

HOUSE BILL No. 1016

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-35-9; IC 31-9-2; IC 31-34-2.5-1; IC 34-30-2-70.6; IC 35-45-21-6; IC 35-46-1-4; IC 35-52-16-23.5.

Synopsis: Newborn safety incubators. Prohibits a person from installing or operating a newborn safety incubator unless the person is a qualified service provider that receives a license from the state department of health (state department). Requires the state department to adopt rules concerning the licensing of the installation and operation of newborn safety incubators. Requires a qualified service provider to: (1) post a sign next to a newborn safety incubator; and (2) remove the newborn safety incubator and the sign if the qualified service provider ceases operating the newborn safety incubator. Makes it a Class A misdemeanor for a person to knowingly or intentionally install or operate a newborn safety incubator without a license, and a Level 6 felony if the offense results in bodily injury to a newborn. Provides that a person who leaves a newborn in a newborn safety incubator is not obligated to disclose the parent's name or person's name. Makes it a Class A misdemeanor for a person to knowingly or intentionally place: (1) any item, with exceptions; or (2) an individual other than a newborn; in a newborn safety incubator.

Effective: July 1, 2015.

Cox

January 6, 2015, read first time and referred to Committee on Public Health.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1016



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-111.3 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2015]: **Sec. 111.3. "Emergency medical**
- 4 **services provider", for purposes of IC 16-35-9, has the meaning set**
- 5 **forth in IC 16-35-9-1.**
- 6 SECTION 2. IC 16-18-2-122 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 122. **(a) "Facility", for**
- 8 **purposes of IC 16-35-9, has the meaning set forth in IC 16-35-9-2.**
- 9 **(b) "Facility", for purposes of IC 16-41-11, has the meaning set forth**
- 10 **in IC 16-41-11-2.**
- 11 SECTION 3. IC 16-18-2-248.2 IS ADDED TO THE INDIANA
- 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 13 [EFFECTIVE JULY 1, 2015]: **Sec. 248.2. "Newborn", for purposes**
- 14 **of IC 16-35-9, has the meaning set forth in IC 16-35-9-3.**
- 15 SECTION 4. IC 16-18-2-248.3 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2015]: **Sec. 248.3. "Newborn safety**
 3 **incubator", for purposes of IC 16-35-9, has the meaning set forth**
 4 **in IC 16-35-9-4.**

5 SECTION 5. IC 16-18-2-302.4 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2015]: **Sec. 302.4. "Qualified service**
 8 **provider", for purposes of IC 16-35-9, has the meaning set forth in**
 9 **IC 16-35-9-5.**

10 SECTION 6. IC 16-35-9 IS ADDED TO THE INDIANA CODE AS
 11 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2015]:

13 **Chapter 9. Newborn Safety Incubators**

14 **Sec. 1. As used in this chapter, "emergency medical services**
 15 **provider" has the meaning set forth in IC 16-41-10-1.**

16 **Sec. 2. As used in this chapter, "facility" means a building in**
 17 **which one (1) or more of the following are located:**

- 18 (1) A hospital licensed under IC 16-21.
- 19 (2) A fire department or volunteer fire department of a unit
- 20 (as defined in IC 36-1-2-23).
- 21 (3) A law enforcement agency (as defined in IC 35-47-15-2).
- 22 (4) A nonprofit corporation described in section 5(4) of this
- 23 chapter.

24 **Sec. 3. As used in this chapter, "newborn" means a child who is**
 25 **less than thirty-one (31) days of age.**

26 **Sec. 4. As used in this chapter, "newborn safety incubator"**
 27 **means a device that is designed to permit:**

- 28 (1) a person to anonymously place a newborn in the device
- 29 with the intent to leave the newborn; and
- 30 (2) another person to remove the newborn from the device
- 31 and take custody of the newborn.

