

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1081  
By: Burton  
Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Section 81.091, Health and Safety Code, provides a criminal penalty of a Class "B" misdemeanor for doctors, nurses, midwives, or other medical professionals attending a childbirth who fail to administer an eye ointment to prevent Ophthalmia Neonatorum—an eye disease that can lead to blindness. While there is a medical necessity to apply this preventative care in certain births, the mandatory application of the ointment on babies born to mothers with no risk factors for the disease and the imposition of a criminal penalty for failing to do so are under close scrutiny by those who question the efficacy and necessity of current law.

S.B. 1081 changes the requirement to apply the prophylaxis. Specifically, the bill removes the mandate that all infants receive the treatment by providing an "opt-out" criteria by which a mother may elect against having the treatment administered. The criteria is based on medically relevant factors related to how infants contract Ophthalmia Neonatorum. The attending health professional first determines whether the infant was delivered vaginally, as this is a major factor in contracting the illness. Second, the attending health professional will review the mother's health records or blood tests to determine whether the mother currently possesses or has a history of sexually transmitted infection. Lastly, the executive commissioner of the Health and Human Services Commission is given rulemaking authority to add new criteria to the opt-out screening. If two or more of the criteria are in the affirmative, the mother may not opt-out. S.B. 1081 also removes the criminal penalty for attending health professionals who do not apply a prophylaxis.

S.B. 1081 respects the right of mothers to choose the healthcare of her infant. Under this change, infants will not be unnecessarily administered a prophylaxis against a disease they have no risk to contract.

As proposed, S.B. 1081 amends current law relating to the administration of prophylaxis to prevent ophthalmia neonatorum.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 81.0911, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 81.091, Health and Safety Code, to read as follows:

Sec. 81.091. OPHTHALMIA NEONATORUM PREVENTION.

SECTION 2. Amends Section 81.091, Health and Safety Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Creates an exception under Subsection (a-1).

(a-1) Provides that administration of prophylaxis is not required for an infant whose parent, managing conservator, or guardian does not consent to the administration of prophylaxis after a person described in Subsection (a) (relating to requiring certain

persons in attendance at childbirth to use or cause to be used prophylaxis to prevent ophthalmia neonatorum) performs the screening assessment under Section 81.0911 and determines the prophylaxis is not required based on the results of the assessment.

SECTION 3. Amends Subchapter E, Chapter 81, Health and Safety Code, by adding Section 81.0911, as follows:

Sec. 81.0911. OPTHALMIA NEONATORUM: PROPHYLAXIS SCREENING. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), by rule, to adopt a screening assessment to determine whether the administration of prophylaxis to prevent ophthalmia neonatorum is required under Section 81.091 (Ophthalmia Neonatorum Prevention; Criminal Penalty).

(b) Requires the screening assessment to include an examination of:

(1) whether the infant was delivered vaginally;

(2) whether the mother of the infant recently tested positive for a sexually transmitted infection (STI) known to cause ophthalmia neonatorum, or has a history of an STI or other disease known to cause ophthalmia neonatorum; and

(3) other criteria determined necessary by the executive commissioner.

SECTION 4. Repealer: Section 81.091(g) (relating to an offense committed by certain persons who fail to perform certain duties required by this section), Health and Safety Code.

SECTION 5. Requires the executive commissioner to, not later than January 1, 2018, adopt the screening assessment required by Section 81.0911, Health and Safety Code, as added by this Act.

SECTION 6. Provides that the repeal by this Act of Section 81.091(g), Health and Safety Code, does not apply to an offense committed before the effective date of the repeal. Provides that an offense committed before the effective date of the repeal is governed by the law as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of the repeal if any element of the offense occurred before that date.

SECTION 7. Effective date: September 1, 2017.