

BILL ANALYSIS

C.S.H.B. 3212
By: Toth
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some in the medical community have raised concerns related to procedures surrounding newborn screening tests. For example, a recent screening revealing that a newborn had medium-chain acyl-CoA dehydrogenase deficiency came back after the parents and newborn had been discharged from the hospital. Tragically, the delay in critical information revealed by the screening result culminated in the death of the newborn. C.S.H.B. 3212 seeks to reduce avoidable bodily harm and death of newborns by providing disclosure and testing requirements for hospitals and laboratories. Specifically, the bill requires that disclosure regarding the risks associated with the failure to perform a newborn screening and the importance of receiving and reviewing test results in a timely manner be given to a newborn's parent, managing conservator, or guardian before the newborn is discharged. The bill also requires a laboratory or facility performing newborn screening tests to perform those tests seven days a week.

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. 3212 amends the Health and Safety Code to require a laboratory or facility established or approved by the Department of State Health Services (DSHS) to perform newborn screening tests for phenylketonuria, other heritable diseases, hypothyroidism, and other disorders for which DSHS requires screening to perform those tests seven days a week. The bill requires a birthing facility, defined as an inpatient or ambulatory health care facility that offers obstetrical or newborn care services, to orally inform the parent, managing conservator, or guardian of a newborn, before discharging the newborn from the facility, of any risks associated with failure to perform such a newborn screening test and the importance of the parent, managing conservator, or guardian receiving and reviewing in a timely manner the results of a screening test specimen analysis in a timely manner.

C.S.H.B. 3212 requires DSHS, not later than September 1, 2023, to include among the information that must be included in the resource pamphlet provided by a hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care during gestation or at delivery to the woman and the father of the infant, if possible, or another adult caregiver for the infant information regarding any risks associated with failure to perform the newborn screening tests and the importance of the woman and father of the infant, or another adult caregiver of the infant, receiving and reviewing in a timely manner the results of a screening test specimen

analysis. The bill establishes that a hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant is not required to comply with the resource pamphlet provision until September 1, 2023.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3212 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute contains a provision absent from the introduced requiring a laboratory or facility established or approved by DSHS that performs certain newborn screening tests to perform those tests seven days a week.

While both the introduced and the substitute require a birthing facility to provide a disclosure regarding newborn screening tests before discharging a newborn, the substitute changes the requirement from informing the parent, managing conservator, or guardian of a newborn subjected to such a test of any risks associated with discharging the newborn before the analysis of the screening test specimen is complete, as in the introduced, to orally informing the parent, managing conservator, or guardian of a newborn of any risks associated with failure to perform such a test and the importance of the parent, managing conservator, or guardian receiving and reviewing in a timely manner the results of a screening test specimen analysis.

The substitute omits a provision included in the introduced that required DSHS to develop a standard informational form for use regarding the disclosure.

The substitute omits a provision included in the introduced establishing that the disclosure requirement applied to an infant who is discharged from a birthing facility on or after the bill's effective date.

The substitute omits provisions included in the introduced that did the following:

- required a birthing facility to complete a newborn screening test and deliver the test results to the parent, managing conservator, or guardian within 24 hours;
- authorized the Health and Human Services Commission (HHSC) to impose an administrative penalty against a birthing facility that violates that provision in an amount determined by HHSC and, if the violation results in serious bodily injury or death of the newborn, made the violation punishable by a civil penalty of at least \$500,000; and
- authorized the attorney general or a district attorney to bring an action to recover the civil penalty and to recover reasonable attorney's fees and litigation costs in bringing the action.

The substitute contains provisions absent from the introduced requiring DSHS, not later than September 1, 2023, to include among the information that must be included in the resource pamphlet provided by a hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant to the woman and the father of the infant, if possible, or another adult caregiver for the infant information regarding any risks associated with failure to perform the newborn screening tests and the importance of the woman and father of the infant, or another adult caregiver of the infant, receiving and reviewing in a timely manner the results of a screening test specimen analysis.

The substitute contains a provision absent from the introduced specifying that those facilities and providers are not required to comply with the informational material provision until September 1, 2023.