

HOUSE BILL 157

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Ambrose Castellano and James R.J. Strickler and  
Kelly K. Fajardo and Christine Trujillo and Doreen Y. Gallegos

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CHILDREN; ALLOWING PERSONS TO LEAVE INFANTS IN SAFETY DEVICES FOR THE SURRENDER OF INFANTS, UNDER CERTAIN CONDITIONS, WITHOUT CRIMINAL PROSECUTION FOR ABANDONMENT OR ABUSE OF A CHILD; ALLOWING THE INSTALLATION AND OPERATION OF SAFETY DEVICES FOR THE SURRENDER OF INFANTS; PROVIDING LIMITED IMMUNITY FOR OPERATORS OF THOSE DEVICES; REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO PROMULGATE RULES; **HAFc**→**MAKING** **APPROPRIATIONS**;←**HAFc** DECLARING AN EMERGENCY.

.222167.1AIC February 3, 2022 (6:21pm)

underscoring material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-22-1.1 NMSA 1978 (being Laws 2005, Chapter 26, Section 2, as amended) is amended to read:

"24-22-1.1. PURPOSE.--The purpose of the Safe Haven for Infants Act is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant ~~[ninety days of age or less, at]~~ with the staff of a safe haven site [this] or inside a surrender safety device pursuant to the requirements of that act. The Safe Haven for Infants Act is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of parents."

SECTION 2. Section 24-22-2 NMSA 1978 (being Laws 2001, Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as amended) is amended to read:

"24-22-2. DEFINITIONS.--As used in the Safe Haven for Infants Act:

- A. "fire station" means a fire station that is certified by the state fire marshal's office;
- B. "hospital" means an acute care general hospital or health care clinic licensed by the state;
- C. "Indian child" means an Indian child as defined by the federal Indian Child Welfare Act of 1978;
- D. "infant" means a child no more than ninety days old, as determined within a reasonable degree of medical certainty;

.222167.1AIC February 3, 2022 (6:21pm)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

E. "law enforcement agency" means a law enforcement agency of the state or a political subdivision of the state;

F. "safe haven site" means a HAFC→~~+~~

~~(1)←~~HAFC hospital, law enforcement agency or fire station that [~~has staff on site at the time an infant is left at such a site; and~~] is staffed twenty-four hours a day and seven days a week; HAFC→~~or~~

~~(2) daycare facility during the facility's operating hours;~~←HAFC

G. "staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the safe haven site; and

H. "surrender safety device" means an electronically monitored device that is:

(1) designed to keep an infant in a secure and safe environment and at a comfortable temperature for a period of no longer than thirty minutes;

(2) capable of being attached to a building in a manner that allows a person to access an infant within the device from inside the building;

(3) equipped with a transparent door through which an infant is visible and may be retrieved by a person from inside the building; and

(4) equipped with an alarm to immediately notify the operator of the device that an infant is secured within the device."

.222167.1AIC February 3, 2022 (6:21pm)

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

SECTION 3. Section 24-22-3 NMSA 1978 (being Laws 2001, Chapter 31, Section 3 and Laws 2001, Chapter 132, Section 3, as amended) is amended to read:

"24-22-3. LEAVING AN INFANT WITH THE STAFF OF A SAFE HAVEN SITE.--

A. A person may leave an infant with the staff of a safe haven site without being subject to criminal prosecution for abandonment or abuse [~~if the infant was born within ninety days of being left at the safe haven site, as determined within a reasonable degree of medical certainty, and~~] if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to Section 30-6-1 NMSA 1978.

B. A safe haven site may ask the person leaving the infant pursuant to this section for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the safe haven site.

~~[C. The safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with procedures developed between the children, youth and families department and the safe haven site.]"~~

SECTION 4. A new section of the Safe Haven for Infants Act is enacted to read:

.222167.1AIC February 3, 2022 (6:21pm)

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

"[NEW MATERIAL] LEAVING AN INFANT IN A SURRENDER SAFETY DEVICE.--A person may leave an infant inside a surrender safety device without being subject to criminal prosecution for abandonment or abuse of a child if:

A. the surrender safety device is:

H AFC → (1) ← located on the property of and attached as a fixture to a safe haven site other than a daycare facility; ← H AFC

H AFC → (2) ← H AFC H AFC → (1) ← H AFC conspicuously marked as a safe surrender location H H H C → pursuant to rules issued by the children, youth and families department with directions for use ← H H H C; and

H AFC → (3) ← H AFC H AFC → (2) ← H AFC not otherwise marked as unsafe for use;

B. the person properly secures the infant inside the surrender safety device pursuant to instructions provided at the site of the surrender safety device; and

C. the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to Section 30-6-1 NMSA 1978."

SECTION 5. Section 24-22-4 NMSA 1978 (being Laws 2001, Chapter 31, Section 4 and Laws 2001, Chapter 132, Section 4, as amended) is amended to read:

"24-22-4. SAFE HAVEN SITE PROCEDURES.--

A. A safe haven site shall accept an infant who is left at [the] a safe haven site in accordance with the

.222167.1AIC February 3, 2022 (6:21pm)

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

provisions of the Safe Haven for Infants Act.

