Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 156

SENATE BILL 1326

AN ACT

AMENDING TITLE 8, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-528; AMENDING SECTION 13-3623.01, ARIZONA REVISED STATUTES; RELATING TO CHILD WELFARE AND PLACEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 8, chapter 5, article 1, Arizona Revised Statutes, is amended by adding section 8-528, to read:

8-528. Newborn infants left with safe haven providers; placement protocol; definitions

A. THE PLACEMENT OF NEWBORN INFANTS WHO ARE LEFT WITH SAFE HAVEN PROVIDERS PURSUANT TO SECTION 13-3623.01 SHALL FOLLOW THE PROTOCOLS PRESCRIBED IN THIS SECTION.

B. IF A NEWBORN INFANT IS LEFT WITH A PRIVATE CHILD WELFARE AGENCY THAT IS LICENSED PURSUANT TO THIS ARTICLE OR WITH A PRIVATE ADOPTION AGENCY THAT IS LICENSED PURSUANT TO SECTION 8-126 AND THE AGENCY HAS THE ABILITY AND DESIRE TO TAKE CUSTODY OF THE INFANT AND TO PLACE THE INFANT FOR ADOPTION, THE SAFE HAVEN PROVIDER SHALL DO THE FOLLOWING:

1. IMMEDIATELY TRANSPORT THE NEWBORN INFANT OR ARRANGE FOR THE NEWBORN INFANT TO BE TRANSPORTED TO A HOSPITAL FOR A PHYSICAL EXAMINATION.

2. IMMEDIATELY CALL CHILD PROTECTIVE SERVICES TO INFORM IT THAT A NEWBORN INFANT HAS BEEN LEFT WITH THE SAFE HAVEN PROVIDER, THE LOCATION OF THE HOSPITAL WHERE THE AGENCY TRANSPORTED THE INFANT OR ARRANGED FOR THE INFANT TO BE TRANSPORTED AND THAT THE AGENCY WILL TAKE CUSTODY OF THE INFANT AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION.

3. TAKE CUSTODY OF THE INFANT FROM THE HOSPITAL WITHIN TWENTY-FOUR HOURS AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION.

C. IF THE PRIVATE CHILD WELFARE AGENCY OR PRIVATE ADOPTION AGENCY DOES NOT HAVE THE ABILITY OR DESIRE TO TAKE CUSTODY OF THE INFANT AND PLACE THE INFANT FOR ADOPTION, THE AGENCY SHALL DO THE FOLLOWING:

1. IMMEDIATELY TRANSPORT THE NEWBORN INFANT OR ARRANGE FOR THE NEWBORN INFANT TO BE TRANSPORTED TO A HOSPITAL FOR A PHYSICAL EXAMINATION.

2. IMMEDIATELY CALL CHILD PROTECTIVE SERVICES TO INFORM IT THAT A NEWBORN INFANT HAS BEEN LEFT WITH THE SAFE HAVEN PROVIDER, THE LOCATION OF THE HOSPITAL WHERE THE AGENCY TRANSPORTED THE INFANT OR ARRANGED FOR THE INFANT TO BE TRANSPORTED AND THAT THE AGENCY WILL NOT TAKE CUSTODY OF THE INFANT AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION.

D. IF A NEWBORN INFANT IS LEFT WITH A CHURCH, THE SAFE HAVEN PROVIDER MUST DO THE FOLLOWING:

1. IMMEDIATELY TRANSPORT THE INFANT OR ARRANGE FOR THE NEWBORN INFANT TO BE TRANSPORTED TO A HOSPITAL FOR A PHYSICAL EXAMINATION.

2. IF THE CHURCH IS AFFILIATED WITH A PRIVATE ADOPTION AGENCY, CONTACT THE PRIVATE ADOPTION AGENCY AND INFORM THE AGENCY THAT A NEWBORN INFANT HAS BEEN LEFT WITH THE SAFE HAVEN PROVIDER.

