

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 678

2017 Regular Session

Horton

CHILDREN/NEWBORNS: Provides relative to prenatal neglect and reporting thereof

Synopsis of Senate Amendments

1. Delete proposed law stipulating that no cause of action shall exist against any individual who in good faith makes a notification to the Dept. of Children and Family Services (DCFS) pursuant to proposed law concerning reporting of suspected prenatal substance exposure when the mother used a controlled dangerous substance during pregnancy in a lawfully prescribed manner.
2. Delete proposed law providing immunity from any civil or criminal liability that may arise from complying with the provisions of proposed law concerning reporting of suspected prenatal substance exposure to DCFS when the mother used a controlled dangerous substance during pregnancy in a lawfully prescribed manner.
3. Stipulate that if a physician, acting in good faith and in accordance with proposed law, makes a notification to DCFS concerning suspected prenatal substance exposure when the mother used a controlled dangerous substance during pregnancy in a lawfully prescribed manner, then the physician shall have no civil or criminal liability for damage or injury arising from that notification, unless the damage or injury was caused by the physician's willful or wanton misconduct or gross negligence.

Digest of Bill as Finally Passed by Senate

Present law encompassed by the Children's Code provides relative to referral for mediation in any proceeding authorized by the code (Ch. C. Art. 437) and for requirements and conditions relative to reporting of child abuse and neglect (Ch. C. Art. 601 et seq.).

Proposed law generally retains present law; repeals a reference to an informal family services plan in provisions relative to mediation; and modifies definitions for purposes of present law and proposed law relative to child abuse and neglect as follows:

- (1) Establishes that the term "newborn" means a child who is not more than 30 days old as determined within a reasonable degree of medical certainty by an examining physician.
- (2) Revises the definition of "prenatal neglect" to mean exposure to chronic or severe use of alcohol or the unlawful use of any controlled dangerous substance as defined in present law, or in a manner not lawfully prescribed, which results in symptoms of withdrawal in the newborn or the presence of a controlled substance or a metabolic thereof in the newborn's body, blood, urine, or meconium that is not the result of medical treatment, or observable and harmful effects in his physical appearance or functioning.

Present law provides requirements relative to medical identification of prenatal neglect and reporting thereof by physicians.

Proposed law revises present law to provide that if a physician has cause to believe that a newborn was exposed in utero to an unlawfully used controlled dangerous substance, the physician shall order a toxicology test upon the newborn, without the consent of the infant's

newborn's parents or guardian, to determine whether there is evidence of prenatal neglect. In cases when the test results are positive, proposed law requires the physician to issue a report as soon as possible in accordance with present law relative to reporting of child abuse and neglect.

Proposed law requires that if there are symptoms of withdrawal in the newborn or other observable and harmful effects in his physical appearance or functioning which a physician has cause to believe are due to the chronic or severe use of alcohol by the mother during pregnancy, or are the effects of fetal alcohol spectrum disorder, then the physician shall issue a report in accordance with present law relative to reporting of child abuse and neglect.

Proposed law provides that if a newborn exhibits symptoms of withdrawal or other observable and harmful effects in his physical appearance or functioning that a physician believes are due to the use of a controlled dangerous substance in a lawfully prescribed manner by the mother during pregnancy, the physician shall make a notification to DCFS on a form developed by the department. Stipulates that such notification shall not constitute a report of child abuse or prenatal neglect, and shall not require prosecution for any illegal action.

Proposed law authorizes healthcare providers to share any protected health information, as defined in federal regulations (45 CFR 160.103), with DCFS for the purpose of complying with the notification requirement of proposed law.

Proposed law requires DCFS to promulgate administrative rules in order to implement the provisions of proposed law. Provides that such rules shall include, at minimum, all of the following:

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

Proposed law stipulates that if a physician, acting in good faith and in accordance with proposed law, makes a notification to DCFS concerning suspected prenatal substance exposure when the mother used a controlled dangerous substance during pregnancy in a lawfully prescribed manner, then the physician shall have no civil or criminal liability for damage or injury arising from that notification, unless the damage or injury was caused by the physician's willful or wanton misconduct or gross negligence.

Proposed law provides that its provisions shall not become enforceable until the date of adoption by DCFS of the administrative rules necessary to fully carry out its requirements as provided in proposed law; and that its provisions shall be enforceable on and after that date.

(Amends Ch. C. Arts. 437(A), 603(24), and 610(G); Adds Ch. C. Art. 603(19) and R.S. 40:1086.11; Repeals Act No. 396 of 2007 R.S.)