

Regular Session, 2013

SENATE BILL NO. 221

BY SENATOR WARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN. Enacts the Louisiana Has Faith in Families Act. (gov sig)

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AN ACT

To enact Chapter 16 of Title XII of the Louisiana Children's Code, to be comprised of Children's Code Articles 1279.1 through 1279.7, and to repeal Part III of Chapter 20 of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:1790 through 1794, relative to adoption; to enact the Louisiana Has Faith in Families Act; to provide certain terms, conditions, procedures, and requirements; to provide for legislative findings and purpose relative to children eligible for adoption; to provide for certain incentives to encourage adoption; to provide for certain classifications; to provide for certain subsidies; to provide for certain reimbursements; to provide relative to educational opportunities and assistance; to provide relative to certain expedited periods and procedures; to provide exceptions; to provide for judicial proceedings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 16 of Title XII of the Louisiana Children's Code, comprised of Children's Code Articles 1279.1 through 1279.7, is hereby enacted to read as follows:

CHAPTER 16. DEPARTMENT OF CHILDREN AND FAMILY SERVICES

ADOPTION INCENTIVES

1 **Art. 1279.1. Short title; citation**

2 **This Chapter shall be known and may be cited as the Louisiana Has**
3 **Faith in Families Act.**

4 **Art. 1279.2. Legislative findings**

5 **The legislature finds:**

6 **A. It is in the best interest of a foster child who is adoption eligible to be**
7 **placed in a permanent adopted family as soon as practicable.**

8 **B. The state has an interest in decreasing the delays in finalizing**
9 **adoptions in order to facilitate permanent adoption and family cohesion.**

10 **Art. 1279.3. Purpose**

11 **Notwithstanding any provision of the law to the contrary, in order to**
12 **facilitate the recruitment of new families for children, the incentives provided**
13 **in this Chapter shall be made available to those children who have been adopted**
14 **from the custody of the state and meet eligibility requirements.**

15 **Art. 1279.4. Adoption Subsidy**

16 **A. The department shall make every effort to declare every child in the**
17 **department's custody eligible for certain adoption assistance or subsidy in**
18 **accordance with the provisions set forth in this Chapter.**

19 **B. Subsidized adoption.**

20 **(1) The department is authorized to develop and implement a program**
21 **for subsidizing the adoption of children with special needs.**

22 **(2) The department may make payments to the adoptive parents of a**
23 **child or, in the case of the subsequent death of the adoptive parents prior to the**
24 **child's reaching the age of majority, to the duly designated tutor or guardian of**
25 **such child, on behalf of a child placed for adoption in accordance with Title XII**
26 **of the Children's Code, if all of the following conditions are met:**

27 **(a) The child, because of physical or mental condition, race, age,**
28 **membership in a sibling group, or other serious impediments or special needs,**
29 **is considered a child that is difficult to place for adoption and the department**

1 has made reasonable attempts to place said child for adoption to no avail.

2 (b) The adoptive family, tutor, or guardian is capable of providing the
3 permanent family relationship needed by the child in all respects other than
4 financial, and the needs of the child are beyond the economic ability and
5 resources of the family, tutor, or guardian.

6 C. Costs and expenses covered.

7 (1) Payments in subsidy of an adoption may include, but are not limited
8 to, the maintenance costs, medical and surgical expenses, and other costs that
9 are incidental to the care, training, and education of the child, including special
10 medical costs for any child in connection with any physical or mental condition
11 which existed prior to the date of the initial judgment of adoption.

12 (2) The amount of payments may vary, depending upon the needs of the
13 child and the adoptive parents, tutor, or guardian, but in any event shall not
14 exceed one hundred percent of the cost of providing foster care for the child.
15 Payments for medical, surgical, psychiatric, and other special costs and services
16 may not exceed the amount the department would pay if it were to provide or
17 secure them as guardian of the child.

18 (3) Payments to the parents, tutor, or guardian shall be terminated when
19 the adoptive child becomes eighteen years of age.

