

By: Morrison, Bonnen of Galveston,
King of Parker, Krause, Simmons, et al.

H.B. No. 3994

A BILL TO BE ENTITLED

AN ACT

relating to notice of and consent to an abortion for a minor and
associated requirements; amending provisions subject to a criminal
penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 33, Family Code, is
amended to read as follows:

CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

SECTION 2. Sections 33.002(a), (e), (f), (h), and (i),
Family Code, are amended to read as follows:

(a) A physician may not perform an abortion on a pregnant
unemancipated minor unless:

(1) the physician performing the abortion gives at
least 48 hours actual notice, in person or by telephone, of the
physician's intent to perform the abortion to:

(A) a parent of the minor, if the minor has no
managing conservator or guardian; or

(B) a court-appointed managing conservator or
guardian;

(2) the physician performing the abortion receives a
certificate or order issued by a court under Section 33.003 or
33.004 ~~[judge of a court having probate jurisdiction, the judge of a
county court at law, the judge of a district court, including a
family district court, or a court of appellate jurisdiction issues~~

1 ~~an order~~] authorizing the minor to consent to the abortion as
2 provided by Section 33.003 or 33.004; or

3 (3) ~~[a probate court, county court at law, district~~
4 ~~court, including a family district court, or court of appeals, by~~
5 ~~its inaction, constructively authorizes the minor to consent to the~~
6 ~~abortion as provided by Section 33.003 or 33.004, or~~

7 ~~[(4)]~~ the physician performing the abortion:

8 (A) concludes that on the basis of the
9 physician's good faith clinical judgment, a condition exists that
10 complicates the medical condition of the pregnant minor and
11 necessitates the immediate abortion of her pregnancy to avert her
12 death or to avoid a serious risk of substantial and irreversible
13 impairment of a major bodily function; and

14 (B) certifies in writing to the ~~[Texas]~~
15 Department of State Health Services and in the patient's medical
16 record the medical indications supporting the physician's judgment
17 that the circumstances described by Paragraph (A) exist.

18 (e) The ~~[Texas]~~ Department of State Health Services shall
19 prepare a form to be used for making the certification required by
20 Subsection (a)(3) ~~[(a)(4)]~~.

21 (f) A certification required by Subsection (a)(3) ~~[(a)(4)]~~
22 is confidential and privileged and is not subject to disclosure
23 under Chapter 552, Government Code, or to discovery, subpoena, or
24 other legal process. Personal or identifying information about the
25 minor, including her name, address, or social security number, may
26 not be included in a certification under Subsection (a)(3)
27 ~~[(a)(4)]~~. The physician must keep the medical records on the minor

1 in compliance with the rules adopted by the Texas [~~State Board of~~
2 Medical Board [~~Examiners~~] under Section 153.003, Occupations Code.

3 (h) A physician shall presume that a pregnant woman is a
4 minor unless the woman presents a valid governmental record of
5 identification showing that she has reached the age of majority. It
6 is a defense to prosecution under this section that the minor
7 falsely represented her age or identity to the physician to be at
8 least 18 years of age by displaying an apparently valid
9 governmental record of identification such that a reasonable person
10 under similar circumstances would have relied on the
11 representation. The defense does not apply if the physician is
12 shown to have had independent knowledge of the minor's actual age or
13 identity or failed to use due diligence in determining the minor's
14 age or identity. In this subsection, "defense" has the meaning and
15 application assigned by Section 2.03, Penal Code.

16 (i) In relation to the trial of an offense under this
17 section in which the conduct charged involves a conclusion made by
18 the physician under Subsection (a)(3) [~~(a)(4)~~], the defendant may
19 seek a hearing before the Texas [~~State Board of~~] Medical Board
20 [~~Examiners~~] on whether the physician's conduct was necessary to
21 avert the death of the minor or to avoid a serious risk of
22 substantial and irreversible impairment of a major bodily function.
23 The findings of the Texas [~~State Board of~~] Medical Board
24 [~~Examiners~~] under this subsection are admissible on that issue in
25 the trial of the defendant. Notwithstanding any other reason for a
26 continuance provided under the Code of Criminal Procedure or other
27 law, on motion of the defendant, the court shall delay the beginning

of the trial for not more than 30 days to permit a hearing under this subsection to take place.

SECTION 3. Chapter 33, Family Code, is amended by adding Section 33.0021 to read as follows:

Sec. 33.0021. CONSENT REQUIRED. A physician may not perform an abortion in violation of Section 164.052(a)(19), Occupations Code.