3. IMMEDIATELY CALL CHILD PROTECTIVE SERVICES TO INFORM IT THAT AN INFANT HAS BEEN LEFT AT THE CHURCH, THE LOCATION OF THE HOSPITAL WHERE THE CHURCH TRANSPORTED THE INFANT OR ARRANGED FOR THE INFANT TO BE TRANSPORTED AND WHETHER A PRIVATE ADOPTION AGENCY WILL TAKE CUSTODY OF THE INFANT.

E. IF THE AGENCY CONTACTED PURSUANT TO SUBSECTION D OF THIS SECTION HAS THE ABILITY AND DESIRE TO TAKE CUSTODY OF THE INFANT AND PLACE THE INFANT FOR ADOPTION, THE AGENCY MUST TAKE CUSTODY OF THE INFANT WITHIN TWENTY-FOUR HOURS AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION.

F. IF THE CHURCH IS NOT AFFILIATED WITH A PRIVATE ADOPTION AGENCY OR THE PRIVATE ADOPTION AGENCY DOES NOT HAVE THE ABILITY OR DESIRE TO TAKE CUSTODY OF THE INFANT AND PLACE THE INFANT FOR ADOPTION, CHILD PROTECTIVE SERVICES SHALL CONTACT THE NEXT PRIVATE ADOPTION AGENCY ON A ROTATING LIST OF AGENCIES MAINTAINED BY CHILD PROTECTIVE SERVICES UNTIL IT CONTACTS AN AGENCY THAT AGREES TO TAKE CUSTODY OF THE INFANT. THE ADOPTION AGENCY MUST TAKE CUSTODY OF THE INFANT FROM THE HOSPITAL WITHIN TWENTY-FOUR HOURS AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION.

G. IF A NEWBORN INFANT IS LEFT WITH A FIREFIGHTER WHO IS ON DUTY, AN EMERGENCY MEDICAL TECHNICIAN WHO IS ON DUTY OR A STAFF MEMBER AT A HEALTH CARE INSTITUTION THAT IS CLASSIFIED BY THE DEPARTMENT OF HEALTH SERVICES PURSUANT TO SECTION 36-405 AS A GENERAL HOSPITAL OR A RURAL GENERAL HOSPITAL, THE SAFE HAVEN PROVIDER SHALL DO THE FOLLOWING:

1. IMMEDIATELY TRANSPORT THE NEWBORN INFANT TO A HOSPITAL FOR A PHYSICAL EXAMINATION.

2. IMMEDIATELY CONTACT CHILD PROTECTIVE SERVICES TO INFORM IT THAT A NEWBORN INFANT HAS BEEN LEFT AT A FIRE STATION OR HEALTH CARE INSTITUTION AND OF THE LOCATION OF THE HOSPITAL WHERE THE SAFE HAVEN PROVIDER TRANSPORTED THE INFANT.

H. WITHIN EIGHT HOURS AFTER CHILD PROTECTIVE SERVICES IS CONTACTED PURSUANT TO SUBSECTION C OR G OF THIS SECTION, CHILD PROTECTIVE SERVICES SHALL CONTACT THE NEXT PRIVATE ADOPTION AGENCY ON A ROTATING LIST MAINTAINED BY CHILD PROTECTIVE SERVICES UNTIL CHILD PROTECTIVE SERVICES CONTACTS AN AGENCY THAT AGREES TO TAKE CUSTODY OF THE INFANT. THE ADOPTION AGENCY MUST TAKE CUSTODY OF THE INFANT FROM THE HOSPITAL WITHIN TWENTY-FOUR HOURS AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION.

I. IF AN AGENCY DOES NOT TAKE CUSTODY OF THE NEWBORN INFANT WITHIN TWENTY-FOUR HOURS AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION, THE HOSPITAL SHALL CONTACT CHILD PROTECTIVE SERVICES, AND CHILD PROTECTIVE SERVICES SHALL CONTACT THE NEXT PRIVATE ADOPTION AGENCY ON ITS ROTATING LIST UNTIL AN AGENCY AGREES TO TAKE CUSTODY OF THE INFANT.