~~[B. In conjunction with the children, youth and families department, a safe haven site shall develop procedures for appropriate staff to accept and provide necessary medical services to an infant left at the safe haven site and to the person leaving the infant at the safe haven site, if necessary.]~~

G.] B. Upon receiving an infant who is left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act, the safe haven site may provide the person leaving the infant, to the extent practicable, with:

- (1) information about adoption services, including the availability of private adoption services;
- (2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and
- (3) written information regarding whom to contact at the children, youth and families department if the parent decides to seek reunification with the infant.

~~[D.]~~ C. A safe haven site shall ask ~~[the]~~ a person leaving ~~[the]~~ an infant with the staff of a safe haven site pursuant to Section 24-22-3 NMSA 1978 whether the infant has a parent who is either a member of an Indian tribe or is eligible for membership in an Indian tribe, but the person leaving the infant is not required to provide that information to the safe haven site.

~~[E.]~~ D. Immediately after receiving an infant in

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

accordance with the provisions of the Safe Haven for Infants Act, a safe haven site shall inform the children, youth and families department that the infant has been left at the safe haven site. [~~The safe haven site shall provide the children, youth and families department with all available information regarding the child and the parents, including the identity of the child and the parents, the location of the parents and the child's medical records.~~]"

SECTION 6. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] CONSENT FOR MEDICAL SERVICES.--A safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with the procedures developed by the safe haven site."

SECTION 7. Section 24-22-5 NMSA 1978 (being Laws 2001, Chapter 31, Section 5 and Laws 2001, Chapter 132, Section 5, as amended) is amended to read:

"24-22-5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--

A. The children, youth and families department shall be deemed to have emergency custody of an infant who has been left at a safe haven site according to the provisions of the Safe Haven for Infants Act.

B. Upon receiving a report of an infant left at a

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

safe haven site pursuant to the provisions of the Safe Haven for Infants Act, the children, youth and families department shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act.

C. When an infant is taken into custody by the children, youth and families department, the department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child:

(1) the child's tribe shall be notified as required by Section 32A-1-14 NMSA 1978 and the federal Indian Child Welfare Act of 1978; and

(2) pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of Section 32A-5-5 NMSA 1978 regarding Indian child placement preferences.

D. The [~~children, youth and families~~] public education department shall perform public outreach functions necessary to educate the public about the Safe Haven for Infants Act, including developing literature about that act and the locations of surrender safety devices and distributing it to safe haven sites.

E. An infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for medicaid benefits and services."

SECTION 8. A new section of the Safe Haven for Infants

.222167.1AIC February 3, 2022 (6:21pm)



underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

Act is enacted to read:

"[NEW MATERIAL] REQUIREMENTS FOR LOCATION AND MONITORING OF A SURRENDER SAFETY DEVICE.--

A. An operator of a safe haven site H AFC →, other than a daycare facility, ←H AFC may install a surrender safety device on the property of and as a fixture attached to the safe haven site.

B. An operator of a safe haven site that installs a surrender safety device shall:

(1) attach the surrender safety device as a fixture to a safe haven site:

(a) that is, without exception, staffed by a medical services provider seven days each week and twenty-four hours each day; and

(b) in a manner that permits staff from inside the safe haven site to view and retrieve through a transparent door an infant located within the surrender safety device;

(2) locate the surrender safety device in an area that is at all times conspicuous and visible to staff working within the safe haven site;

(3) regularly monitor the surrender safety device by visually and physically checking the device two times during a day to ensure that the surrender safety device is functioning;

(4) keep instructions posted on or near the

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

surrender safety device for use of the surrender safety device;  
and

(5) keep a warning posted conspicuously on or near the surrender safety device that indicates that a child over the age of ninety days shall not be placed in the surrender safety device.

C. A safe haven site may equip a surrender safety device with a video surveillance system to monitor the surrender safety device in addition to the requirements provided pursuant to Subsection B of this section."

SECTION 9. Section 24-22-8 NMSA 1978 (being Laws 2001, Chapter 31, Section 8 and Laws 2001, Chapter 132, Section 8, as amended) is amended to read:

"24-22-8. IMMUNITY.--A safe haven site and its staff are immune from criminal liability and civil liability for accepting an infant HAFC→or installing, operating or maintaining a surrender safety device←HAFC in compliance with the provisions of the Safe Haven for Infants Act but not for subsequent negligent medical care or treatment of the infant HAFC→or injury arising from negligent installation, operation or maintenance of a surrender safety device←HAFC ."

SECTION 10. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] RULEMAKING.--The public education department shall promulgate rules for the dissemination of information to students regarding the Safe Haven for Infants

.222167.1AIC February 3, 2022 (6:21pm)

Act, including the location of safe haven sites and surrender safety devices."

H AFC → ~~SECTION 11. APPROPRIATIONS.~~

~~A. Seventy thousand dollars (\$70,000) is appropriated from the general fund to the public education department for expenditure in fiscal years 2022 through 2025 to educate students regarding the Safe Haven for Infants Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2025 shall revert to the general fund.~~

~~B. Three hundred thirty thousand dollars (\$330,000) is appropriated from the general fund to the local government division of the department of finance and administration for expenditure in fiscal years 2022 through 2025 to install surrender safety devices at state-owned safe haven sites. Any unexpended or unencumbered balance remaining at the end of fiscal year 2025 shall revert to the general fund.~~ ← H AFC

SECTION H AFC → 12. ← H AFC H AFC → 11. ← H AFC EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

-11-

underscoring material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight ←  
delete = → bold, red, highlight, strikethrough ←