

Regular Session, 2013

SENATE BILL NO. 220

BY SENATORS WALSWORTH, WARD, ALARIO, APPEL, BROOME, BROWN,
BUFFINGTON, CLAITOR, CORTEZ, CROWE, DONAHUE,
GUILLORY, JOHNS, LAFLEUR, LONG, MILLS, NEVERS, PERRY,
GARY SMITH, TARVER, THOMPSON AND WHITE

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

CHILDREN. Provides for the "Louisiana Has Faith in Families" Act. (gov sig)

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, ethnic**
28 **background, age, membership in a sibling group, or other serious impediments**
29 **or special needs, is considered a child that is difficult to place for adoption, and**

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

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

7 C. Costs and expenses covered.

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

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

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

21 D. Eligibility.

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

29 (2)(a) Adoptive parents who are residents of the state of Louisiana, and

1 who are eligible to adopt a child residing in Louisiana and to receive subsidy
2 payments for such adoption, or the designated tutor or guardian, shall remain
3 eligible to receive such payments, regardless of whether or not such adoptive
4 parents, tutor, or guardian subsequently become residents of another state,
5 except in cases where the other state meets all of the following criteria:

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

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

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

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

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

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

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

1 **F. Contractual obligation of the state.**

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

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

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

19 **Art. 1279.5. Health Insurance Reimbursement**

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

28 **B. Any child who is in the custody of the department or has been**
29 **adopted from the custody of the department shall be qualified for Medicaid if**

1 the child meets the guidelines set forth pursuant to Part II of Chapter 8 of Title
2 46 of the Louisiana Revised Statues of 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
6 considered for premium assistance for employer sponsored insurance pursuant
7 to LAC 50:III.3, Ch. 23:2311.

8 Art. 1279.6. Educational Opportunities and Assistance

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

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

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

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

29 C. When a child is in the custody of the department and is placed with

1 foster parents who have other children in the home who are participants in an
2 approved home study program, pursuant to R.S. 17:236.1, the department may
3 approve the placement of the foster child in an approved home study program
4 if the department finds it is in the best interest of the child. Home study
5 programs approved by the Department of Education to educate foster children
6 shall offer a sustained curriculum of quality at least equal to that offered by
7 public schools at the same grade level, pursuant to R.S. 17:236.1(C)(1).
8 Notwithstanding any other provision of law to the contrary, the Department of
9 Education shall provide the department, upon request, verification that a home
10 study program in which a foster child is participating has been approved
11 pursuant to R.S. 17:236. The foster parent shall provide the department
12 appropriate documentation, including but not limited to copies of standardized
13 tests, to substantiate that the child is progressing on grade level and at a rate
14 equal to one grade level for each year in the program.

15 Art. 1279.7. Expedited procedure for finalizing adoptions

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

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

21 (2) When the child is in the custody of the department, any additional
22 home study required by Article 1207 may be waived by the court if the adoptive
23 parents have been the foster parents of the child for the required six month time
24 period.

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

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

5 Section 2. Part III of Chapter 20 of Title 46 of the Louisiana Revised Statutes of
 6 1950, comprised of R.S. 46:1790 through 1794, is hereby repealed in its entirety.

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

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

Walsworth (SB 220)

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 requires that it be known and may be cited as the "Louisiana Has Faith in Families Act".

Proposed law lists the following legislative findings:

- (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 requires that, in order to facilitate the recruitment of new families for children, incentives provided in proposed law be made available to those children who have been adopted from the custody of the state and meet eligibility requirements.

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

Present law authorizes the department to develop and implement a program for subsidizing the adoption of children with special needs. Proposed law retains these provisions.

Proposed law retains present law authorizing the department to make payments to adoptive parents of a child 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 the 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, ethnic background, 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 retains provisions in present law that payments in subsidy of an 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.

Provides that the amount of payments may vary, depending upon the needs of the child and the adoptive parents, tutor, or guardian, but in any event shall not exceed 100% of the cost of providing foster care for the child. Provides that payments for medical, surgical, psychiatric, and other special costs and services not exceed the amount the department would pay if it were to provide or secure them as guardian of the child.

Present law requires termination of payments to the parents, tutor, or guardian when the adoptive child becomes 18 years old. Proposed law retains these provisions.

