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DOMESTIC RELATIONS Safe Place for Newborns: Provide for Voluntary Relinquishment of a Newborn Under Certain Circumstances; Provide that a Mother Who Leaves a Newborn Child in the Custody of a Medical Facility Shall Not be Prosecuted; Provide for Duties of Medical Facilities Accepting a Newborn Child and the Department of Human Resources; Repeal Conflicting Laws

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DOMESTIC RELATIONS

Safe Place for Newborns: Provide for Voluntary Relinquishment of a Newborn Under Certain Circumstances; Provide that a Mother Who Leaves a Newborn Child in the Custody of a Medical Facility Shall Not be Prosecuted; Provide for Duties of Medical Facilities Accepting a Newborn Child and the Department of Human Resources; Repeal Conflicting Laws

CODE SECTION:	O.C.G.A. §§ 19-10A-1 to -7 (new)
BILL NUMBER:	HB 360
ACT NUMBER:	921
GEORGIA LAWS:	2002 Ga. Laws 1137
SUMMARY:	The Act prohibits the prosecution of a mother who leaves a newborn child in the custody of a medical facility under specified circumstances. The Act also mandates that the newborn be no older than one week and that the mother give the medical facility proof of her identity and address, if available. The Act further provides that medical facilities will be reimbursed for certain costs as a result of taking custody of newborns and also provides for civil and criminal immunity for these medical facilities and their employees.
EFFECTIVE DATE:	May 15, 2002 ¹

1. 2002 Ga. Laws 1137, § 2, at 1139. The Act became effective upon approval by the Governor. *Id.*

History

“She’s beautiful, just beautiful” exclaimed Judy Manning (R-Marietta) about “Baby Grace” who was found in a trash bin in Savannah, Georgia in January 2002.² Baby Grace was lucky to be found alive after abandonment by her parents. Other babies, such as a forty-eight hour old newborn found in McDuffie County on March 15, 2002, were not so lucky.³ If the law at the time did not threaten to prosecute mothers for abandoning their babies to proper caregivers, this McDuffie newborn might still be alive. In fact, this was the belief motivating the advocates of the Safe Place for Newborns Act.⁴

While it is obvious that a mother should be prosecuted for leaving a baby in a dumpster, Georgia law provided that a mother could even be prosecuted for leaving a baby at a hospital, a clinic, an adoption agency, or other safe place.⁵ “Georgia law encourage[d] secret, possibly deadly abandonment of newborns.”⁶ As the number of babies left in unsafe places increased, states began to enact legislation to prevent such unsafe abandonment. Thirty-five other states passed laws that allowed parents to leave their newborns at designated areas without fear of prosecution for abandonment.⁷

The rescuing of Baby Grace revived the issue of newborn abandonment and forced the General Assembly to reconsider a “safe place” act.⁸ As Representative Barnard of the 154th District remarked, “[t]his gives us the momentum to put the bill back into play.”⁹ The bill was introduced to save the lives of babies, to place

2. Yolanda Rodriguez, ‘Baby Grace’ Gets Credit: Desperate Moms May Get a Break, ATLANTA J. CONST., Apr. 2, 2002, at 3B.

3. Editorial, *Pass Save-Baby Bill*, AUGUSTA CHRON., Apr. 3, 2002, at A4.

4. See generally, Doug Gross, *Senators Approve Baby Abandonment Bill*, AUGUSTA CHRON., Apr. 2, 2002, at A1.

5. Anne Hart, *Bill Makes It OK to Abandon a Baby in a Safe Place*, FLA. TIMES-UNION, Jan. 26, 2002, at B3.

6. *Id.*

7. See e.g., 2002 Wa. ALS 331; FLA. STAT. ANN. § 383.50 (2001).

8. See Jim Tharpe, *Newborn’s Ordeal May Revive Bill; Legislation Would Set Rules to Give Up Babies*, ATLANTA J. CONST., Jan. 4, 2002, at 4C; see also Telephone Interview with Rep. Judith Manning, House District No. 32 (June 10, 2002). Legislators first introduced a safe place in the 1998 legislative session, but it did not pass. *Id.*

9. Jim Tharpe, *Newborn’s Ordeal May Revive Bill; Legislation Would Set Rules to Give Up Babies*, ATLANTA J. CONST., Jan. 4, 2002, at 4c.

them into loving homes, and to give “an opportunity for a distraught mom to recover her life without fear of prosecution.”¹⁰

HB 360

Introduction

Representatives Judy Manning, Barbara Reece, Lynn Smith, Anne Mueller, Terry Barnard, and Kathy Ashe of the 32nd, 11th, 103rd, 152nd, 154th, and 46th Districts, respectively, sponsored HB 360.¹¹ Representative Manning introduced the bill on the House Floor on February 2, 2001.¹² The House referred the bill to its Judiciary Committee, and the Committee favorably reported the bill, as substituted, on February 27, 2001.¹³ The House adopted the Judiciary Committee’s substitute, and passed HB 360 on March 7, 2001 by a vote of 150 to 18.¹⁴

