

First Extraordinary Session, 2000

HOUSE BILL NO. 223

BY REPRESENTATIVES GLOVER, PERKINS, R. ALEXANDER, BRUCE, BRUNEAU, DIEZ, HEATON, HEBERT, MCCALLUM, PITRE, STRAIN, WALSWORTH, ALARIO, E. ALEXANDER, ANSARDI, BAYLOR, BROOME, K. CARTER, CLARKSON, DAMICO, DANIEL, DARTEZ, DEVILLIER, DOERGE, DURAND, FAUCHEUX, FRITH, FRUGE, GUILLORY, HILL, HUNTER, ILES, KATZ, KENNEY, LANDRIEU, MCDONALD, MONTGOMERY, MURRAY, NEVERS, ODINET, PIERRE, POWELL, RICHMOND, ROMERO, SCHWEGMANN, GARY SMITH, JACK SMITH, JANE SMITH, THOMPSON, TOWNSEND, WADDELL, WARNER, WELCH, WILKERSON, WILLARD, WINSTON, WOOTON, AND WRIGHT

AN ACT

To amend and reenact Children's Code Articles 1101 and 1193(introductory paragraph) and to enact Children's Code Article 1015(7) and Title XVII of the Children's Code, to be comprised of Articles 1701 through 1706, relative to newborns; to provide for legislative intent; to provide for relinquishment of newborns; to provide for definitions; to provide for subpoenas; to provide for authority and responsibility of accepting entity; to provide for parental rights; to provide for evaluation of the programs; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 1101 and 1193(introductory paragraph) are hereby amended and reenacted and Children's Code Article 1015(7) and Title XVII of the Children's Code, comprised of Articles 1701 through 1706, are hereby enacted to read as follows:

Art. 1015. Grounds

The grounds for termination of parental rights are:

* * *

(7) Relinquishment of a newborn pursuant to Title XVII of this Code.

Art. 1101. Purpose

Except as otherwise provided in Articles 1195 and 1196 and Title XVII of this Code, this Title provides the exclusive means by which a parent can voluntarily relinquish his parental rights to a child for the ultimate purpose of adoption.

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Art. 1193. Persons whose consent or relinquishment is required

Unless rights have been terminated in accordance with Title X, ~~or XI, or XVII~~, consent to the adoption of a child or relinquishment of parental rights shall be required of the following:

* * *

TITLE XVII

RELINQUISHMENT OF NEWBORNS

Art. 1701. Statement of legislative intent

Mindful that the family is the most fundamental unit of human society, the Legislature of Louisiana also recognizes the government's role in the protection of the individual lives of its citizens. In particular, great care must be given to protecting the children, those who are unable to protect themselves. To that end, it is the intent of the legislature to provide a mechanism by which any mother, hardly more than a child herself, may relinquish the care of her newborn to the state in anonymity and without fear of prosecution or persecution.

Art. 1702. Definitions

As used in this Title:

(1) "Department" means the Louisiana Department of Social Services.

(2) "Designated emergency care facility" means any hospital licensed in the state of Louisiana, any public health unit, any fire station, any police station, or any pregnancy crisis facility.

(3) "Newborn" means an infant not more than thirty days old.

(4) "Relinquish" means to give over possession or control.

Art. 1703. Relinquishment of newborns

A. Where a newborn infant is left in the care of any individual at a designated emergency care facility with no affirmative expression that someone intends to return for the newborn, such act shall be designated relinquishment of a newborn.

B.(1) The relinquishment of a newborn shall not be considered a criminal act of neglect, abandonment, molestation, or cruelty, or a crime against the child. Relinquishment in accordance with this Title shall be an affirmative defense to any prosecution for such act.

(2) Notwithstanding the provisions of Subparagraph (1) of this Paragraph, the relinquishment of a newborn may be grounds for termination of parental rights pursuant to the provisions of Article 1015.

Art. 1704. Authority and responsibility of designated emergency care facilities; transfer of the relinquished newborn; termination of parental rights

A. A designated emergency care facility to which a newborn has been relinquished shall provide the newborn with any necessary

care, including but not limited to any emergency medical care at a medical facility. The act of relinquishment shall be considered as parental consent for purposes of providing medical treatment and care to the newborn. No cause of action shall be brought against a designated emergency care facility or anyone associated therewith, for good faith actions relative to the relinquishment of or medical treatment and care of a newborn unless damage or injury to a newborn was caused by willful or wanton misconduct or gross negligence.

B. The designated emergency care facility to which a newborn has been relinquished shall notify the department within twenty-four hours of the relinquishment. After such notification, the department shall take custody and control of the relinquished newborn within twenty-four hours, and it shall commence a thorough search of all listings of missing children to ensure that the relinquished newborn has not been reported missing.

C. The department shall file and pursue to judgment in the trial court a petition to terminate the parental rights of the parents of the relinquished newborn in accordance with the provisions of Title X. Any final judgment terminating parental rights relieves the newborn and the parent against whom the judgment is rendered of all their legal duties and divests them of all their legal rights with regard to one another, as provided in Chapter 9 of Title X including exceptions stated therein.

D. Unless otherwise specifically provided in this Title, no provision of this Title shall preclude the application of nor be construed to supersede any other provision of Titles VI, X, XI, or XII of this Code.

Art. 1705. Parental rights; establishing

A.(1) A mother who has relinquished her newborn may revoke her intentions to relinquish the newborn by filing a legal proceeding establishing her parental rights. The mother must establish her parental rights by proving that she has manifested a substantial commitment to her parental responsibilities and that she is a fit parent of the child. The petition shall be filed in the parish in which the newborn has been relinquished.

(2) A father of a newborn relinquished may file a legal proceeding establishing his parental rights. He must establish his parental rights by acknowledging that he is the father of the child and by proving that he has manifested a substantial commitment to his parental responsibilities and that he is a fit parent of the child. The petition shall be filed in the parish in which the newborn has been relinquished and the hearing shall require the same proof as that required in Article 1138.

B. Should there be a legal proceeding brought pursuant to Titles VI, X, XI, or XII of this Code, then all time periods within which the petitioning parent must assert his parental rights are governed exclusively by the respective provisions of Titles VI, X, XI, or XII.

C. If maternity or paternity is at issue, on its own motion or motion of any party, the court shall issue an order for immediate blood or tissue sampling in accordance with the provisions of R.S. 9:396 et seq. and shall order an expedited report. The hearing resolving this issue shall be held at the earliest time that the results of the testing can be reported to the court.

D. If the court finds that the petitioning parent has established his parental rights, the court shall order the child to be in his legal custody. If the court finds that the petitioning parent has failed to establish his parental rights, it shall decree that his rights are terminated.

Art. 1706. Evaluation; rules

The department shall evaluate the program and shall submit a written report on the program including recommendations for revisions and improvements to the House Committee on Civil Law and Procedure and the House Committee on Health and Welfare and the Senate Committee on Judiciary A and the Senate Committee on Health and Welfare not later than March 1, 2001. The department shall further adopt rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Title.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____