

SENATE BILL NO. 136

BY SENATOR FRED MILLS

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

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AN ACT

To amend and reenact R.S. 3:4104(G), R.S. 15:587.1.2(D), R.S. 22:11.1, R.S. 27:220(D), R.S. 29:784(B), R.S. 30:2019(C) and (D)(2)(d), 2019.1(E), and 2022(B)(3), R.S. 32:415.2(D)(1), R.S. 34:851.14.1(B), R.S. 36:254(D)(1)(a)(i), R.S. 40:5.3(E), 962(H), 2008.10(B), and 2136(B), R.S. 49:953(E)(1) and (G)(3)(d), 954(B), and R.S. 56:6.1(B), to enact R.S. 49:951(8) and 953.1, and to repeal R.S. 49:953(B), relative to emergency rulemaking; to provide for emergency rulemaking in extraordinary circumstances; to provide for criteria that justify an emergency rule; to provide for occurrences that do not satisfy emergency rulemaking; to provide for minimum information in an agency statement for emergency rulemaking; to provide for the effective date, duration, and applicability of an emergency rule; to provide for a maximum number of times an agency can repromulgate an identical emergency rule; to provide for declaratory judgment of the validity of an emergency rule; to provide for legislative oversight of an emergency rule; to provide for gubernatorial oversight of an emergency rule; to provide for notice to the agency if an emergency rule is determined to be unacceptable; to provide for final action on the emergency rule; to provide technical changes to correlating statutes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 3:4104(G) is hereby amended and reenacted to read as follows:

§4104. Production stabilization plans

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G. Each production stabilization plan adopted pursuant to this section shall be considered a "rule" as that term is defined in R.S. 49:951(6); and the adoption, amendment, and judicial review of such plans shall be in accordance with the provisions of the Administrative Procedure Act (R.S. 49:951 et seq.) relating to rules and rule-making. The revision of any provision of a production stabilization plan shall be accomplished only by the amendment of such plan. Any suspensive action taken by the commissioner pursuant to Subsection F of this ~~section~~ **Section** and any action taken by the commissioner pursuant to ~~the third paragraph of Subsection B of this section~~ **Paragraph (B)(3) of this Section** shall be deemed an "emergency rule" as that term is used in ~~R.S. 49:953(B)~~ **R.S. 49:953.1**, but the commissioner shall not be required to find that any such action is required by an imminent peril to the public health, safety, or welfare.

* * *

Section 2. R.S. 15:587.1.2(D) is hereby amended and reenacted to read as follows:
 §587.1.2. Provision of information to protect children who receive services at a
 therapeutic group home

* * *

D. The Louisiana Department of Health may adopt rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Section, including requirements and provisions for utilizing the criminal history information. The department may utilize the process provided in ~~R.S. 49:953(B)~~ **R.S. 49:953.1** for adoption of the rule.

Section 3. R.S. 22:11.1 is hereby amended and reenacted to read as follows:
 §11.1. Rules and regulations; essential health benefits package

The commissioner shall promulgate rules pursuant to the Administrative Procedure Act to define "essential health benefits", to establish annual limitations on cost sharing and deductibles, and to define required levels of coverage. The commissioner shall adopt initial administrative rules before January 1, 2020. Notwithstanding any provision of ~~R.S. 49:953(B)~~ **R.S. 49:953.1** to the contrary, the

1 commissioner may adopt initial administrative rules as required by this Section
2 pursuant to the provisions of ~~R.S. 49:953(B)~~ **R.S. 49:953.1** without a finding that an
3 imminent peril to the public health, safety, or welfare exists.

4 Section 4. R.S. 27:220(D) is hereby amended and reenacted to read as follows:

5 §220. Duties of the board; adoption of administrative regulations; rulemaking
6 authority

7 * * *

8 D. For purposes of expeditious implementation of the provisions of this
9 Chapter, the promulgation of initial administrative rules shall constitute a matter of
10 imminent peril to public health, safety, and welfare as provided in ~~R.S. 49:953(B)~~
11 **R.S. 49:953.1**.

12 Section 5. R.S. 29:784(B) is hereby amended and reenacted to read as follows:

13 §784. Regulation of services during emergency

14 * * *

15 B. An order issued pursuant to Subsection A of this Section may take effect
16 immediately and shall be promulgated as an emergency rule as provided in ~~R.S.~~
17 ~~49:953~~ **R.S. 49:953.1**.