J. IF NO AGENCY TAKES CUSTODY OF THE INFANT PURSUANT TO THIS SECTION WITHIN FORTY-EIGHT HOURS AFTER THE HOSPITAL COMPLETES THE PHYSICAL EXAMINATION, CHILD PROTECTIVE SERVICES SHALL TAKE CUSTODY OF THE INFANT.

K. NOTWITHSTANDING ANY OTHER LAW, BEFORE A PRIVATE ADOPTION AGENCY OR CHILD PROTECTIVE SERVICES TAKES CUSTODY OF AN INFANT PURSUANT TO THIS SECTION, A HEALTH CARE PROVIDER, AS DEFINED IN SECTION 36-3201, MAY MAKE HEALTH CARE TREATMENT DECISIONS FOR THE INFANT. A HEALTH CARE PROVIDER WHO MAKES A GOOD FAITH MEDICAL DECISION PURSUANT TO THIS SUBSECTION IS IMMUNE FROM LIABILITY.

L. THE SAFE HAVEN PROVIDER THAT TAKES CUSTODY OF THE INFANT SHALL ACT AS THE RESPONSIBLE ADULT AND COMPLETE THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM APPLICATION PROCESS ON BEHALF OF THE INFANT. IF THE CHILD IS DETERMINED INELIGIBLE FOR THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM OR IF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM DOES NOT REIMBURSE THE HOSPITAL FOR THE MEDICAL EXAMINATION AND TREATMENT PROVIDED TO THE INFANT, THE ENTITY OR INDIVIDUAL THAT ULTIMATELY TAKES CUSTODY OF THE INFANT MUST COMPENSATE THE HOSPITAL FOR THE MEDICAL EXAMINATION AND TREATMENT PROVIDED TO THE INFANT.

M. AN AGENCY THAT TAKES CUSTODY OF THE NEWBORN INFANT MUST COMPLY WITH ALL STATE AND FEDERAL LAWS REGARDING ADOPTION AND PLACEMENT OF CHILDREN.

N. CHILD PROTECTIVE SERVICES SHALL INFORM AN AGENCY WHEN IT HAS ROTATED TO THE TOP OF THE CONTACT LIST AND INFORM IT THAT CHILD PROTECTIVE SERVICES WILL NOTIFY IT THE NEXT TIME A NEWBORN INFANT IS LEFT WITH A SAFE HAVEN PROVIDER.

O. A PRIVATE ADOPTION AGENCY MAY CONTACT CHILD PROTECTIVE SERVICES TO BE PLACED ON THE ROTATING LIST MAINTAINED BY CHILD PROTECTIVE SERVICES PURSUANT TO THIS SECTION IF IT:

1. IS A NONPROFIT AGENCY.

2. DOES NOT SPECIALIZE IN INTERNATIONAL ADOPTIONS.

3. HAS A TWENTY-FOUR HOUR EMERGENCY CONTACT NUMBER.

P. THE PROTOCOLS PRESCRIBED IN THIS SECTION APPLY ONLY TO AN INFANT WHO IS SEVENTY-TWO HOURS OF AGE OR YOUNGER AND WHO IS NOT ABUSED. IF AN INFANT WHO IS TRANSPORTED TO A HOSPITAL IS OLDER THAN SEVENTY-TWO HOURS OR HAS BEEN ABUSED, THE HOSPITAL SHALL CONTACT CHILD PROTECTIVE SERVICES, AND CHILD PROTECTIVE SERVICES SHALL TAKE CUSTODY OF THE INFANT.

Q. FOR THE PURPOSES OF THIS SECTION:

1. "CHURCH" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3623.01, SUBSECTION H, PARAGRAPH 2, SUBDIVISION (d), ITEM (iii).