Present law requires that eligibility for payments in subsidy of adoption be determined and approved by the department prior to the completion of the adoption proceeding and that thereafter they be redetermined at least annually, except in cases where the child is eligible for funding pursuant to Title IV, Part E of the Social Security Act, then the redetermination is to be made at least every five years.

Proposed law retains these provisions.

Proposed law retains provisions in present law that requires that adoptive parents who are residents of the state, and who are eligible to adopt a child residing in Louisiana and to receive subsidy payments, or the designated tutor or guardian, remain eligible to receive payments, regardless of whether or not the adoptive parents, tutor, or guardian subsequently become residents of another state, except in cases where the other state meets all of the following criteria:

- (1) Has a subsidized adoption program that is available to the 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.

Proposed law retains provisions in present law requiring 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, be eligible for a subsidy under the same conditions as Louisiana residents, except in cases where the other state meets all of the following criteria:

- (1) Has a subsidized adoption program that is available to the 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 retains provisions in present law which requires that subsidized payments 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.

Present law authorizes the department to adopt, promulgate, and enforce necessary rules and regulations to implement present law in accordance with the Administrative Procedure Act. Proposed law requires that the department adopt, promulgate, and enforce these rules and regulations.

Present law requires that any agreement by the department to subsidize the adoption of a child eligible for the 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 is relying on the availability of the subsidy at the time of the final decree of adoption, constitutes 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. Provides that this obligation ceases when the adoptive child reaches the age of majority. Proposed law retains these provisions.

Present 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 authorizes the adoptive parents to 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 requires that any child in the custody of the department who is eligible for adoption and is placed in an approved adoptive home is to be eligible for dependant coverage pursuant to the prospective adoptive parents' health insurance policy as a dependent. Provides that any additional costs for the child are to be added to the adoptive parents' health insurance policy and shall not be paid for by the department. Provides the adoptive parents may qualify for premium assistance.

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 qualified for Medicaid if the child meets the guidelines set forth in present law regarding The Louisiana Children and Youth Health Insurance Program. Provides that any child in the custody of the department who is Medicaid eligible, is eligible for adoption, and has been placed in an approved prospective adoptive home or has been adopted from the custody of the department, shall be considered eligible for premium assistance for employer sponsored insurance.

Proposed law requires that a child in custody of 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.

Requires that a child in the custody of the department is eligible to attend a school in the school district or parish of the foster care placement. Requires that a child in the custody of the department be given preference in enrollment in the same manner as children already receiving a preference to attend a charter school.

Proposed law provides that if a child 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, then the foster child may attend the same nonpublic or parochial school if the department finds it is in the best interest of the child, and if the child meets the admission requirements of the nonpublic or parochial school. Provides that the department shall not be directly responsible for paying for the expenses associated with that education.

Proposed law provides that if a child is in the custody of the department and 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. Requires that the home study programs approved by the Department of Education to educate foster children offer a sustained curriculum of quality at least equal to that offered by public schools at the same grade level.

Proposed law requires that the Department of Education provide the department, upon request, verification that a home study program in which a foster child is participating in has been approved and requires the foster parent to provide the department appropriate documentation, including but not limited to copies of standardized tests, to substantiate that the child is progressing on grade level and at a rate equal to one grade level for each year in the program.

Proposed law provides that in order to shorten the waiting time for finalizing the adoption when the child is eligible for adoption and has been in foster care with the prospective adoptive parents, any necessary waiting period as required by law shall be applied retroactively. Requires that 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 requires that the case be allotted to the judge who presided over the termination proceedings. Authorizes the court to 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.

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)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Adds provision that a child in custody of the department of who has been adopted from the custody of the department be qualified for Medicaid if the child meets the guidelines regarding the La. Children and Youth Health Insurance Program.
2. Adds provision that if Medicaid eligible, the child shall be considered for premium assistance for employer sponsored insurance.
3. Adds provision that a foster child may attend the same nonpublic or parochial school as other children living in the home if the child meets the admission requirements of the nonpublic or parochial school
- .4. Specifies that the department is not directly responsible for paying expenses associated with the nonpublic or parochial education.
5. Adds requirement that if a child is in a home study program that the program be approved by the Department of Education to educate foster children and offer a sustained curriculum of quality at least equal to that offered by public schools at the same grade level.

6. Adds provisions for verification of the home study program and requires the foster parents to provide appropriate documentation to substantiate that the child is progressing on grade level and at a rate equal to one grade level for each year in the program.