32 **Sec. 5. As used in this chapter, "qualified service provider"**
 33 **means any of the following:**

- 34 (1) A hospital licensed under IC 16-21.
- 35 (2) A fire department or volunteer fire department of a unit
- 36 (as defined in IC 36-1-2-23).
- 37 (3) A law enforcement agency (as defined in IC 35-47-15-2).
- 38 (4) A nonprofit corporation that:
 - 39 (A) has been in existence for at least ten (10) years;
 - 40 (B) is qualified as tax exempt under Section 501(c)(3) of the
 - 41 Internal Revenue Code; and
 - 42 (C) has one (1) or more of the following as its exempt



1 **purpose:**

2 **(i) Child welfare.**

3 **(ii) Religion.**

4 **(iii) Domestic violence prevention or intervention.**

5 **Sec. 6. A person may not install or operate a newborn safety**
 6 **incubator unless the person is a qualified service provider that**
 7 **receives a license from the state department under this chapter.**

8 **Sec. 7. (a) A qualified service provider may apply to the state**
 9 **department for a license to install and operate a newborn safety**
 10 **incubator in the facility of the qualified service provider.**

11 **(b) A qualified service provider that receives a license under this**
 12 **chapter may install and operate a newborn safety incubator in the**
 13 **facility of the qualified service provider for the purpose of taking**
 14 **custody of a newborn who is voluntarily left in the newborn safety**
 15 **incubator.**

16 **Sec. 8. The state department shall adopt rules under IC 4-22-2**
 17 **to do the following concerning the licensing of the installation and**
 18 **operation of newborn safety incubators:**

19 **(1) Establish minimum license qualifications.**

20 **(2) Establish the following requirements:**

21 **(A) Sanitation standards.**

22 **(B) Procedures to provide emergency care for a newborn**
 23 **left in a newborn safety incubator.**

24 **(3) Establish requirements for the newborn safety incubator,**
 25 **including the following:**

26 **(A) Manufacturing or manufacturer standards.**

27 **(B) Design and function requirements, including that the**
 28 **newborn safety incubator satisfies all the following:**

29 **(i) Is accessible from the exterior of a facility.**

30 **(ii) Allows a newborn to be placed anonymously in the**
 31 **newborn safety incubator from outside the facility.**

32 **(iii) The door or window of the newborn safety incubator**
 33 **that allows access outside the facility automatically locks**
 34 **after a newborn is placed in the newborn safety**
 35 **incubator.**

36 **(iv) A person outside the facility is unable to access the**
 37 **newborn safety incubator after a newborn has been**
 38 **placed in the newborn safety incubator.**

39 **(v) Provides a controlled environment for the care and**
 40 **protection of the newborn, including temperature,**
 41 **humidity, and oxygen controls.**

42 **(vi) Has a signal that notifies an emergency medical**



1 services provider within thirty (30) seconds of a newborn
2 being placed in the newborn safety incubator.

3 (vii) Is accessible to an emergency medical services
4 provider inside the facility.

5 (4) Prescribe the operating policies, supervision, and
6 maintenance of the newborn safety incubator, including
7 requiring that only an emergency medical services provider
8 supervise the newborn safety incubator and take custody of a
9 newborn.

10 (5) Establish procedures for the issuance, renewal, denial, and
11 revocation of licenses under this chapter. The rules adopted
12 under this subdivision must address the following:

13 (A) The form and content of the license.

14 (B) The collection of an annual license fee.

15 (6) Prescribe the procedures and standards for inspections of
16 the newborn safety incubator.

17 (7) Establish any other criteria the state department considers
18 necessary to ensure the safety and welfare of a newborn
19 placed in a newborn safety incubator.

20 **Sec. 9. (a) An applicant must submit an application for a license**
21 **on a form prepared by the state department showing that:**

22 (1) the applicant is of reputable and responsible character;
23 and

24 (2) the applicant is able to comply with the minimum
25 standards for the newborn safety incubator and with rules
26 adopted under this chapter.

27 (b) The application under subsection (a) must contain the
28 following additional information:

29 (1) The name of the applicant.

30 (2) The type of facility in which the newborn safety incubator
31 will be installed.

32 (3) The location of the facility.

33 (4) The name of the person in charge of the facility.

34 (5) Other information necessary for the licensing of the
35 installation and operation of newborn safety incubators.

36 (c) The state department may impose a reasonable application
37 fee to cover the costs of issuing a license under this chapter.

38 **Sec. 10. A license to install and operate a newborn safety**
39 **incubator:**

40 (1) expires one (1) year after the date of issuance;

41 (2) is not assignable or transferable;

42 (3) is issued only for the facility named in the application; and



1 (4) may be renewed each year upon the payment of a renewal
2 fee in an amount established by the state department.

