

SENATE BILL NO. 220

BY SENATORS WALSWORTH, ALARIO, APPEL, BROOME, BROWN, BUFFINGTON, CLAITOR, CORTEZ, CROWE, DONAHUE, GUILLORY, JOHNS, LAFLEUR, LONG, MILLS, NEVERS, PERRY, GARY SMITH, TARVER, THOMPSON, WARD AND WHITE AND REPRESENTATIVES ADAMS, BILLIOT, BROWN, BURFORD, HENRY BURNS, HOFFMANN, HOWARD, NANCY LANDRY, PYLANT, ROBIDEAUX, SCHRODER, ST. GERMAIN AND WILLMOTT

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

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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 adoptive 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 for those children who have been
14 adopted 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
30 the department has made reasonable attempts to place said child for adoption

1 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 that 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 adopted 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 the department, in accordance with rules and regulations
23 adopted as provided by Paragraph E of this Article, prior to the completion of
24 the adoption proceeding. Such eligibility shall thereafter be redetermined at
25 least annually, except that in those cases where the child is eligible for funding
26 pursuant to Title IV, Part E of the Social Security Act, the redetermination shall
27 be 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
30 payments for such adoption, or the designated tutor or guardian, shall remain

1 eligible to receive such payments, regardless of whether or not such adoptive
2 parents, tutor, or guardian subsequently become residents of another state,
3 except in cases where the other state meets all of the following criteria:

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

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

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

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

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

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

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

28 F. Contractual obligation of the state.

29 (1) Any agreement by the department to subsidize the adoption of a
30 child eligible for such subsidy, which results in a final decree of adoption of the

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

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

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

16 Art. 1279.5. Health Insurance Reimbursement

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

25 B. Any child who is in the custody of the department or has been
26 adopted from the custody of the department shall be qualified for Medicaid if
27 the child meets the guidelines set forth pursuant to Part II of Chapter 8 of Title
28 46 of the Louisiana Revised Statues of 1950.

29 C. Any child in the custody of the department who is Medicaid eligible,
30 is eligible for adoption, and has been placed in an approved prospective

1 adoptive home or adopted from the custody of the department shall be
2 considered for premium assistance for employer sponsored insurance pursuant
3 to LAC 50:III.2311.

4 Art. 1279.6. Educational Opportunities and Assistance

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

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

14 (3) A child in the custody of the department shall be given preference in
15 enrollment in the same manner as children receiving preference in R.S.
16 17:3991(C)(1)(c)(iii) for enrollment to attend a charter school that has been
17 established pursuant to R.S. 17:3983.

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

25 C. When a child is in the custody of the department and is placed with
26 foster parents who have other children in the home who are participants in an
27 approved home study program, pursuant to R.S. 17:236.1, the department may
28 approve the placement of the foster child in an approved home study program
29 if the department finds it is in the best interest of the child. Home study
30 programs approved by the Department of Education to educate foster children

1 shall offer a sustained curriculum of quality at least equal to that offered by
2 public schools at the same grade level, pursuant to R.S. 17:236.1(C)(1).
3 Notwithstanding any other provision of law to the contrary, the Department of
4 Education shall provide the department, upon request, verification that a home
5 study program in which a foster child is participating has been approved
6 pursuant to R.S. 17:236. The foster parent shall provide the department
7 appropriate documentation, including but not limited to copies of standardized
8 tests, to substantiate that the child is progressing on grade level and at a rate
9 equal to one grade level for each year in the program.

10 Art. 1279.7. Expedited procedure for finalizing adoptions

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

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

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

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

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

29 Section 2. Part III of Chapter 20 of Title 46 of the Louisiana Revised Statutes of
30 1950, comprised of R.S. 46:1790 through 1794, is hereby repealed in its entirety.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____