18 * * *

19 Section 6. R.S. 30:2019(C) and (D)(2)(d), 2019.1(E), and 2022(B)(3) are hereby
20 amended and reenacted to read as follows:

21 §2019. Promulgation of rules and regulations

22 * * *

23 C. Except for ~~R.S. 49:953(B)(1)~~ **R.S. 49:953.1**, promulgation of rules or
24 regulations requiring a permit, license, or compliance schedule of a previously
25 unregulated industry or practice shall not be initiated prior to a public hearing being
26 held. Such hearing shall be held in accordance with the Administrative Procedure
27 Act.

28 D. * * *

29 (2) Subparagraph (1)(b) of this Subsection shall not apply to any rule that
30 meets any of the following criteria:

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(d) Is an emergency rule under ~~R.S. 49:953(B)~~ **R.S. 49:953.1**.

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§2019.1. Promulgation of rules and regulations affecting agriculture

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E. Unless an emergency is initially declared by the governor and action is taken as provided for in ~~R.S. 49:953(B)(1)~~ **R.S. 49:953.1**, no rule, regulation, or permit fee may be adopted, amended, or repealed which affects the agriculture industry unless statements from the secretary of the department, the chancellor, and the commissioner of agriculture and forestry accompany the rule, regulation, or permit fee which outline their individual opinions on the issues of whether the rule, regulation, or permit fee is justified, practical, and worthy of implementation, and public hearings have been held in accordance with the Administrative Procedure Act. Such statements from the secretary of the department, the chancellor, and the commissioner of agriculture and forestry shall be provided to the appropriate legislative oversight committee by the respective official. The failure of an official to provide a statement shall constitute support for the rule, regulation, or permit fee.

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§2022. Permit applications and variance requests; notification

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B.

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(3) Applications undergoing technical review shall not be subject to rule changes ~~which~~ **that** occur during the technical review unless such changes are made in accordance with ~~R.S. 49:953(B)(1)~~ **R.S. 49:953.1** or are required by federal law or regulation to be incorporated prior to permit issuance. However, such a rule change made prior to the issuance of the permit may constitute grounds for a modification of the final permit.

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Section 7. R.S. 32:415.2(D)(1) is hereby amended and reenacted to read as follows:

§415.2. Operating vehicle while under suspension or revocation; removal of license

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D.(1) The Department of Public Safety and Corrections, public safety services, shall promulgate rules and regulations for implementation of the provisions of this Section. Once the department has published the notice of intent to adopt the permanent rules in the Louisiana Register, and the period for public comment has expired, the department is authorized to adopt the proposed rule as an emergency rule to expedite the enforcement of this Section subject to legislative oversight as provided in R.S. 49:968, ~~and 953,~~ **and 953.1.**

* * *

Section 8. R.S. 34:851.14.1(B) is hereby amended and reenacted to read as follows:
§851.14.1. Closure of waterways

* * *

B. Any such closure or restricted use shall be made by an order issued by the secretary in the same manner as issuance of an emergency rule as provided in ~~R.S. 49:953(B)~~ **R.S. 49:953.1.** Such order shall be subject to oversight by the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources in accordance with ~~R.S. 49:953(B)~~ **R.S. 49:953.1.** The order authorized in this Section shall specify a closure or a type of restriction, a description of the area subject to the order, and the reason for the emergency action. Upon issuance of any such order, no person shall operate a vessel contrary to the provisions of the order.

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Section 9. R.S. 36:254(D)(1)(a)(i) is hereby amended and reenacted to read as follows:

§254. Powers and duties of the secretary of the Louisiana Department of Health

* * *

D.(1)(a)(i) The secretary shall direct and be responsible for the Medical Assistance Program, Title XIX of the Social Security Act, including eligibility determination and those health planning and resource development functions as are

1 permissible under provisions of Title XIX of the Social Security Act, Title XXI of
 2 the Social Security Act, and R.S. 46:976. Any modification to the Medical
 3 Assistance Program approved by waiver by the United States Department of Health
 4 and Human Services, Health Care Financing Administration or its successor, that
 5 provides for a managed care or voucher system shall be implemented by the
 6 secretary but only after the approved plan and any modifications thereto have been
 7 approved by the House and Senate committees on health and welfare and the Joint
 8 Legislative Committee on the Budget. Unless approved by such committees as
 9 provided in this Subparagraph, modifications to the medical assistance program as
 10 provided herein shall not be considered avoidance of a budget deficit in the case of
 11 medical assistance programs, shall not be considered a means of securing new or
 12 enhanced federal funding in medical assistance programs, and shall not be
 13 considered necessary to avoid imminent peril to the public health, safety, or welfare;
 14 such modification shall not be promulgated as emergency rules under the provisions
 15 of ~~R.S. 49:953(B)~~ **R.S. 49:953.1** unless approved by such committees.

