

2017 Regular Session

HOUSE BILL NO. 678 (Substitute for House Bill No. 479 by Representative Horton)

BY REPRESENTATIVE HORTON

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

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

1 AN ACT

2 To amend and reenact Children's Code Articles 437(A), 603(24), and 610(G), to enact
3 Children's Code Article 603(19) and Subpart E of Part VI of Chapter 5-A of Title 40
4 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1086.11, and
5 to repeal Act No. 396 of the 2007 Regular Session of the Legislature, relative to
6 prenatal neglect and the reporting thereof; to provide for definitions; to provide for
7 notification procedures; to provide for limitation of liability; to provide for referral
8 for mediation; to provide for promulgation of rules by the Department of Children
9 and Family Services; to provide for enforceability; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Children's Code Articles 437(A), 603(24), and 610(G) are hereby
12 amended and reenacted and Children's Code Article 603(19) is hereby enacted to read as
13 follows:

14 Art. 437. Referral for mediation

15 A. At any time the court may order the referral for mediation in any
16 proceeding authorized by this Code, except domestic abuse assistance proceedings
17 brought pursuant to Chapter 8, Title XV, ~~and the informal family services plan~~
18 ~~procedure of Chapter 5, Title VII.~~

19 * * *

20 Art. 603. Definitions

1 As used in this Title:

2 * * *

3 (19) "Newborn" means a child who is not more than thirty days old, as
4 determined within a reasonable degree of medical certainty by an examining
5 physician.

6 * * *

7 (24) "Prenatal neglect" means ~~the unlawful use by a mother during~~
8 ~~pregnancy of a~~ exposure to chronic or severe use of alcohol or the unlawful use of
9 any controlled dangerous substance, as defined by R.S. 40:961 et seq., or in a manner
10 not lawfully prescribed, which results in symptoms of withdrawal in the ~~infant~~
11 newborn or the presence of a controlled substance or a metabolic thereof in the
12 ~~infant's~~ his body, blood, urine, or meconium that is not the result of medical
13 treatment, or observable and harmful effects in his physical appearance or
14 functioning.

15 * * *

16 Art. 610. Reporting procedure; report to the legislature

17 * * *

18 G.(1) If a physician has cause to believe that a ~~mother of an infant~~
19 ~~unlawfully used during pregnancy a~~ newborn was exposed in utero to an unlawfully
20 used controlled dangerous substance, as defined by R.S. 40:961 et seq., the physician
21 shall order a toxicology test upon the ~~infant~~ newborn, without the consent of the
22 ~~infant's~~ newborn's parents or guardian, to determine whether there is evidence of
23 prenatal neglect. If the test results are positive, the physician shall ~~report the results~~
24 issue a report, as soon as possible, in accordance with this Article. If the test results
25 are negative, all identifying information shall be obliterated if the record is retained,
26 unless the parent approves the inclusion of identifying information. Positive test
27 results shall not be admissible in a criminal prosecution.

28 (2) If there are symptoms of withdrawal in the newborn or other observable
29 and harmful effects in his physical appearance or functioning that a physician has

1 cause to believe are due to the chronic or severe use of alcohol by the mother during
2 pregnancy or are the effects of fetal alcohol spectrum disorder, the physician shall
3 issue a report in accordance with this Article.

4 * * *

5 Section 2. Subpart E of Part VI of Chapter 5-A of Title 40 of the Louisiana Revised
6 Statutes of 1950, comprised of R.S. 40:1086.11, is hereby enacted to read as follows:

7 SUBPART E. NEONATAL ABSTINENCE SYNDROME

8 §1086.11. Physician notification

9 A. If a newborn exhibits symptoms of withdrawal or other observable and
10 harmful effects in his physical appearance or functioning that a physician believes
11 are due to the use of a controlled dangerous substance, as defined by R.S. 40:961 et
12 seq., in a lawfully prescribed manner by the mother during pregnancy, the physician
13 shall make a notification to the Department of Children and Family Services on a
14 form developed by the department. Such notification shall not constitute a report of
15 child abuse or prenatal neglect, nor shall it require prosecution for any illegal action.

16 B. A healthcare provider shall be authorized to share any protected health
17 information, as defined in 45 CFR 160.103, with the Department of Children and
18 Family Services for the purpose of complying with the notification requirement of
19 this Subpart.

20 C. The Department of Children and Family Services shall promulgate rules
21 and regulations in accordance with the Administrative Procedure Act to implement
22 the provisions of this Subpart. Such rules shall include, at minimum, all of the
23 following:

24 (1) The manner in which the notification shall be made to the department.

25 (2) The form and minimum required contents of the notification.

26 (3) The plan to monitor the statewide system regarding the availability and
27 delivery of appropriate services for newborns and affected families and caretakers.

28 D. No cause of action shall exist against any individual who in good faith
29 makes a notification to the Department of Children and Family Services pursuant to

1 Subsection A of this Section. Such individuals shall have immunity from any civil
2 or criminal liability that may arise from complying with the provisions of this
3 Subpart.

4 Section 3. Act No. 396 of the 2007 Regular Session of the Legislature is hereby
5 repealed in its entirety.

6 Section 4. The provisions of this Act shall not become enforceable until the date of
7 adoption by the Department of Children and Family Services of the administrative rules and
8 regulations necessary to fully carry out the requirements of the department provided in this
9 Act. The provisions of this Act shall be enforceable on and after that date.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 678 Original

2017 Regular Session

Horton

Abstract: Provides relative to prenatal neglect and reporting thereof to the Dept. of Children and Family Services (DCFS).

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 no cause of action shall exist against any individual who, in good faith, makes a notification to DCFS pursuant to proposed law relative to a newborn exhibiting symptoms of withdrawal or other observable and harmful effects believed to be due to the mother's use of a controlled dangerous substance in a lawfully prescribed manner during pregnancy. Provides that any such individual shall have immunity from any civil or criminal liability that may arise from complying with the provisions of proposed law.

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.)