20 D. Eligibility.

21 (1) Eligibility for payments in subsidy of adoption shall be determined
22 and approved by department, in accordance with rules and regulations adopted
23 as provided by Subsection E of this Article, prior to the completion of the
24 adoption proceeding. Such eligibility shall thereafter be redetermined at least
25 annually, except that in those cases where the child is eligible for funding
26 pursuant to Title IV-E of the Social Security Act, the redetermination shall be
27 made at least every five years thereafter.

28 (2)(a) Adoptive parents who are residents of the state of Louisiana, and
29 who are eligible to adopt a child residing in Louisiana and to receive subsidy

1 payments for such adoption, or the designated tutor or guardian, shall remain
2 eligible to receive such payments, regardless of whether or not such adoptive
3 parents, tutor, or guardian subsequently become residents of another state,
4 except in cases where the other state has any of the following:

5 (i) Has a subsidized adoption program that is available to such former
6 Louisiana residents, parents, tutors, or guardians for the particular Louisiana
7 child to be adopted.

8 (ii) Is a party to the Interstate Compact on Adoption and Medical
9 Assistance in accordance with the provisions of Children's Code Articles 1601
10 et seq.

11 (b) Adoptive parents who are residents of other states, and who are
12 eligible to adopt a child residing in Louisiana, or the designated tutor or
13 guardian residing in another state, shall be eligible for a subsidy under the same
14 conditions as Louisiana residents, except in cases where the other state meets
15 any of the following criteria:

16 (i) Has a subsidized adoption program that is available to such Louisiana
17 nonresident parents, tutors, or guardians for the particular Louisiana child to
18 be adopted.

19 (ii) Is a party to the Interstate Compact on Adoption and Medical
20 Assistance in accordance with the provisions of Children's Code Articles 1601
21 et seq.

22 (3) The subsidized payments, as provided herein, shall include cases
23 involving children in the custody of the department and children determined to
24 be entitled to benefits pursuant to federal laws, rules, or regulations.

25 E. Rules and regulations. The department, in accordance with the
26 Administrative Procedure Act, shall adopt, promulgate, and enforce such rules
27 and regulations as are necessary and appropriate to implement the provisions
28 of this Chapter.

29 F. Contractual obligation of the state.

1 **(1) Any agreement by the department to subsidize the adoption of a child**
2 **eligible for such subsidy, which results in a final decree of adoption of the child**
3 **by adoptive parents or the designated tutor or guardian of the child who are**
4 **relying on the availability of the subsidy at the time of the final decree of**
5 **adoption, shall constitute a contractual obligation on the part of the state in**
6 **favor of the adoptive parents, tutor, or guardian to the extent that such parents,**
7 **tutor, or guardian remain eligible for the subsidy under the laws and**
8 **regulations prevailing on the date of the final decree of adoption. Such**
9 **obligation shall cease when the adoptive child reaches the age of majority.**

10 **(2) Changes in the child's condition or changes in the income of the**
11 **adoptive parents, where the condition or income formed the basis for the**
12 **subsidy, shall be cause for modifying the subsidy agreement in accordance with**
13 **the laws and regulations prevailing at the time of the final decree of adoption.**

14 **G. The adoptive parents may be awarded a one time payment to cover**
15 **non-recurring expenses of the adoption, such as attorney fees and court costs,**
16 **directly related to the legal adoption of a child with special needs, in an amount**
17 **to be approved by the department.**

18 **Art. 1279.5. Health Insurance Reimbursement**

19 **A. Notwithstanding any provision of law to the contrary, any child in the**
20 **custody of the department who is eligible for adoption and is placed in an**
21 **approved adoptive home shall be eligible for dependant coverage under the**
22 **prospective adoptive parents' health insurance policy pursuant to R.S. 22:1004.**
23 **Any additional costs for the child to be added to the adoptive parents' health**
24 **insurance policy shall not be paid for by the department, but the adoptive**
25 **parents may qualify for premium assistance pursuant to Subsection (C) of this**
26 **Article.**

27 **B. Any child who is in the custody of the department or has been**
28 **adopted from the custody of the department shall be automatically qualified for**
29 **enrollment in the Louisiana Children and Youth Health Insurance Program**

1 pursuant to Part II of Chapter 8 of Title 46 of the Louisiana Revised Statutes of
2 1950.

