

2017 Regular Session

ACT No. 359

HOUSE BILL NO. 678 (Substitute for House Bill No. 479 by Representative Horton)

BY REPRESENTATIVE HORTON

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AN ACT

To amend and reenact Children's Code Articles 437(A), 603(24), and 610(G), to enact Children's Code Article 603(19) and Subpart E of Part VI of Chapter 5-A of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1086.11, and to repeal Act No. 396 of the 2007 Regular Session of the Legislature, relative to prenatal neglect and the reporting thereof; to provide for definitions; to provide for notification procedures; to provide for limitation of liability; to provide for referral for mediation; to provide for promulgation of rules by the Department of Children and Family Services; to provide for enforceability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 437(A), 603(24), and 610(G) are hereby amended and reenacted and Children's Code Article 603(19) is hereby enacted to read as follows:

Art. 437. Referral for mediation

A. At any time the court may order the referral for mediation in any proceeding authorized by this Code, except domestic abuse assistance proceedings brought pursuant to Chapter 8, Title XV, ~~and the informal family services plan procedure of Chapter 5, Title VII.~~

* * *

1 Art. 603. Definitions

2 As used in this Title:

3 * * *

4 (19) "Newborn" means a child who is not more than thirty days old, as
5 determined within a reasonable degree of medical certainty by an examining
6 physician.

7 * * *

8 (24) "Prenatal neglect" means ~~the unlawful use by a mother during~~
9 ~~pregnancy of a~~ exposure to chronic or severe use of alcohol or the unlawful use of
10 any controlled dangerous substance, as defined by R.S. 40:961 et seq., or in a manner
11 not lawfully prescribed, which results in symptoms of withdrawal in the ~~infant~~
12 newborn or the presence of a controlled substance or a metabolic thereof in the
13 ~~infant's~~ his body, blood, urine, or meconium that is not the result of medical
14 treatment, or observable and harmful effects in his physical appearance or
15 functioning.

16 * * *

17 Art. 610. Reporting procedure; report to the legislature

18 * * *

19 G.(1) If a physician has cause to believe that a ~~mother of an infant~~
20 ~~unlawfully used during pregnancy a~~ newborn was exposed in utero to an unlawfully
21 used controlled dangerous substance, as defined by R.S. 40:961 et seq., the physician
22 shall order a toxicology test upon the ~~infant~~ newborn, without the consent of the
23 ~~infant's~~ newborn's parents or guardian, to determine whether there is evidence of
24 prenatal neglect. If the test results are positive, the physician shall ~~report the results~~
25 issue a report, as soon as possible, in accordance with this Article. If the test results
26 are negative, all identifying information shall be obliterated if the record is retained,
27 unless the parent approves the inclusion of identifying information. Positive test
28 results shall not be admissible in a criminal prosecution.

29 (2) If there are symptoms of withdrawal in the newborn or other observable
30 and harmful effects in his physical appearance or functioning that a physician has

1 cause to believe are due to the chronic or severe use of alcohol by the mother during
2 pregnancy or are the effects of fetal alcohol spectrum disorder, the physician shall
3 issue a report in accordance with this Article.

4 * * *

5 Section 2. Subpart E of Part VI of Chapter 5-A of Title 40 of the Louisiana Revised
6 Statutes of 1950, comprised of R.S. 40:1086.11, is hereby enacted to read as follows:

7 SUBPART E. NEONATAL ABSTINENCE SYNDROME

8 §1086.11. Physician notification

9 A. If a newborn exhibits symptoms of withdrawal or other observable and
10 harmful effects in his physical appearance or functioning that a physician believes
11 are due to the use of a controlled dangerous substance, as defined by R.S. 40:961 et
12 seq., in a lawfully prescribed manner by the mother during pregnancy, the physician
13 shall make a notification to the Department of Children and Family Services on a
14 form developed by the department. Such notification shall not constitute a report of
15 child abuse or prenatal neglect, nor shall it require prosecution for any illegal action.

16 B. A healthcare provider shall be authorized to share any protected health
17 information, as defined in 45 CFR 160.103, with the Department of Children and
18 Family Services for the purpose of complying with the notification requirement of
19 this Subpart.

20 C. The Department of Children and Family Services shall promulgate rules
21 and regulations in accordance with the Administrative Procedure Act to implement
22 the provisions of this Subpart. Such rules shall include, at minimum, all of the
23 following:

- 24 (1) The manner in which the notification shall be made to the department.
- 25 (2) The form and minimum required contents of the notification.
- 26 (3) The plan to monitor the statewide system regarding the availability and
27 delivery of appropriate services for newborns and affected families and caretakers.

28 D. A physician who in good faith makes a notification to the Department of
29 Children and Family Services in compliance with this Section shall have no civil or
30 criminal liability for damage or injury arising from that notification, unless the

1 damage or injury was caused by the physician's willful or wanton misconduct or
2 gross negligence.

3 Section 3. Act No. 396 of the 2007 Regular Session of the Legislature is hereby
4 repealed in its entirety.

5 Section 4. The provisions of this Act shall not become enforceable until the date of
6 adoption by the Department of Children and Family Services of the administrative rules and
7 regulations necessary to fully carry out the requirements of the department provided in this
8 Act. The provisions of this Act shall be enforceable on and after that date.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____