SECTION 4. Section 33.003, Family Code, is amended by amending Subsections (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) and adding Subsections (g-1), (i-1), (i-2), (i-3), (l-1), (l-2), (o), (p), (q), and (r) to read as follows:

(a) A pregnant minor ~~[who wishes to have an abortion without notification to one of her parents, her managing conservator, or her guardian]~~ may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to and consent ~~[either]~~ of ~~[her parents or]~~ a parent, managing conservator, or guardian.

(b) The application must ~~[may]~~ be filed in:

(1) a [any] county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence;

(2) if the minor's county of residence has a population of less than 10,000:

(A) a court described by Subdivision (1);

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a neighboring county; or

1 (C) a county court at law, court having probate
2 jurisdiction, or district court, including a family district court,
3 in the county in which the facility at which the minor intends to
4 obtain the abortion is located; or

5 (3) a county court at law, court having probate
6 jurisdiction, or district court, including a family district court,
7 in the county in which the facility at which the minor intends to
8 obtain the abortion is located, if the minor is not a resident of
9 this state.

10 (c) The application must be made under oath and include:

11 (1) a statement that the minor is pregnant;

12 (2) a statement that the minor is unmarried, is under
13 18 years of age, and has not had her disabilities removed under
14 Chapter 31;

15 (3) a statement that the minor wishes to have an
16 abortion without the notification to and consent of ~~[either of her~~
17 ~~parents or]~~ a parent, managing conservator, or guardian; [and]

18 (4) a statement as to whether the minor has retained an
19 attorney and, if she has retained an attorney, the name, address,
20 and telephone number of her attorney; and

21 (5) a statement about the minor's current residence,
22 including the minor's physical address, mailing address, and
23 telephone number.

24 (e) The court shall appoint a guardian ad litem for the
25 minor who shall represent the best interest of the minor. If the
26 minor has not retained an attorney, the court shall appoint an
27 attorney to represent the minor. The ~~[If the]~~ guardian ad litem may

1 not also ~~[is an attorney admitted to the practice of law in this~~
2 ~~state, the court may appoint the guardian ad litem to]~~ serve as the
3 minor's attorney ad litem.

4 (g) The court shall fix a time for a hearing on an
5 application filed under Subsection (a) and shall keep a record of
6 all testimony and other oral proceedings in the action. ~~[The court~~
7 ~~shall enter judgment on the application immediately after the~~
8 ~~hearing is concluded.]~~

9 (g-1) The pregnant minor must appear before the court in
10 person and may not appear using videoconferencing, telephone
11 conferencing, or other remote electronic means.

12 (h) The court shall rule on an application submitted under
13 this section and shall issue written findings of fact and
14 conclusions of law not later than 5 p.m. on the fifth ~~[second]~~
15 business day after the date the application is filed with the court.
16 On request by the minor, the court shall grant an extension of the
17 period specified by this subsection. If a request for an extension
18 is made, the court shall rule on an application and shall issue
19 written findings of fact and conclusions of law not later than 5
20 p.m. on the fifth ~~[second]~~ business day after the date the minor
21 states she is ready to proceed to hearing. If the court fails to
22 rule on the application and issue written findings of fact and
23 conclusions of law within the period specified by this subsection,
24 the application is deemed to be denied ~~[granted and the physician~~
25 ~~may perform the abortion as if the court had issued an order~~
26 ~~authorizing the minor to consent to the performance of the abortion~~
27 ~~without notification under Section 33.002]~~. If the court

authorizes the minor to consent to the abortion under this subsection, the court clerk shall issue to the physician who is to perform the abortion a certificate showing that the court granted the application. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly, regardless of whether the minor is granted an extension under this subsection.

(i) The court shall determine by clear and convincing ~~[a preponderance of the]~~ evidence, as described by Section 101.007, whether the minor has overcome the presumption that notifying and requesting consent from a parent, managing conservator, or guardian is in the minor's best interest. In making a determination under this subsection, the court shall consider:

(1) whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, ~~[either of her parents or a]~~ managing conservator, or guardian;

(2) ~~[7]~~ whether the abortion ~~[notification]~~ would ~~[not]~~ be in the best interest of the minor; and

(3) ~~[7, or]~~ whether notification or the attempt to obtain consent may lead to physical, sexual, or emotional abuse of the minor, as described by Section 261.001.

(i-1) In determining whether the minor meets the requirements of Subsection (i)(1), the court shall consider the experience, perspective, and judgment of the minor. The court may consider all relevant factors, including:

(1) the minor's age;

1 (2) the minor's life experiences, such as working,
2 traveling independently, or managing her own financial affairs;

3 (3) steps taken by the minor to explore her options and
4 the consequences of those options; and

5 (4) the minor's decision not to notify and obtain
6 consent from a parent, managing conservator, or guardian.