The bill went to the Senate where Lieutenant Governor Mark Taylor assigned it to its Judiciary Committee.¹⁵ The Senate Judiciary Committee made a clerical change to the bill’s files, and favorably reported HB 360 on February 27, 2002.¹⁶ The Senate adopted the Judiciary Committee’s substitute, considered a floor amendment that was later withdrawn, and passed the bill on April 1, 2002, by a vote of 43 to 6.¹⁷ Governor Roy Barnes signed the bill into law on May 15, 2002.¹⁸

10. Doug Gross, *Unwanted Baby Bill Resurfaces in Senate Abortion Issue Stalled Plan Earlier This Month*, FLA. TIMES-UNION, Mar. 18, 2002, at B 1.

11. HB 360, as introduced, 2001 Ga. Gen. Assem.

12. State of Georgia Final Composite Status Sheet, HB 360, Apr. 12, 2002.

13. *Id.*

14. Georgia House of Representatives Voting Record, HB 360 (Mar. 7, 2001); State of Georgia Final Composite Status Sheet, HB 360, Apr. 12, 2002.

15. State of Georgia Final Composite Status Sheet, HB 360, Apr. 12, 2002.

16. *Id.*

17. *Id.*; Student Observation of the Senate Floor (Apr. 4, 2002) (withdrawn by Sen. Mike Beatty); Georgia Senate Voting Record, HB 360 (Apr. 1, 2002).

18. 2002 Ga. Laws 1137, § 2, at 1139.

Consideration by the House Judiciary Committee

Following introduction, the House assigned HB 360 to the House Judiciary Committee.¹⁹ The Judiciary Committee made significant changes to the bill.²⁰ The first change moved Code section 19-10A-2, which dealt with the intent of the General Assembly in passing the bill, to Code section 19-10A-3, and replaced it with the definition of a “medical facility.”²¹ By adding this section, the Committee substitute amended the designation number of each section.²²

The House Judiciary Committee then amended Code section 19-10A-3 by replacing the word “parent” for “a mother” and removing the language “and has not been physically abused” by replacing it with “and the mother shows proof of her identity, if available, to the person with whom the newborn is left and provides her name and address.”²³ Also, the House Judiciary Committee removed the definition of a medical facility from this section of the bill.²⁴

The Committee substitute also changed Code section 19-10A-4, dealing with the Department of Human Resources’ reports to the General Assembly. The Committee substitute added the language “pursuant to Code section 19-10A-4,” instead of “as contemplated by.”²⁵ A similar change was made in Code section 19-10A-5.²⁶

The House Judiciary Committee substitute also changed Code section 19-10A-5, which required the Department of Human Resources to reimburse a medical facility for “all medical and other cost,” to requiring the Department of Human Resources to reimburse a medical facility for “all reasonable medical and other reasonable costs” in Code section 19-10A-6.²⁷ The House Judiciary Committee further amended Code section 19-10A-5 by redesignating it as Code section 19-10A-6 to require the medical facility to notify the Department of Human Resources not only when a newborn is ready

19. State of Georgia Final Composite Status Sheet, HB 360, Apr. 12, 2002.

20. Compare HB 360, as introduced, 2001 Ga. Gen. Assem., with HB 360 (HCS), 2001 Ga. Gen. Assem.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Compare HB 360, as introduced, 2001 Ga. Gen. Assem., with HB 360 (HCS), 2001 Ga. Gen. Assem.

27. *Id.*

for discharge, but also when a mother leaves a newborn at the facility.²⁸ The House Judiciary Committee also added a provision requiring the Department of Human Resources to “promptly bring the child before the juvenile court as required by Code section 15-11-47.”²⁹ Lastly, the House Judiciary Committee amended Code section 19-10A-6 by redesignating it as Code section 19-10A-7, which allowed immunity for medical facilities and their employees as “provided for in this chapter” instead of as “provided for in this article.”³⁰

Consideration by the House

The House adopted the Judiciary Committee’s substitute, and passed HB 360 on March 7, 2001 by a vote of 150 to 18.

Consideration by the Senate Judiciary Committee

The Senate Judiciary Committee favorably reported HB 360 on February 27, 2002, with one clerical change.³¹ The Senate Judiciary Committee made the bill appropriate for the year 2002 by renaming it the “Safe Place for Newborns Act of 2002” instead of 2001.³²

Consideration by the Senate

Senator Nadine Thomas of the 10th District presented HB 360 on the Senate floor on April 1, 2002.³³ Senator Mike Beatty of the 47th District introduced a floor amendment, known as the “right to know” amendment, which would have required doctors to inform women about the dangers of abortion.³⁴ Senator Beatty voluntarily withdrew the floor amendment after opposition made it clear that the Safe

28. *Id.*

29. *Id.*

30. *Id.*

31. State of Georgia Final Composite Status Sheet, HB 360, Apr. 12, 2002; *Compare* HB 360 (HCS), 2001 Ga. Gen. Assem., *with* HB 360 (SCS), 2002 Ga. Gen. Assem.

