, LAW ENFORCEMENT AGENCY, LOCAL DEPARTMENT OF
34 SOCIAL SERVICES, OR FIRE OR RESCUE COMPANY OR AN EMPLOYEE OF A HOSPITAL,
35 LAW ENFORCEMENT AGENCY, LOCAL DEPARTMENT OF SOCIAL SERVICES, OR FIRE
36 OR RESCUE COMPANY ACTING IN GOOD FAITH SHALL BE IMMUNE FROM CRIMINAL
37 PROSECUTION FOR ANY ACTION TAKEN RELATED TO THE ABANDONMENT OF A

1 NEWBORN UNDER § 3-828(C) OF THIS ARTICLE OR § 10-219(C) OF THE FAMILY LAW
2 ARTICLE, INCLUDING CARE AND MEDICAL TREATMENT OF THE NEWBORN.

3 (B) (1) A HOSPITAL OR AN EMPLOYEE OF A HOSPITAL ACTING IN GOOD
4 FAITH SHALL BE IMMUNE FROM CIVIL LIABILITY FOR ANY ACTION TAKEN RELATED
5 TO THE ABANDONMENT OF A NEWBORN UNDER § 3-828(C) OF THIS ARTICLE OR §
6 10-219(C) OF THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL
7 TREATMENT OF THE NEWBORN, UNLESS INJURY TO THE NEWBORN WAS CAUSED BY
8 WILLFUL OR WANTON MISCONDUCT OR GROSS NEGLIGENCE.

9 (2) A CLAIM AGAINST A LAW ENFORCEMENT AGENCY OR LOCAL
10 DEPARTMENT OF SOCIAL SERVICES OR AN EMPLOYEE OF A LAW ENFORCEMENT
11 AGENCY OR LOCAL DEPARTMENT OF SOCIAL SERVICES FOR AN ACTION TAKEN
12 RELATED TO THE ABANDONMENT OF A NEWBORN UNDER § 3-828(C) OF THIS ARTICLE
13 OR § 10-219(C) OF THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL
14 TREATMENT OF THE NEWBORN, SHALL BE GOVERNED BY THE MARYLAND TORT
15 CLAIMS ACT UNDER TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE OR
16 THE LOCAL GOVERNMENT TORT CLAIMS ACT UNDER TITLE 5, SUBTITLE 3 OF THIS
17 ARTICLE.

18 (3) A FIRE OR RESCUE COMPANY OR AN EMPLOYEE OF A FIRE OR
19 RESCUE COMPANY SHALL HAVE THE IMMUNITY FROM CIVIL LIABILITY DESCRIBED
20 IN § 5-604 OF THIS SUBTITLE FOR ANY ACTION TAKEN RELATED TO THE
21 ABANDONMENT OF A NEWBORN UNDER § 3-828(C) OF THIS ARTICLE OR § 10-219(C) OF
22 THE FAMILY LAW ARTICLE, INCLUDING CARE AND MEDICAL TREATMENT OF THE
23 NEWBORN.

24 (4) THE MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES
25 SYSTEMS SHALL DEVELOP AND ESTABLISH APPROPRIATE PROTOCOL PROCEDURES
26 FOR FIRE AND RESCUE EMPLOYEES WHO TAKE ANY ACTION RELATED TO THE
27 ABANDONMENT OF A NEWBORN UNDER § 3-828(C) OF THIS ARTICLE, INCLUDING
28 CARE AND MEDICAL TREATMENT OF THE NEWBORN.

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

33 (2) THIS SECTION DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
34 AFFECTING, ANY IMMUNITIES FROM CIVIL LIABILITY OR CRIMINAL PROSECUTION
35 OR DEFENSES ESTABLISHED BY ANY OTHER PROVISION OF THE CODE OR AT
36 COMMON LAW, TO WHICH THE STATE, A LOCAL GOVERNMENT, OR ANY PERSON OR
37 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, LOCAL DEPARTMENT OF SOCIAL SERVICES, OR FIRE AND RESCUE EMPLOYEE WITHIN 3 DAYS AFTER 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, LOCAL DEPARTMENT OF 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 ARTICLE FROM CIVIL LIABILITY OR CRIMINAL PENALTY.

(4) THE MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SHALL DEVELOP AND ESTABLISH APPROPRIATE PROTOCOL PROCEDURES FOR FIRE AND RESCUE EMPLOYEES WHO ACCEPT OR TREAT A NEWBORN UNDER THIS SUBSECTION.

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.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002.