7 (i-2) In determining whether the abortion is in the best
8 interest of the minor, the court may:

9 (1) inquire as to the minor's reasons for seeking an
10 abortion;

11 (2) consider the degree to which the minor is informed
12 about the state-published informational materials described by
13 Chapter 171, Health and Safety Code; and

14 (3) require the minor to be evaluated by a licensed
15 mental health counselor, who shall return the evaluation to the
16 court for review within three business days.

17 (i-3) If the court finds that the minor is mature and
18 sufficiently well informed, that the abortion ~~[notification]~~ would
19 ~~[not]~~ be in the minor's best interest, or that notification or the
20 attempt to obtain consent may lead to physical, sexual, or
21 emotional abuse of the minor, the court shall enter an order
22 authorizing the minor to consent to the performance of the abortion
23 without notification to and consent of a parent, ~~[either of her~~
24 ~~parents or a]~~ managing conservator, or guardian and shall execute
25 the required forms.

26 (j) If the court finds that the minor does not meet the
27 requirements of Subsection (i-3) ~~[(i-1)]~~, the court may not authorize

1 the minor to consent to an abortion without the notification
2 authorized under Section 33.002(a)(1) and consent under Section
3 33.0021.

4 (k) The court may not notify a parent, managing conservator,
5 or guardian that the minor is pregnant or that the minor wants to
6 have an abortion. The court proceedings shall be conducted in a
7 manner that protects the anonymity of the minor. The application
8 and all other court documents pertaining to the proceedings are
9 confidential and privileged and are not subject to disclosure under
10 Chapter 552, Government Code, or to discovery, subpoena, or other
11 legal process. The minor may file the application using a pseudonym
12 or using only her initials. Confidential records pertaining to a
13 minor under this subsection may be disclosed to the minor.

14 (l) An order of the court issued under this section is
15 confidential and privileged and is not subject to disclosure under
16 Chapter 552, Government Code, or discovery, subpoena, or other
17 legal process. The order may not be released to any person but the
18 pregnant minor, the pregnant minor's guardian ad litem, the
19 pregnant minor's attorney, the physician who is to perform the
20 abortion, another person designated to receive the order by the
21 minor, or a governmental agency or attorney in a criminal or
22 administrative action seeking to assert or protect the interest of
23 the minor. The supreme court may adopt rules to permit confidential
24 docketing of an application under this section.

25 (l-1) The clerk of the court, at intervals prescribed by the
26 Office of Court Administration of the Texas Judicial System, shall
27 submit a report to the office that includes, for each case filed

under this section:

(1) the case number and style;

(2) the applicant's county of residence;

(3) the court of appeals district in which the proceeding occurred;

(4) the date of filing;

(5) the date of disposition; and

(6) the disposition of the case.

(1-2) The Office of Court Administration of the Texas Judicial System shall annually compile and publish a report aggregating the data received under Subsections (1-1)(2), (3), and (6). A report under this subsection must protect the anonymity of all minors and judges that are the subject of the report.

(o) A minor who has filed an application under this section may not withdraw or otherwise non-suit her application without the permission of the court.

(p) Except as otherwise provided by Subsection (q), a minor who has filed an application and has obtained a determination by the court as described by Subsection (i) may not initiate a new application proceeding and the prior proceeding is res judicata of the issue relating to the determination of whether the minor may or may not be authorized to consent to the performance of an abortion without the consent of and notification to a parent, managing conservator, or guardian.

(q) A minor whose application is denied may subsequently submit an application to the court that denied the application if the minor shows that there has been a material change in

1 circumstances since the time the court denied the application.

2 (r) An attorney retained by the minor to assist her in
3 filing an application under this section shall fully inform himself
4 or herself of the minor's prior application history, including the
5 representations made by the minor in the application regarding her
6 address, proper venue in the county in which the application is
7 filed, and whether a prior application has been filed and
8 initiated. If an attorney assists the minor in the application
9 process in any way, with or without payment, the attorney
10 representing the minor must attest to the truth of the minor's
11 claims regarding the venue and prior applications in a sworn
12 statement.

13 SECTION 5. Section 33.004, Family Code, is amended by
14 amending Subsection (b) and adding Subsection (c-1) to read as
15 follows:

16 (b) The court of appeals shall rule on an appeal under this
17 section not later than 5 p.m. on the fifth ~~[second]~~ business day
18 after the date the notice of appeal is filed with the court that
19 denied the application. On request by the minor, the court shall
20 grant an extension of the period specified by this subsection. If a
21 request for an extension is made, the court shall rule on the appeal
22 not later than 5 p.m. on the fifth ~~[second]~~ business day after the
23 date the minor states she is ready to proceed. If the court of
24 appeals fails to rule on the appeal within the period specified by
25 this subsection, the appeal is deemed to be denied ~~[granted and the~~
26 ~~physician may perform the abortion as if the court had issued an~~
27 ~~order authorizing the minor to consent to the performance of the~~

1 ~~abortion without notification under Section 33.002~~]. If the court
2 authorizes the minor to consent to the abortion under this
3 subsection, the court clerk shall issue to the physician who is to
4 perform the abortion a certificate showing that the court granted
5 the application. Proceedings under this section shall be given
6 precedence over other pending matters to the extent necessary to
7 assure that the court reaches a decision promptly, regardless of
8 whether the minor is granted an extension under this subsection.

