

SENATE BILL 1065

By Marrero B

AN ACT to amend Tennessee Code Annotated, Title 68,
relative to testing for certain substances in
pregnant women.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 5, is amended by adding
Section 2 of this act as a new part thereto.

SECTION 2.

(a) The general assembly declares that, as a matter of public policy of this state and in the interest of public health, pregnant women who abuse alcohol and drugs pose a risk to their unborn children. Pregnant women who meet certain criteria, as determined by the department, through rules and regulations duly promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall be tested for alcohol and drugs in order to encourage them to seek immediate treatment for an alcohol-related or drug-related problem.

(b) If the department levies a fee or charge for the cost of testing, it shall use the same billing and collection methods normally used by independent private laboratories. Any fee shall be waived for patients who are unable to pay.

(c) The department, in promulgating rules to implement this act, shall consider the following as indications of the necessity for alcohol or drug testing:

- (1) No prenatal care;
- (2) Late prenatal care after twenty-four (24) weeks gestation;
- (3) Incomplete prenatal care;
- (4) Abruption of the placenta;

(5) Intrauterine fetal death;

(6) Preterm labor of no obvious cause;

(7) Intrauterine growth retardation of no obvious cause;

(8) Previously known alcohol or drug abuse; or

(9) Unexplained congenital anomalies.

(d) The commissioner of health is authorized to adopt rules, using criteria established by the United States department of health and human services as guidelines for modeling the drug and alcohol testing program pursuant to this act, concerning, but not limited to:

(1) Standards for licensing drug and alcohol testing laboratories and suspension and revocation of the licenses;

(2) Body specimens and minimum specimen amounts that are appropriate for drug or alcohol testing;

(3) Methods of analysis and procedures to ensure reliable drug or alcohol testing results, including the use of breathalyzers and standards for initial tests and confirmation tests;

(4) Minimum cut-off detection levels for alcohol, each drug or metabolites of the drug for the purposes of determining a positive test result;

(5) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens tested; and

(6) Retention, storage and transportation procedures to ensure reliable results on confirmation tests and retests.

(e) Prior to acting on the proposed rules to implement this chapter, the commissioner shall submit the proposed rules to the house health and human resources and the senate general welfare committees of the general assembly for their review and comment. The

committees shall have forty-five (45) days to review the proposed rules and transmit any comment it may have to the commissioner.

(f) Any woman who tests positive for alcohol or drugs on a test administered pursuant to this chapter shall be referred to treatment for an alcohol-related or drug-related problem. Every physician, surgeon or other person permitted by law to attend a pregnant woman during gestation shall report each woman who refuses to seek treatment for an alcohol-related or drug-related problem or who misses two (2) or more appointments to the department of children's services. Such reports shall be in a manner specified by the department, either by contacting a local representative of the department or by utilizing the department's centralized intake procedure, where applicable.

(g) A health care provider who makes a report of alcohol or drug abuse, as required by subsection (f), shall not be liable in any civil or criminal action that is based solely upon such report.

(h) Nothing in this section shall be construed to confer any immunity upon a health care provider for a criminal or civil action arising out of the treatment of a woman about whom the report of alcohol or drug abuse was made.

(i) All information, interviews, reports, statements, memoranda and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except in accordance with this section.

(j) Laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of the information under any other circumstance is authorized solely pursuant to a written consent form signed

voluntarily by the person tested, unless the release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

- (1) The name of the person who is authorized to obtain the information;
- (2) The purpose of the disclosure;
- (3) The precise information to be disclosed;
- (4) The duration of the consent; and
- (5) The signature of the person authorizing release of the information.

(k) Information on drug or alcohol test results for tests administered pursuant to this act shall not be released or used in any criminal proceeding against the woman who was subject to the test. Information released contrary to this section is inadmissible as evidence in the criminal proceeding.

SECTION 3. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2010, the public welfare requiring it.