3 C. Any child in the custody of the department who is Medicaid eligible,
4 is eligible for adoption, and has been placed in an approved prospective
5 adoptive home or adopted from the custody of the department shall be deemed
6 eligible for premium assistance as is defined in R.S. 46:977.3(4).

7 Art. 1279.6. Educational Opportunities and Assistance

8 A.(1) A child who is in foster care pursuant to placement through the
9 department shall be allowed to remain enrolled in the public school in which the
10 child was enrolled at the time he entered foster care for the duration of the
11 child's stay in the custody of the state or until he completes the highest grade
12 offered at the school, if the department determines that remaining in such
13 school is in the best interest of the child. Transportation of the child shall be
14 provided pursuant to R.S. 17:238(C).

15 (2) A child in the custody of the department shall be eligible to attend
16 a school in the school district of the foster care placement.

17 (3) A child in the custody of the department shall be given preference in
18 enrollment in the same manner as children receiving preference in R.S.
19 17:3991(C)(1)(c)(iii) for enrollment to attend a charter school which has been
20 established pursuant to R.S. 17:3983.

21 B. When a child is in the custody of the department and is placed with
22 foster parents who have other children living in the home who already attend
23 a nonpublic or parochial school, the foster child may attend the same nonpublic
24 or parochial school if the department finds it is in the best interest of the child.
25 The foster parents shall not be prohibited from paying for the expenses
26 associated for such education.

27 C. When a child is in the custody of the department and is placed with
28 foster parents who have other children in the home who are participants in an
29 approved home study program, pursuant to R.S. 17:236.1, the department may

1 approve the placement of the foster child in an approved home study program
2 if the department finds it is in the best interest of the child. The foster parent
3 shall monitor the home study program to assure that it offers a sustained
4 curriculum of quality at least equal to that offered by public schools at the same
5 grade level, pursuant to R.S. 17:236.1(C)(1).

6 Art. 1279.7. Expedited procedure for finalizing adoptions

7 A. In order to shorten the waiting time for finalizing the adoption when
8 the child is eligible for adoption, the following shall apply:

9 (1) Where the child has been placed in foster care with the prospective
10 adoptive parents, any necessary waiting period as required by Article 1211 shall
11 be applied retroactively.

12 (2) When the child is in the custody of the department, any additional
13 home study required by Art. 1207 may be waived by the court if the adoptive
14 parents have been the foster parents of the child for the required six month time
15 period.

16 (3)(a) Whenever a child has been placed in the custody of the
17 department and the child is eligible for adoption, the prospective adoptive
18 parents may file an adoption proceeding in the court which terminated the
19 parental rights, pursuant to Article 1180, and the case shall be allotted to the
20 judge who presided over the termination proceedings.

21 (b) The court may order the approval of the adoptive placement *ex parte*
22 without the need for a hearing required pursuant to Article 1177, where the
23 prospective adoptive parents were previously approved by the department as
24 foster parents for the child.

25 Section 2. Part III of Chapter 20 of Title 46 of the Louisiana Revised Statutes of
26 1950, comprised of R.S. 46:1790 through 1794, is hereby repealed.

27 Section 3. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Present law provides certain incentives for certain children who are in the custody of the Department of Children and Family Services (DCFS) to be placed with adoptive parents once the biological rights of the parents have been terminated.

Proposed law provides that proposed law shall be known and may be cited as the "Louisiana Has Faith in Families Act".

