

## **BILL ANALYSIS**

C.S.H.B. 2886  
By: Klick  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the requirement for the administration of prophylaxis to a newborn infant for the prevention of ophthalmia neonatorum does not account for situations in which the infant's parents, managing conservator, or guardian object to the administration of the prophylaxis. C.S.H.B. 2886 seeks to protect health care providers from any legal ramifications resulting from a parent's, managing conservator's, or guardian's objection to having the prophylaxis administered to the infant.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2886 amends the Health and Safety Code to establish that a physician, nurse, midwife, or other person in attendance at childbirth who is unable to apply prophylaxis approved by the executive commissioner of the Health and Human Services Commission to prevent ophthalmia neonatorum due to the objection of a parent, managing conservator, or guardian of the newborn infant does not commit a Class B misdemeanor criminal offense for failure to perform a duty under statutory provisions relating to ophthalmia neonatorum prevention and to establish that such a person is not subject to criminal, civil, or administrative liability or any professional disciplinary action for failure to administer the prophylaxis. The bill requires the physician, nurse, midwife, or person to ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the infant.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2886 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 81.091, Health and Safety Code, is amended by amending Subsection (g) and adding Subsection (g-1) to read as follows:

(g) Except as provided by Subsection (g-1), a [A] person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(g-1) A physician, nurse, midwife, or other person in attendance at childbirth who is unable to apply the prophylaxis due to the objection of the parents, managing conservator, or guardian of the newborn does not commit an offense under this section and may not be prosecuted for failure to administer the prophylaxis as required by this section.

The physician, nurse, midwife, or other person in attendance at childbirth shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the child. The parent, managing conservator, or guardian shall sign the entry.

SECTION 2. This Act takes effect September 1, 2017.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 81.091, Health and Safety Code, is amended by amending Subsection (g) and adding Subsection (g-1) to read as follows:

(g) Except as provided by Subsection (g-1), a [A] person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(g-1) A physician, nurse, midwife, or other person in attendance at childbirth who is unable to apply the prophylaxis as required by this section due to the objection of a parent, managing conservator, or guardian of the newborn infant does not commit an offense under this section and is not subject to criminal, civil, or administrative liability or any professional disciplinary action for failure to administer the prophylaxis.

The physician, nurse, midwife, or person shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the infant.

SECTION 2. Same as introduced version.