3 **Sec. 11. A qualified service provider that holds a license under**
4 **this chapter shall post a sign next to the qualified service provider's**
5 **newborn safety incubator that reads: "Newborn Safety Incubator**
6 **Only For Newborns Less Than 31 Days of Age. Placing Any Other**
7 **Item or Individual In This Incubator Is A Class A Misdemeanor**
8 **And Is Punishable By Confinement Up To One Year and A \$5,000**
9 **Fine."**

10 **Sec. 12. (a) If a qualified service provider ceases operating a**
11 **newborn safety incubator, the qualified service provider shall:**

12 (1) notify the state department not later than ten (10) days
13 after the date the qualified service provider ceases using the
14 newborn safety incubator; and

15 (2) remove the:

16 (A) newborn safety incubator; and

17 (B) sign described in section 11 of this chapter.

18 (b) If a qualified service provider notifies the state department
19 under subsection (a)(1), the state department shall designate the
20 qualified service provider's license as permanently inactive.

21 (c) If a qualified service provider:

22 (1) ceases operating a newborn safety incubator; and

23 (2) removes the newborn safety incubator;

24 as described under this section, the qualified service provider must
25 apply for a new license if the qualified service provider intends to
26 install and operate another newborn safety incubator.

27 **Sec. 13. The state health commissioner may take any of the**
28 **following actions for a violation of any provision of this chapter or**
29 **of the rules adopted under this chapter:**

30 (1) Issue a letter of correction.

31 (2) Issue a probationary license.

32 (3) Conduct a reinspection.

33 (4) Deny renewal of a license.

34 (5) Revoke a license.

35 (6) Impose a civil penalty in an amount not to exceed ten
36 thousand dollars (\$10,000).

37 **Sec. 14. A person licensed under this chapter is immune from**
38 **civil liability for an act or omission relating to the:**

39 (1) installation or operation of a newborn safety incubator; or

40 (2) removal of a newborn from a newborn safety incubator;

41 unless the act or omission constitutes gross negligence or willful or
42 wanton misconduct.



1 **Sec. 15. The removal of an:**

2 **(1) item; or**

3 **(2) individual other than a newborn;**

4 **from a newborn safety incubator by an emergency medical services**
 5 **provider does not constitute a violation of this chapter.**

6 **Sec. 16. IC 4-21.5 applies to an action under this chapter.**

7 **Sec. 17. The state department may adopt rules under IC 4-22-2**
 8 **necessary to carry out this chapter.**

9 **Sec. 18. A person who knowingly or intentionally installs or**
 10 **operates a newborn safety incubator without a license under this**
 11 **chapter commits a Class A misdemeanor. However, the offense is**
 12 **a Level 6 felony if it results in bodily injury to a newborn.**

13 SECTION 7. IC 31-9-2-44.2 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2015]: **Sec. 44.2. "Facility", for purposes of IC 31-34-2.5, has the**
 16 **meaning set forth in IC 16-35-9-2.**

17 SECTION 8. IC 31-9-2-82.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2015]: **Sec. 82.5. "Newborn safety incubator", for purposes of**
 20 **IC 31-34-2.5, has the meaning set forth in IC 16-35-9-4.**

21 SECTION 9. IC 31-9-2-100.7 IS ADDED TO THE INDIANA
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2015]: **Sec. 100.7. "Qualified service**
 24 **provider", for purposes of IC 31-34-2.5, has the meaning set forth**
 25 **in IC 16-35-9-5.**

26 SECTION 10. IC 31-34-2.5-1, AS AMENDED BY P.L.128-2012,
 27 SECTION 158, IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2015]: **Sec. 1. (a) An emergency medical**
 29 **services provider shall, without a court order, take custody of a child**
 30 **who is, or who appears to be, not more than thirty (30) less than**
 31 **thirty-one (31) days of age if:**

32 **(1) the child is voluntarily left:**

33 **(A) with the provider by the child's parent; or**

34 **(B) in a newborn safety incubator at a facility of a qualified**
 35 **service provider that holds a license under IC 16-35-9; and**

36 **(2) the parent does not express an intent to return for the child.**

37 **(b) An emergency medical services provider who takes custody of**
 38 **a child under this section shall perform any act necessary to protect the**
 39 **child's physical health or safety.**

40 **(c) Any person who in good faith voluntarily leaves a child:**

41 **(1) with an emergency medical services provider; or**

42 **(2) in a newborn safety incubator at a facility of a qualified**



1 **service provider that holds a license under IC 16-35-9;**
 2 is not obligated to disclose the parent's name or the person's name.