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 17 Section 10. R.S. 40:5.3(E), 962(H), 2008.10(B), and 2136(B) are hereby amended
 18 and reenacted to read as follows:

19 §5.3. Molluscan shellfish sanitation requirements; opening and closing of molluscan
 20 shellfish growing areas; adoption of guidelines to regulate molluscan
 21 shellfish industry; authority to collect samples for bacteriological
 22 analysis; testing of oysters; Calcasieu Lake

* * *

24 E. The purpose of this Section is to develop guidelines to govern and regulate
 25 the shellfish industry to ensure that the final shellfish product is safe and wholesome.
 26 The Louisiana Department of Health shall enforce the requirements for classification
 27 of shellfish growing areas and for certifying, processing, and distributing shellfish,
 28 which requirements are contained in Louisiana Administrative Code Title 51, Part
 29 IX and promulgated under the provisions of ~~R.S. 49:953(B)~~ **R.S. 49:953.1**.

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1 §962. Authority to control

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3 H. If the scheduling of a substance in Schedule I is necessary to avoid an
4 imminent peril to the public health, safety, or welfare, the secretary may adopt an
5 emergency rule adding the substance to Schedule I pursuant to ~~R.S. 49:953(B)~~ **R.S.**
6 **49:953.1**. In determining whether the substance poses an imminent peril to the public
7 health, safety, or welfare, the secretary shall consider the factors set forth in
8 Paragraphs (C)(4), (5), and (6) of this Section.

9 * * *

10 §2008.10. Therapeutic group homes licensed by the Louisiana Department of
11 Health; state central registry of child abuse and neglect; criminal
12 background checks

13 * * *

14 B. The Louisiana Department of Health may adopt rules and regulations in
15 accordance with the Administrative Procedure Act to implement the provisions of
16 this Section, including requirements and provisions for utilizing the criminal history
17 information. The department may utilize the process provided in ~~R.S. 49:953(B)~~ **R.S.**
18 **49:953.1** for adoption of the rule.

19 * * *

20 §2136. Rules; regulations; minimum standards

21 * * *

22 B. Notwithstanding the provisions of ~~R.S. 49:953(B)(1)~~ **R.S. 49:953.1**, or any
23 other law, rule, or regulation, the licensing agency shall establish rules, regulations,
24 and minimum standards for the licensing of ambulatory surgical centers as defined
25 in R.S. 40:2133(A) by adopting emergency rules in accordance with the
26 Administrative Procedure Act.

27 * * *

28 Section 11. R.S. 49:953(E)(1) and (G)(3)(d) and 954(B) are hereby amended and
29 reenacted and R.S. 49:951(8) and 953.1 are hereby enacted to read as follows:

30 §951. Definitions

1 As used in this Chapter:

2 * * *

3 **(8) "Preamble" means a brief explanation of the basis and rationale for**
4 **the intended administrative rulemaking action including a summary of the**
5 **information and data supporting the intended action.**

6 * * *

7 §953. Procedure for adoption of rules; agency rule review

8 * * *

9 E.(1) No agency shall adopt, amend, or repeal any rule if the accompanying
10 fiscal and economic impact statement approved by the ~~Legislative Fiscal Office~~
11 **legislative fiscal office** indicates that the rule change would result in any increase in
12 the expenditure of state funds, unless the rule is adopted as an emergency rule
13 pursuant to the requirements of ~~this Section~~ **R.S. 49:953.1** or unless the legislature
14 has specifically appropriated the funds necessary for the expenditures associated with
15 the rule change.

16 * * *

17 G.(1)

18 * * *

19 (3) This provision shall not apply in those cases where the policy, standard,
20 or regulation:

21 * * *

22 (d) Is an emergency rule under ~~Subsection B of this Section~~ **R.S. 49:953.1.**

23 * * *

24 **§953.1. Emergency rulemaking**

25 **A.(1) In extraordinary circumstances an agency may adopt an**
26 **emergency rule as an alternative to the rulemaking provisions provided for in**
27 **R.S. 49:953. An emergency rule may be adopted by an agency without prior**
28 **notice or a public hearing for any of the following reasons:**

29 **(a) To prevent imminent peril to the public health, safety, or welfare.**

30 **(b) To avoid sanctions or penalties from the United States.**

1 (c) To avoid a budget deficit in the case of the medical assistance
2 program.

3 (d) To secure new or enhanced federal funding.

4 (e) To effectively administer provisions of law related to the imposition,
5 collection, or administration of taxes when required due to time constraints
6 related to congressional, legislative, or judicial action.