9 (c-1) Notwithstanding Subsection (c), the court of appeals
10 may publish an opinion relating to a ruling under this section if
11 the opinion is written in a way to preserve the confidentiality of
12 the identity of the pregnant minor.

13 SECTION 6. Chapter 33, Family Code, is amended by adding
14 Section 33.0065 to read as follows:

15 Sec. 33.0065. RECORDS. The clerk of the court shall retain
16 the records for each case before the court under this chapter in
17 accordance with rules for civil cases and grant access to the
18 records to the minor who is the subject of the proceeding.

19 SECTION 7. Section 33.008, Family Code, is amended to read
20 as follows:

21 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
22 INVESTIGATION AND ASSISTANCE. (a) If a minor claims to have been
23 physically or sexually abused or a [A] physician or physician's
24 agent [who] has reason to believe that a minor has been [or may be]
25 physically or sexually abused [by a person responsible for the
26 minor's care, custody, or welfare, as that term is defined by
27 Section 261.001], the physician or physician's agent shall

1 immediately report the suspected abuse and the name of the abuser to
 2 the Department of Family and Protective Services and to a local law
 3 enforcement agency and shall refer the minor to the department for
 4 services or intervention that may be in the best interest of the
 5 minor. The local law enforcement agency shall respond and shall
 6 write a report within 24 hours of being notified of the alleged
 7 abuse. A report shall be made regardless of whether the local law
 8 enforcement agency knows or suspects that a report about the abuse
 9 may have previously been made.

10 (b) The appropriate local law enforcement agency and the
 11 Department of Family and Protective Services shall investigate
 12 suspected abuse reported under this section and, if warranted
 13 [appropriate], shall refer the case to the appropriate prosecuting
 14 authority ~~[assist the minor in making an application with a court~~
 15 ~~under Section 33.003]~~.

16 (c) When the local law enforcement agency responds to the
 17 report of physical or sexual abuse as required by Subsection (a), a
 18 law enforcement officer or appropriate agent from the Department of
 19 Family and Protective Services may take emergency possession of the
 20 minor without a court order to protect the health and safety of the
 21 minor as described by Chapter 262.

22 SECTION 8. Chapter 33, Family Code, is amended by adding
 23 Section 33.0085 to read as follows:

24 Sec. 33.0085. DUTY OF JUDGE OR JUSTICE TO REPORT ABUSE OF
 25 MINOR. (a) Notwithstanding any other law, a judge or justice who,
 26 as a result of court proceedings conducted under Section 33.003 or
 27 33.004, has reason to believe that a minor has been or may be

physically or sexually abused shall:

(1) immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency; and

(2) refer the minor to the department for services or intervention that may be in the best interest of the minor.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

SECTION 9. Section 33.010, Family Code, is amended to read as follows:

Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other law, information obtained by the Department of Family and Protective Services or another entity under Section 33.008, 33.0085, or 33.009 is confidential except to the extent necessary to prove a violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

SECTION 10. (a) Section 33.002, Family Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) Sections 33.003 and 33.004, Family Code, as amended by

1 this Act, apply only to a petition filed on or after the effective
2 date of this Act. A petition filed before the effective date of
3 this Act is governed by the law in effect on the date the petition
4 was filed, and the former law is continued in effect for that
5 purpose.

6 (c) The Office of Court Administration of the Texas Judicial
7 System is not required to publish the initial report under Section
8 33.003(1-2), Family Code, as added by this Act, before January 1,
9 2017.

10 SECTION 11. Every provision in this Act and every
11 application of the provisions in this Act are severable from each
12 other. If any application of any provision in this Act to any
13 person or group of persons or circumstances is found by a court to
14 be invalid, the remainder of this Act and the application of the
15 Act's provisions to all other persons and circumstances may not be
16 affected. All constitutionally valid applications of this Act
17 shall be severed from any applications that a court finds to be
18 invalid, leaving the valid applications in force, because it is the
19 legislature's intent and priority that the valid applications be
20 allowed to stand alone. Even if a reviewing court finds a provision
21 of this Act invalid in a large or substantial fraction of relevant
22 cases, the remaining valid applications shall be severed and
23 allowed to remain in force.

24 SECTION 12. This Act takes effect January 1, 2016.