2. "CUSTODY" MEANS LEGAL AUTHORITY TO ACT ON BEHALF OF A CHILD INCLUDING THE FOLLOWING:

(a) THE DUTY AND AUTHORITY TO MAKE DECISIONS THAT AFFECT THE CHILD, INCLUDING MEDICAL DECISIONS.

(b) THE AUTHORITY TO FILE A PETITION FOR TERMINATION OF PARENTAL RIGHTS.

Sec. 2. Section 13-3623.01, Arizona Revised Statutes, is amended to read:

13-3623.01. <u>Safe haven for newborn infants; definitions</u>

A. A person is not guilty of abuse of a child pursuant to section 13-3623, subsection B solely for leaving an unharmed newborn infant with a safe haven provider.

B. A fire station and a health care institution that is classified by the department of health services pursuant to section 36-405 as a GENERAL hospital or ~~an outpatient treatment center~~ A RURAL GENERAL HOSPITAL shall post a notice ~~at all entrances~~ that it accepts a newborn infant pursuant to

this section. The notice shall be placed on the exterior of the building in a location that is noticeable to the public. The ~~notice~~ WORDS "BABY SAFE HAVEN" shall be printed in bold-faced capital letters that are not less than two inches in height. The notice may include an identifying logo. A fire station~~,~~ OR hospital ~~or outpatient treatment center~~ that does not post a notice as prescribed by this subsection is not subject to civil liability. A NOTICE THAT IS VALID BEFORE THE EFFECTIVE DATE OF THE AMENDMENT TO THIS SECTION REMAINS VALID AFTER THE EFFECTIVE DATE OF THE AMENDMENT TO THIS SECTION.

C. If a parent or agent of a parent voluntarily delivers the parent's newborn infant to a safe haven provider, the safe haven provider shall take custody of the newborn infant if both of the following are true:

1. The parent did not express an intent to return for the newborn infant.

2. The safe haven provider reasonably believes that the child is a newborn infant.

D. The safe haven provider shall COMPLY WITH THE REQUIREMENTS OF SECTION 8-528 AND report the receipt of a newborn infant to child protective services of the department of economic security as soon as practicable after taking custody of the newborn infant. Child protective services shall report the number of newborn infants delivered to safe haven providers pursuant to section 8-526.

E. A parent or agent of a parent who leaves a newborn infant with a safe haven provider may remain anonymous, and the safe haven provider shall not require the parent or agent to answer any questions. A safe haven provider shall offer written information about information and referral organizations.

F. A safe haven provider who receives a newborn infant pursuant to this section is not liable for any civil or other damages for any act or omission by the safe haven provider in maintaining custody of the newborn infant if the safe haven provider acts in good faith without gross negligence.

G. This section does not preclude the prosecution of the person for any offense based on any act not covered by this section.

H. For the purposes of this section:

1. "Newborn infant" means an infant who is seventy-two hours old or younger.

2. "Safe haven provider" means any of the following:

(a) A firefighter who is on duty.

(b) An emergency medical technician who is on duty.

(c) A ~~staff member at a~~ health care institution that is classified by the department of health services pursuant to section 36-405 as a GENERAL hospital or ~~an outpatient treatment center~~ A RURAL GENERAL HOSPITAL. THE PARENT OR AGENT MUST DELIVER THE NEWBORN INFANT TO A MEDICAL STAFF MEMBER AT THE HEALTH CARE INSTITUTION.

1 (d) A staff member or volunteer at any of the following that posts a
2 public notice that it is willing to accept a newborn infant pursuant to this
3 section:
4 (i) A private child welfare agency licensed pursuant to title 8,
5 chapter 5, article 1.
6 (ii) An adoption agency licensed pursuant to section 8-126.
7 (iii) A church. For the purposes of this item, "church" means a
8 building that is erected or converted for use as a church, where services are
9 regularly convened, that is used primarily for religious worship and
10 schooling and that a reasonable person would conclude is a church by reason
11 of design, signs or architectural or other features.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.