Proposed law provides legislative findings as follows:

- (1) It is in the best interest of a foster child who is adoption eligible to be placed in a permanent adopted family as soon as is practicable.
- (2) The state has an interest in decreasing the delays in finalizing adoptions in order to facilitate permanent adoption and family cohesion.

Proposed law provides that, in order to facilitate the recruitment of new families for children, the incentives shall be made available to those children who have been adopted from the custody of the state and meet any eligibility requirements.

Proposed law provides that the department shall make every effort to declare every child in the department's custody eligible for certain adoption assistance or subsidy.

Proposed law provides that the department is authorized to develop and implement a program for subsidizing the adoption of children with special needs.

Proposed law provides that the department may make payments to adoptive parents or, in the case of the subsequent death of the adoptive parents prior to the child's reaching the age of majority, to the duly designated tutor or guardian of said child, on behalf of a child placed for adoption if all of the following conditions are met:

- (1) The child, because of physical or mental condition, race, age, membership in a sibling group, or other serious impediments or special needs, is considered a child that is difficult to place for adoption and the department has made reasonable attempts to place such child for adoption to no avail.
- (2) The adoptive family, tutor, or guardian is capable of providing the permanent family relationship needed by the child in all respects other than financial, and the needs of the child are beyond the economic ability and resources of the family, tutor, or guardian.

Proposed law provides that payments in subsidy of adoption may include, but are not limited to, the maintenance costs, medical and surgical expenses, and other costs incidental to the care, training, and education of the child, including special medical costs for any child in connection with any physical or mental condition which existed prior to the date of the initial judgment of adoption.

Proposed law provides that the amount of payments may vary, depending upon the needs of the child and the adoptive parents, tutor, or guardian, but shall not exceed one hundred percent of the cost of providing foster care for the child. Payments for medical, surgical, psychiatric, and other special costs and services may not exceed the amount the department would pay if it were to provide or secure them as guardian of the child.

Proposed law provides that payments to the parents, tutor, or guardian shall be terminated when the adoptive child becomes eighteen years of age.

Proposed law provides that eligibility for payments in subsidy of adoption shall be determined and approved by the department prior to the completion of the adoption proceeding, and shall be redetermined at least annually thereafter, except that in those cases where the child is eligible for funding pursuant to the Social Security Act, such redetermination shall be made at least every five years thereafter.

Proposed law provides adoptive parents who are residents of the state of Louisiana, and who are eligible to adopt a child residing in Louisiana and to receive subsidy payments for such adoption, or the designated tutor or guardian, shall remain eligible to receive such payments, regardless of whether or not such adoptive parents, tutor, or guardian subsequently become residents of another state, except in cases where that state has any of the following:

- (1) A subsidized adoption program that is available to such former Louisiana residents, parents, tutors, or guardians for the particular Louisiana child to be adopted.
- (2) Is a party to the Interstate Compact on Adoption and Medical Assistance in accordance with the provisions of Children's Code Articles 1601 et seq.

Proposed law provides that adoptive parents who are residents of other states, and who are eligible to adopt a child residing in Louisiana, or the designated tutor or guardian residing in another state, shall be eligible for a subsidy under the same conditions as Louisiana residents, except in cases where the other state:

- (1) Has a subsidized adoption program that is available to such Louisiana nonresident parents, tutors, or guardians for the particular Louisiana child to be adopted.
- (2) Is a party to the Interstate Compact on Adoption and Medical Assistance.

Proposed law provides that the subsidized payments, as provided herein, shall include cases involving children in the custody of the department and children determined to be entitled to benefits pursuant to federal laws, rules, or regulations.

Proposed law provides that the department, in accordance with the Administrative Procedure Act, shall adopt, promulgate, and enforce such rules and regulations as are necessary and appropriate to implement the provisions of the proposed law.