7 (2) It shall not be considered an emergency if the agency is acting in the
8 normal course and scope of fulfilling its mission, failed to take necessary steps
9 in the administration of the agency to avoid an emergency, is promulgating
10 rules to implement an Act of the legislature unless the Act specifically directed
11 the agency to proceed with emergency rulemaking, or is continually
12 republishing existing emergency rules.

13 (3) Subject to applicable constitutional or statutory provisions, an
14 emergency rule shall become effective on the date of its adoption, or on a date
15 specified by the agency to be not more than sixty days from the date of its
16 adoption, provided written notice is given as required by Subsection B of this
17 Section.

18 (4) An emergency rule shall not remain in effect beyond the publication
19 date of the Louisiana Register published in the month following the month in
20 which the emergency rule is adopted, unless the emergency rule and the reasons
21 for adoption are published in that issue. An emergency rule shall not be
22 effective for a period longer than one hundred eighty days.

23 (5) No emergency rule shall be adopted by an agency more than two
24 consecutive times unless the agency is operating under a state or federal
25 declaration of disaster, a state or federal public health emergency, or an
26 ongoing emergency as authorized by the legislature, governor, or other
27 provision of law. However, the agency may concurrently proceed with the
28 adoption of an identical rule pursuant to the procedure provided for in R.S.
29 49:953(A).

30 B.(1) No later than five days after the adoption of an emergency rule, the

1 agency shall provide notice in writing of its emergency action along with a copy
2 of the emergency rule. The notice shall contain, at a minimum, all of the
3 following:

4 (a) A preamble which states the specific provision or provisions of
5 Paragraph (A)(1) of this Section the agency is citing as cause for emergency
6 rulemaking and the specific facts and detailed reasoning for emergency
7 rulemaking in order to satisfy the criteria for an emergency rule.

8 (b) The name of the person within the agency who has the responsibility
9 for responding to inquiries about the action.

10 (c) A statement that the intended action complies with the statutory law
11 administered by the agency, including a citation of the enabling legislation.

12 (2)(a) The notice required in Paragraph (1) of this Subsection shall be
13 transmitted to the governor of the state of Louisiana, the attorney general, the
14 speaker of the House of Representatives, the president of the Senate, and the
15 Office of the State Register in accordance with each entity's transmittal policy.

16 (b) No later than five days after the adoption of the emergency rule, the
17 agency shall transmit a copy of the notice required in Paragraph (1) of this
18 Subsection to all persons who have made timely request of the agency for notice
19 of rule changes.

20 (3) The office of the state register may omit from the Louisiana Register
21 any emergency rule which would be unduly cumbersome, expensive, or
22 otherwise inexpedient to print, if the emergency rule in printed or processed
23 form is made available on application to the adopting agency, and if the
24 Louisiana Register contains a notice stating the general subject matter of the
25 omitted emergency rule, the reasons for the finding of the emergency submitted
26 by the agency, and how a copy may be obtained.

27 C. The validity of an emergency rule may be determined in an action for
28 declaratory judgment in the district court of the parish in which the agency is
29 located. The agency shall be made a party to the action. An action for a
30 declaratory judgment under this Section may be brought only by a person to

1 whom such emergency rule is applicable or who would be adversely affected by
2 such emergency rule and only on the grounds that the emergency rule does not
3 meet the criteria for adoption of an emergency rule as provided in Paragraph
4 (A)(1) of this Section. The court shall declare the emergency rule invalid if it
5 finds that there is not sufficient evidence that such emergency rule must be
6 adopted on an emergency basis for one or more of the reasons for adoption of
7 an emergency rule as provided in Subsection A of this Section. Notwithstanding
8 any provision of law to the contrary, the emergency rule shall remain in effect
9 until such declaratory judgment is rendered. The provisions of R.S. 49:963 shall
10 not apply to any action brought pursuant to this Section. The provisions of this
11 Section are in addition to R.S. 49:963 and shall not limit any action pursuant to
12 R.S. 49:963.

13 D.(1) Within sixty days after receipt of the emergency rule and agency
14 notice required in Subsection B of this Section by the presiding officer of either
15 the House of Representatives or the Senate, an oversight subcommittee of either
16 house may individually or jointly conduct a hearing to review the emergency
17 rule and make a determination of whether the emergency rule meets the criteria
18 for an emergency rule set forth in Subsection A of this Section. The oversight
19 subcommittee shall also make the following determinations:

20 (a) Whether the emergency rule is in conformity with the intent and
21 scope of the enabling legislation purporting to authorize the emergency rule.

