By: Ellis S.B. No. 1886

A BILL TO BE ENTITLED

AN ACT

relating to diagnostic testing of pregnant women and certain newborns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 81.090, Health and Safety Code, is amended to read as follows:

Sec. 81.090. DIAGNOSTIC [~~SEROLOGIC~~] TESTING DURING PREGNANCY AND AFTER BIRTH.

SECTION 2. Section 81.090, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (h), (i), (j), (k), and (l) and adding Subsections (a-1), (c-1), and (c-2) to read as follows:

(a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at the first examination and visit;

(2) submit the sample to an appropriately certified [~~a~~] laboratory [~~approved under this section~~] for diagnostic testing approved by the United States Food and Drug Administration for:

(A) [~~a standard serologic test for~~] syphilis [~~approved by the board~~];

(B) [~~a standard serologic test for~~] HIV infection [~~approved by the board~~]; and

(C) [~~a standard serologic test for~~] hepatitis B infection [~~approved by the board~~]; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(a-1) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at an examination in the third trimester of the pregnancy;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(b) A successor is presumed to have complied with this section if the successor in good faith obtains a record that indicates compliance with Subsections (a) and (a-1), if applicable.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother on admission for delivery; and

(2) submit the sample to an appropriately certified [~~a~~] laboratory [~~approved under this section~~] for diagnostic testing approved by the United States Food and Drug Administration for:

(A) [~~a standard serologic test for~~] syphilis [~~approved by the board~~];

(B) [~~a standard serologic test for~~] HIV infection [~~approved by the board~~]; and

(C) [~~a standard serologic test for~~] hepatitis B infection [~~approved by the board~~].

(c-1) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from the diagnostic test for HIV infection performed under Subsection (a-1), the physician or person shall instruct the laboratory to expedite the processing of the diagnostic test for HIV infection under Subsection (c)(2)(B) so that the results are received less than six hours after the time the sample is submitted.

(c-2) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from a diagnostic test for HIV infection performed under Subsection (a) or (a-1) and the diagnostic test for HIV infection was not performed before delivery under Subsection (c), the physician or other person in attendance at delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the newborn child less than two hours after the time of birth;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and

(3) instruct the laboratory to expedite the processing of the test so that the results are received less than six hours after the time the sample is submitted.

(h) A [~~The department is not required to approve a~~]

laboratory under this section must be certified as required by [~~Subsection (d) or provide a list of approved laboratories under Subsection (e) as long as~~] the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a), and subsequent amendments[~~, are in effect~~].

(i) Before conducting or causing to be conducted a diagnostic [~~standard serologic~~] test for HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate if resources permit.

(j) The result of a [~~standard~~] test for HIV infection under Subsection (a)(2)(B), (a-1), [~~or~~] (c)(2)(B), or (c-2) is a test result for purposes of Subchapter F.

(k) Before the [~~blood~~] sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed

about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the department [~~Texas Department of Health~~] and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis;

(2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) the available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis.

(l) A physician or other person may not conduct a diagnostic [~~standard~~] test for HIV infection under Subsection (a)(2)(B), (a-1), or (c)(2)(B) if the woman objects. A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (c-2) if a parent, managing conservator, or guardian objects.

SECTION 3. Sections 81.090(d), (e), and (f), Health and Safety Code, are repealed.

SECTION 4. (a) Sections 81.090(a), (c), (h), (i), and (k), Health and Safety Code, as amended by this Act, apply only to a test performed on or after the effective date of this Act. A test performed before the effective date of this Act is covered by the

law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Sections 81.090(a-1), (c-1), and (c-2), Health and Safety Code, as added by this Act, and Sections 81.090(b), (j), and (l), Health and Safety Code, as amended by this Act, apply only to a physician or other person attending a pregnant woman during gestation or at delivery of an infant on or after January 1, 2010.

SECTION 5. This Act takes effect September 1, 2009.