Proposed law provides that any agreement by the department to subsidize the adoption of a child eligible for such subsidy, which results in a final decree of adoption of the child by adoptive parents or the designated tutor or guardian of the child who are relying on the availability of the subsidy at the time of the final decree of adoption, shall constitute a contractual obligation on the part of the state in favor of the adoptive parents, tutor, or guardian, to the extent that the parents, tutor, or guardian remain eligible for the subsidy under the laws which were in effect on the date of the final decree of adoption.

Proposed law provides that any contractual obligation shall cease when the adoptive child reaches the age of majority.

Proposed law provides that changes in the child's condition or changes in the income of the adoptive parents, where the condition or income formed the basis for the subsidy, shall be cause for modifying the subsidy agreement in accordance with the laws and regulations prevailing at the time of the final decree of adoption.

Proposed law provides that the adoptive parents may be awarded a one time payment to cover non-recurring expenses of the adoption, such as attorney fees and court costs, which are directly related to the legal adoption of a child with special needs, in an amount to be

approved by the department.

Proposed law provides that any child in the custody of the department who is eligible for adoption and is placed in an approved adoptive home shall be eligible for dependant coverage pursuant to the prospective adoptive parents' health insurance policy as a dependant. Proposed law further provides that any additional costs for the child to be added to the adoptive parents' health insurance policy shall not be paid for by the department.

Proposed law provides that any child who is in the custody of the department or has been adopted from the custody of the department shall be automatically qualified for enrollment in the Louisiana Children and Youth Health Insurance Program (LaChip).

Proposed law provides that any child in the custody of the department who is Medicaid eligible, is eligible for adoption, and is placed in an approved prospective adoptive home or has been adopted from the custody of the department, shall be deemed eligible for premium assistance for private health insurance.

Proposed law provides that a child in custody of the department shall be entitled to any of the following options:

- (1) A child who is in foster care pursuant to placement through the department shall be allowed to remain enrolled in the public school in which the child was enrolled at the time he entered foster care for the duration of the child's stay in the custody of the state or until he completes the highest grade offered at the school, if the department determines that remaining in that school is in the best interest of the child. Proposed law further provides that transportation shall be provided in accordance with law.
- (2) A child in the custody of the department shall be eligible to attend a school in the school district of the foster care placement.
- (3) A child in the custody of the department shall be given preference in enrollment in the same manner as children already receiving a preference to attend a charter school.
- (4) When a child is in the custody of the department and is placed with foster parents who have other children living in the home who already attend a nonpublic or parochial school, the foster child may attend the same nonpublic or parochial school if the department finds it is in the best interest of the child. Proposed law further provides that the foster parents shall not be prohibited from paying for the expenses associated for such education.
- (5) When a child is in the custody of the department and is placed with foster parents who have other children in the home who are participants in an approved home study program, the department may approve the placement of the foster child in an approved home study program if the department finds it is in the best interest of the child. Proposed law further provides that the foster parent shall monitor the home study program to assure that it offers a sustained curriculum of quality at least equal to that offered by public schools at the same grade level.

Proposed law provides that in order to shorten the waiting time for finalizing the adoption when the child eligible for adoption has been in foster care with the prospective adoptive parents, any necessary waiting period as required by law shall be applied retroactively.

Proposed law provides when the child is in the custody of the department, any additional home study required by law may be waived by the court if the adoptive parents have been the foster parents of the child for the required six month time period.

Proposed law provides whenever a child has been placed in the custody of the department

and the child is eligible for adoption, the prospective adoptive parents may file an adoption proceeding in the court which terminated the parental rights and the case shall be allotted to the judge who presided over the termination proceedings.

Proposed law provides that the court may order the approval of the adoptive placement *ex parte* without the need for a hearing where the prospective adoptive parents were previously approved by the department as foster parents for the child.

Present law provides that DCFS is authorized to develop and implement a program for subsidizing the adoption of children with special needs.

Present law provides procedures and requirements for eligibility, costs and expenses, and contractual obligations.

Proposed law repeals present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds Ch. C. Arts. 1279.1-1279.7; repeals R.S. 46:1790-1794)