22 (b) Whether the emergency rule is in conformity with and not contrary
23 to all applicable provisions of law and of the constitution.

24 (c) The advisability or relative merit of the emergency rule.

25 (d) Whether the emergency rule is acceptable or unacceptable to the
26 oversight subcommittee.

27 (2)(a) If within sixty days after receipt of the emergency rule and agency
28 notice required in Subsection B of this Section either the House or Senate
29 oversight committee determines that an emergency rule is unacceptable, the
30 respective subcommittee shall provide a written report which contains the

1 **following:**

2 **(i) A copy of the emergency rule.**

3 **(ii) A summary of the determinations made by the oversight committee.**

4 **(b) The written report shall be delivered to the governor, the agency**
 5 **proposing the rule change, and the Louisiana Register no later than four days**
 6 **after the oversight committee makes its determination.**

7 **(3) If an emergency rule is determined to be unacceptable by an**
 8 **oversight committee, the agency shall not propose a rule change or emergency**
 9 **rule that is the same as or substantially similar to the disapproved emergency**
 10 **rule within four months after issuance of a written report by the subcommittee**
 11 **issued pursuant to this Subsection, nor more than once during the interim**
 12 **between regular sessions of the legislature.**

13 **E. Within sixty days after adoption of an emergency rule, the governor**
 14 **may review such emergency rule and make the determinations as provided in**
 15 **Subsection D of this Section. If within this time period the governor finds an**
 16 **emergency rule unacceptable, he shall prepare a written report as provided in**
 17 **Paragraph (D)(2) of this Section and transmit copies to the agency proposing**
 18 **the emergency rule and the Louisiana Register no later than four days after the**
 19 **governor makes his determination.**

20 **F. Upon receipt by the agency of a report issued by the oversight**
 21 **subcommittee or the governor finding an emergency rule unacceptable, the**
 22 **emergency rule shall be nullified and shall be without effect. The governor shall**
 23 **have no authority to disapprove the action taken on an emergency rule by the**
 24 **oversight subcommittee.**

25 §954. Filing; taking effect of rules

26 * * *

27 **B.(1)** Each rule hereafter adopted shall be effective upon its publication in the
 28 Louisiana Register, said publication to be subsequent to the act of adoption, except
 29 that:

30 ~~(1)~~ **if** a later date is required by statute or specified in the rule, the later day

1 is the effective date.

2 (2) ~~Subject to applicable constitutional or statutory provisions, an emergency~~
 3 ~~rule shall become effective on the date of its adoption, or on a date specified by the~~
 4 ~~agency to be not more than sixty days future from the date of its adoption, provided~~
 5 ~~written notice is given within five days of the date of adoption to the governor of~~
 6 ~~Louisiana, the attorney general of Louisiana, the speaker of the House of~~
 7 ~~Representatives, the president of the Senate, and the Office of the State Register as~~
 8 ~~provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond~~
 9 ~~the publication date of the Louisiana Register published in the month following the~~
 10 ~~month in which the emergency rule is adopted, unless such rule and the reasons for~~
 11 ~~adoption thereof are published in that issue; however, any emergency rule so~~
 12 ~~published shall not be effective for a period longer than one hundred twenty days,~~
 13 ~~but the adoption of an identical rule under R.S. 49:953(A)(1), (2), and (3) is not~~
 14 ~~precluded. The agency shall take appropriate measures to make emergency rules~~
 15 ~~known to the persons who may be affected by them. An emergency rule shall be~~
 16 ~~considered effective pursuant to the provisions of R.S. 49:953.1.~~

17 Section 12. R.S. 56:6.1(B) is hereby amended and reenacted to read as follows:

18 §6.1. Emergency closure of hunting or fishing seasons; rules and regulations;
 19 prohibitions; penalties

20 * * *

21 B. Any such closure shall be made by an order issued by the secretary in the
 22 same manner as the issuance of an emergency rule as provided in ~~R.S. 49:953(B)~~
 23 **R.S. 49:953.1**. The closure order authorized in this Section shall include a
 24 description of the area subject to the closure, indication of the species of fish or
 25 wildlife covered by such order, and the reasons for the closure. In addition, the order
 26 may include restrictions on hunting or fishing times, bag or creel limits, and harvest
 27 restrictions and may alter season opening and closing dates. Upon the issuance of
 28 any such order, the possession, sale, barter, trade, or exchange of, or the attempt to
 29 possess, sell, barter, trade, or exchange, any species of fish or wildlife contrary to the
 30 provisions of the order is prohibited.

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Section 13. R.S. 49:953(B) is hereby repealed.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____