

BILL ANALYSIS

C.S.H.B. 945
By: King
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law requires parental notification at least 48 hours before an abortion procedure is to be performed on a minor, and also provides certain exceptions to the notification requirement. This notification process was designed to be minimally intrusive. However, instances have arisen which demonstrate lack of compliance with current law. Since abortion patients can be subject to health risks, it can be argued that parental consent should serve as the normal standard of care for minors, consistent with the standard for other potentially risky medical procedures. The purpose of C.S.H.B. 945 is to require, with limited exceptions, the consent of a parent, managing conservator, or court-appointed guardian in order for an abortion to be performed on a minor, and to require applications for a judicial waiver of this requirement to be subject to a stricter burden of proof.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly delegated to the Texas Supreme Court in SECTION 10 of this bill.

ANALYSIS

C.S.H.B. 945 amends Section 33.001 of the Family Code by adding a definition of “clear and convincing evidence.”

C.S.H.B. 945 amends Section 33.002 of the Family Code to require, with limited exceptions, the consent of a parent, managing conservator, or court-appointed guardian for a minor seeking an abortion. Consent is to be in the form of a written affidavit, with verification of identity. The affidavit and a copy of the document used to verify identity must be retained in the physician’s files. The bill provides that a physician who performs an abortion in violation of this section may receive a license suspension for one year, and that complaints and investigations shall be conducted in accordance with Chapters 154 and 164, Occupations Code.

C.S.H.B. 945 provides that a physician who has not received the consent of the parent, managing conservator, or court-appointed guardian is authorized to perform an abortion if the physician concludes that the pregnant minor is in jeopardy of serious, irreversible impairment or death, and there is insufficient time to obtain the requisite consent.

C.S.H.B. 945 amends Section 33.003 of the Family Code to provide that a pregnant minor who wishes to have an abortion without the requisite consent must apply for a judicial waiver. The court must appoint a guardian ad litem for the applicant minor who shall represent the best interests of the minor. In ruling on the application, the court must use a “clear and convincing evidence” standard in determining whether the minor applicant is mature and sufficiently well informed to make the decision to have an abortion without the requisite consent, and whether requiring that consent would not be in the best interest of the minor or may lead to abuse.

C.S.H.B. 945 makes additional conforming changes, consistent with the purposes of the bill, including changing references to the notification requirements in current law to consent requirements.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003. The Act applies only to an abortion performed on or after the 90th day after the effective date of the Act.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds a definition of “clear and convincing evidence.”

The substitute makes suspension of a physician’s license for a violation of Section 33.002, Family Code, discretionary with the Texas State Board of Medical Examiners. The original bill made a one-year license suspension mandatory.

The original bill required the application for a judicial waiver to be filed in an appropriate court in the county in which the minor resides. The substitute does not change the venue provision in current law, which allows the application to be filed in an appropriate court anywhere in the state.

The substitute requires the court to appoint a guardian ad litem for the applicant minor who shall represent the best interests of the minor. The original bill does not include an analogous provision.

The substitute provides that the court shall enter an order authorizing an abortion to be performed on a minor without the requisite consent if the court finds that the minor is mature and sufficiently well informed and that requiring consent would not be in the minor’s best interest or may lead to abuse. The original bill provided that the court shall enter such an order if the court finds that the minor is mature and sufficiently well informed, that requiring consent would not be in the minor’s best interest, or that requiring consent may lead to abuse.

The substitute provides that proceedings relating to a judicial waiver 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 of the period specified by subsection (h) of Section 33.002, Family Code or by subsection (b) of Section 33.004, Family Code. The original bill does not include analogous provisions.

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