

BILL ANALYSIS

Senate Research Center
77R8390 KLA-D

H.B. 706
By: Morrison (Truan)
Jurisprudence
4/23/2001
Engrossed

DIGEST AND PURPOSE

Under current Texas law, an emergency medical services provider is required to take possession of a child 30 days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent does not express an intent to return for the child. The provider is required to notify the Department of Protective and Regulatory Services (department) and the department is required to assume the care, custody, and control of the child. H.B. 706 enhances protection for a newborn by expediting placement with a designated emergency infant care provider, which includes an emergency medical services provider, hospital, or a licensed child-placing agency and increases protection for mothers who choose a responsible alternative to newborn abandonment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.001, Family Code, to authorize a court to order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has voluntarily delivered the child to a designated emergency infant care provider, rather than an emergency medical services provider, under Section 262.302, rather than 262.301, without expressing an intent to return for the child, among other conditions, and that termination is in the best interest of the child.

SECTION 2. Amends Section 262.105, Family Code, to require the Department of Protective and Regulatory Services (department), if the department files a suit affecting the parent-child relationship required under Subsection (a)(1) seeking termination of the parent-child relationship, to file the suit not later than the 45th day after the date the department assumes the care, control, and custody of a child under Section 262.303.

SECTION 3. Amends Section 262.109(d), Family Code, to authorize the written notice to be waived by the court at the initial hearing on a showing that the department took possession of the child under Subchapter D.

SECTION 4. Amends Chapter 262D, Family Code, as follows:

Adds a new Section 262.301 and redesignates existing text of Sections 262.301 - 262.303 as Sections 262.302 - 262.304.

Sec. 262.301. DEFINITIONS. Defines "designated emergency infant care provider" and "emergency medical services provider."

Sec. 262.302. ACCEPTING POSSESSION OF CERTAIN ABANDONED CHILDREN.
(a) Requires a designated emergency infant care provider, rather than an emergency medical

services provider licensed under Chapter 773, Health and Safety Code, to take possession, without a court order, of a child who appears to be 60, rather than is 30, days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(b) Prohibits the provider, unless the designated emergency infant care provider who takes possession of a child under this section suspects the child has been abused or neglected, from pursuing the parent who delivers the child or preventing the parent from leaving. Authorizes the parent to remain anonymous.

(c) Provides that the designated emergency infant care provider is immune from civil or criminal liability for any injury to the child that results from the provider taking possession of the child, except for an injury that results from gross negligence. Makes a conforming change.

Sec. 262.303. NOTIFICATION OF POSSESSION OF ABANDONED CHILD. Makes conforming changes.

Sec. 262.304. FILING PETITION AFTER ACCEPTING POSSESSION OF ABANDONED CHILD. Makes a conforming change.

Sec. 262.305. REPORT TO LAW ENFORCEMENT AGENCY; INVESTIGATION. (a) Requires the department, immediately after assuming care, control, and custody of a child under Section 262.303, to report the child to appropriate state and local law enforcement agencies as a potential missing child.

(b) Requires a law enforcement agency that receives a report under Subsection (a) to investigate whether the child is reported as missing.

Sec. 262.306. NOTICE. Requires each designated emergency infant care provider to post in a conspicuous location a notice stating that the provider is a designated emergency infant care provider location and will accept possession of a child in accordance with this subchapter.

Sec. 262.307. REIMBURSEMENT FOR CARE OF ABANDONED CHILD. Requires the department to reimburse a designated emergency infant care provider that takes possession of a child under Section 262.302 for the cost to the provider of assuming the care, control, and custody of the child.

SECTION 5. Amends Section 263.3025, Family Code, by adding Subsection (d), to provide that in preparing the permanency plan for a child taken into possession under Chapter 262D, the department is not required to conduct a search for or give preference to the child's relatives for purposes of permanent placement if the department does not have information concerning the child's identity or the identities of the child's parents.

SECTION 6. Amends Chapter 263E, Family Code, by adding Section 263.405, as follows:

Sec. 263.405. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR OF CERTAIN ABANDONED CHILDREN; TERMINATION OF PARENTAL RIGHTS. (a) Provides that in a suit to terminate the parent-child relationship, there is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with Chapter 262D, consents to the termination of parental rights with regard to the child.

(b) Requires a court, if a person claims to be the parent of a child taken into possession under Chapter 262D, before the court renders a final order terminating the

parental rights of the child's parents, to order genetic testing for parentage determination unless parentage has previously been established. Requires the court to hold the petition for termination of the parent-child relationship in abeyance for a period not to exceed 60 days pending the results of the genetic testing.

SECTION 7. Amends Section 22.041(h), Penal Code, to provide that it is an exception to the application of this section, rather than affirmative defense to prosecution under Subsection (b), that the actor voluntarily delivered the child to a designated emergency infant care, rather than medical services, provider under Section 262.302, rather than 262.301, Family Code.

SECTION 8. Makes application of the change in law made by Section 263.405, Family Code, as added by this Act, prospective.

SECTION 9. Makes application of the change in law made by Section 22.041(h), Penal Code, as amended by this Act, prospective.

SECTION 10. Effective date: September 1, 2001.