32. *Compare* HB 360, as introduced, 2001 Ga. Gen. Assem., *with* HB 360 (SCS), 2002 Ga. Gen. Assem.

33. Audio Recordings of Senate Proceedings, Apr. 1, 2002, at <http://www.ganet.org/services/leg/audio/2002archive.html> [hereinafter Senate Audio].

34. Senate Audio, *supra* note 33 (remarks by Sen. Mike Beatty).

Place for Newborns Act had “nothing to do with abortion.”³⁵ The Senate passed HB 360, without the floor amendment Senator Mike Beatty proposed, by a vote of 43 to 6.³⁶

Opposition to HB 360

Senator Mitch Seabaugh of the 28th District led the opposition to HB 360 in the Senate.³⁷ He believed the bill encouraged “irresponsible behavior.”³⁸ Senator Seabaugh was also concerned with the problem of notifying potential mothers of the legislation.³⁹ Senator Seabaugh opposed the bill because he preferred legislation that would encourage adoption as opposed to irresponsible behavior as he thought HB 360 did.⁴⁰

The Act

Section 1 of the Act amends Title 19 of the Georgia Code, relating to domestic relations, by adding 10A as a new chapter, and calling it the “Safe Place for Newborns Act of 2002.”⁴¹ The first substantive subsection of the bill is Code section 19-10A-2 which defines the term “medical facility”.⁴² The medical facilities covered by the act are places where human births occur on a regular and ongoing basis, such as hospitals and health centers.⁴³ However, the Act expressly excludes physicians’ or dentists’ private offices.⁴⁴

The Act’s most significant section is Code section 19-10A-4 which provides that “[a] mother shall not be prosecuted for the crimes of cruelty to a child, . . . ; contributing to the delinquency, unruliness, or deprivation of a child . . . ; or abandonment of a dependent child, . . .

35. *Id.* (remarks by Sen. Nadine Thomas and Sen. Mike Beatty).

36. *See* Withdrawn Senate Floor Amendment to HB 360, introduced by Sen. Mike Beatty, Apr. 1, 2002; *see also* Senate Audio, *supra* note 33; Georgia Senate Voting Record, HB 360 (Apr. 1, 2002).

37. *See* Gross, *supra* note 4. The bill’s other opponents included Sens. Joey Brush (R-24), Robert Brown (D-26), Daniel Lee (D-29), Robert Lamutt (R-21), and Charles Tanksley (R-32). *Id.*

38. Senate Audio, *supra* note 33 (remarks by Sen. Mitch Seabaugh); *see also* Audio Recordings of House Proceedings, Mar. 7, 2001, at <http://www.ganet.org/services/leg/audio/2002archive.html>.

39. Senate Audio, *supra* note 33 (remarks by Sen. Mitch Seabaugh).

40. *Id.*

41. O.C.G.A. § 19-10A-1 (Supp. 2002).

42. O.C.G.A. § 19-10A-2 (Supp. 2002).

43. *Id.*

44. *Id.*

because of the act of leaving her newborn child in the physical custody . . .” of a medical facility.⁴⁵ Code section 19-10A-4 further requires that the “drop off” of the newborn be under certain circumstances to avoid possible prosecution. Among these requirements are that the mother show identification, including name and address, and most noticeably, that the newborn be “no more than one week old.”⁴⁶ Representative Judy Manning stated that Legislature used the seven-day requirement because there must be some cut off date, and because doctors are able to determine the age of a newborn accurately up to one week.⁴⁷

Section 1 further adds Code section 19-10A-6, which provides that the Department of Human Resources shall reimburse a medical facility taking custody of a newborn for reasonable costs incurred in caring for the newborn.⁴⁸ This subsection further provides required duties of the medical facilities and the Department of Human Resources.⁴⁹ For example, the Department of Human Resources must take custody of the child within six hours of being notified by the medical facility and then “promptly” bring the child before the juvenile court.⁵⁰ The Act also expressly immunizes medical facilities, and their employees or agents, from civil or criminal liability for failing to discharge any of the duties under the Act.⁵¹ However, the Act expressly denies any type of immunity for the medical facility that negligently treats the newborn taken into custody.⁵²

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45. O.C.G.A. § 19-10A-4 (Supp. 2002).

46. *Id.*

47. Telephone Interview with Rep. Judith Manning, House District No. 32 (June 10, 2002).

48. O.C.G.A. § 19-10A-6 (Supp. 2002).

49. *Id.* A medical facility must notify the Department of Human Resources at the time a child is left at the facility and when that child is ready for discharge. *Id.*

50. *Id.*

51. O.C.G.A. § 19-10A-7 (Supp. 2002).

52. *Id.*