3 SECTION 11. IC 34-30-2-70.6 IS ADDED TO THE INDIANA
 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2015]: **Sec. 70.6. IC 16-35-9-14 (Concerning**
 6 **persons who install, operate, or remove a newborn from a newborn**
 7 **safety incubator).**

8 SECTION 12. IC 35-45-21-6 IS ADDED TO THE INDIANA
 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2015]: **Sec. 6. (a) The following definitions**
 11 **apply throughout this section:**

12 **(1) "Newborn" has the meaning set forth in IC 16-35-9-3.**

13 **(2) "Newborn safety incubator" has the meaning set forth in**
 14 **IC 16-35-9-4.**

15 **(b) A person who knowingly or intentionally places any:**

16 **(1) item, except as provided in subsection (c); or**

17 **(2) individual other than a newborn;**

18 **in a newborn safety incubator commits tampering with a newborn**
 19 **safety incubator, a Class A misdemeanor.**

20 **(c) For purposes of subsection (b), "item" does not include any**
 21 **item placed in a newborn safety incubator with a newborn that is**
 22 **intended to provide comfort, support, or information to the**
 23 **newborn or information about the newborn.**

24 SECTION 13. IC 35-46-1-4, AS AMENDED BY P.L.168-2014,
 25 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2015]: **Sec. 4. (a) A person having the care of a dependent,**
 27 **whether assumed voluntarily or because of a legal obligation, who**
 28 **knowingly or intentionally:**

29 **(1) places the dependent in a situation that endangers the**
 30 **dependent's life or health;**

31 **(2) abandons or cruelly confines the dependent;**

32 **(3) deprives the dependent of necessary support; or**

33 **(4) deprives the dependent of education as required by law;**

34 **commits neglect of a dependent, a Level 6 felony.**

35 **(b) However, the offense is:**

36 **(1) a Level 5 felony if it is committed under subsection (a)(1),**
 37 **(a)(2), or (a)(3) and:**

38 **(A) results in bodily injury; or**

39 **(B) is:**

40 **(i) committed in a location where a person is violating**

41 **IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or**

42 **IC 35-48-4-1.1 (dealing in methamphetamine); or**



- 1 (ii) the result of a violation of IC 35-48-4-1 (dealing in
 2 cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in
 3 methamphetamine);
 4 (2) a Level 3 felony if it is committed under subsection (a)(1),
 5 (a)(2), or (a)(3) and results in serious bodily injury;
 6 (3) a Level 1 felony if it is committed under subsection (a)(1),
 7 (a)(2), or (a)(3) by a person at least eighteen (18) years of age and
 8 results in the death of a dependent who is less than fourteen (14)
 9 years of age; and
 10 (4) a Level 5 felony if it is committed under subsection (a)(2) and
 11 consists of cruel confinement or abandonment that:
 12 (A) deprives a dependent of necessary food, water, or sanitary
 13 facilities;
 14 (B) consists of confinement in an area not intended for human
 15 habitation; or
 16 (C) involves the unlawful use of handcuffs, a rope, a cord,
 17 tape, or a similar device to physically restrain a dependent.
 18 (c) It is a defense to a prosecution based on an alleged act under this
 19 section that:
 20 (1) the accused person left a dependent child who was, at the time
 21 the alleged act occurred, **not more than thirty (30) less than**
 22 **thirty-one (31)** days of age with an emergency medical provider
 23 who took custody of the child under IC 31-34-2.5 when:
 24 (A) the prosecution is based solely on the alleged act of
 25 leaving the child with the emergency medical services
 26 provider; and
 27 (B) the alleged act did not result in bodily injury or serious
 28 bodily injury to the child; or
 29 (2) the accused person, in the legitimate practice of the accused
 30 person's religious belief, provided treatment by spiritual means
 31 through prayer, in lieu of medical care, to the accused person's
 32 dependent.
 33 (d) Except for property transferred or received:
 34 (1) under a court order made in connection with a proceeding
 35 under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5
 36 or IC 31-6-5 before their repeal); or
 37 (2) under section 9(b) of this chapter;
 38 a person who transfers or receives any property in consideration for the
 39 termination of the care, custody, or control of a person's dependent
 40 child commits child selling, a Level 6 felony.
 41 SECTION 14. IC 35-52-16-23.5 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2015]: **Sec. 23.5. IC 16-35-9-18 defines a**
2 **crime concerning newborn safety incubators.**

