

By: King, Hupp, et al.

H.B. No. 945

Substitute the following for H.B. No. 945:

By: Goodman

C.S.H.B. No. 945

A BILL TO BE ENTITLED

AN ACT

relating to parental consent to abortion.

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

SECTION 1. SECTION 1. Section 33.001, Family Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Clear and convincing evidence" has the meaning assigned by Section 101.007.

SECTION 2. Section 33.002, Family Code, is amended by amending Subsection (a) and adding Subsections (j) and (k) to read as follows:

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

(1) a parent, managing conservator, or court-appointed guardian of the minor consents in a written affidavit to the abortion and submits a valid governmental record of identification to verify the identity of the parent, managing conservator, or court-appointed guardian [~~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 judge of a court having probate jurisdiction,

1 the judge of a county court at law, the judge of a district court,
2 including a family district court, or a court of appellate
3 jurisdiction issues an order authorizing the minor to consent to
4 the abortion as provided by Section 33.003 or 33.004;

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

9 (4) the physician performing the abortion:

10 (A) concludes that on the basis of the
11 physician's good faith clinical judgment, a condition exists that
12 complicates the medical condition of the pregnant minor and
13 necessitates the immediate abortion of her pregnancy to avert her
14 death or to avoid a serious risk of substantial and irreversible
15 impairment of a major bodily function and that there is
16 insufficient time to obtain the consent required by Subdivision
17 (1); and

18 (B) certifies in writing to the Texas Department
19 of Health and in the patient's medical record the medical
20 indications supporting the physician's judgment that the
21 circumstances described by Paragraph (A) exist.

22 (j) A physician who performs an abortion with the consent
23 required by Subsection (a)(1) shall retain in the physician's files
24 the written affidavit of the parent, managing conservator, or
25 guardian and a copy of the identification submitted by the parent,
26 managing conservator, or guardian.

27 (k) The Texas State Board of Medical Examiners may suspend

1 for one year the license of a physician who performs an abortion in
2 violation of this section. Complaints and investigations under
3 this subsection shall be conducted in accordance with Chapters 154
4 and 164, Occupations Code.

5 SECTION 3. The heading to Section 33.002, Family Code, is
6 amended to read as follows:

7 Sec. 33.002. PARENTAL CONSENT [~~NOTICE~~].

8 SECTION 4. Sections 33.003(a), (c), (e), (h), (i), and (j),
9 Family Code, are amended to read as follows:

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

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

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

18 (2) a statement that the minor is unmarried, is under
19 18 years of age, and has not had her disabilities removed under
20 Chapter 31;

21 (3) a statement that the minor wishes to have an
22 abortion without the consent [~~notification~~] of either of her
23 parents or a managing conservator or guardian; and

24 (4) a statement as to whether the minor has retained an
25 attorney and, if she has retained an attorney, the name, address,
26 and telephone number of her attorney.

27 (e) The court shall appoint a guardian ad litem for the

1 applicant minor who shall represent the best interests of the
2 minor. If the minor has not retained an attorney, the court shall
3 appoint an attorney to represent the minor. If the guardian ad
4 litem is an attorney admitted to the practice of law in this state,
5 the court may appoint the guardian ad litem to serve as the minor's
6 attorney.

7 (h) The court shall rule on an application submitted under
8 this section and shall issue written findings of fact and
9 conclusions of law not later than 5 p.m. on the second business day
10 after the date the application is filed with the court. On request
11 by the minor, the court shall grant an extension of the period
12 specified by this subsection. If a request for an extension is
13 made, the court shall rule on an application and shall issue written
14 findings of fact and conclusions of law not later than 5 p.m. on the
15 second business day after the date the minor states she is ready to
16 proceed to hearing. If the court fails to rule on the application
17 and issue written findings of fact and conclusions of law within the
18 period specified by this subsection, the application is deemed to
19 be granted and the physician may perform the abortion as if the
20 court had issued an order authorizing the minor to consent to the
21 performance of the abortion without the consent required
22 ~~[notification]~~ under Section 33.002. Proceedings under this
23 section shall be given precedence over other pending matters to the
24 extent necessary to assure that the court reaches a decision
25 promptly regardless of whether the minor is granted an extension
26 under this subsection.

27 (i) The court shall determine by clear and convincing [a

1 ~~preponderance of the~~ evidence whether the minor is mature and
2 sufficiently well informed to make the decision to have an abortion
3 performed without the consent of ~~[notification to]~~ either of her
4 parents or a managing conservator or guardian and~~[]~~ whether
5 requiring that consent ~~[notification]~~ would not be in the best
6 interest of the minor~~[]~~ or ~~[whether notification]~~ may lead to
7 ~~[physical, sexual, or emotional]~~ abuse, as that term is defined by
8 Section 261.001, of the minor. If the court finds that the minor is
9 mature and sufficiently well informed and~~[]~~ that requiring consent
10 ~~[notification]~~ would not be in the minor's best interest~~[]~~ or
11 ~~[that notification]~~ may lead to ~~[physical, sexual, or emotional]~~
12 abuse, as that term is defined by Section 261.001, of the minor, the
13 court shall enter an order authorizing the minor to consent to the
14 performance of the abortion without consent of ~~[notification to]~~
15 either of her parents or a managing conservator or guardian and
16 shall execute the required forms.

17 (j) If the court finds that the minor does not meet the
18 requirements of Subsection (i), the court may not authorize the
19 minor to consent to an abortion without the consent required
20 ~~[notification authorized]~~ under Section 33.002(a)(1).

21 SECTION 5. Sections 33.004(b) and (f), Family Code, are
22 amended to read as follows:

23 (b) The court of appeals shall rule on an appeal under this
24 section not later than 5 p.m. on the second business day after the
25 date the notice of appeal is filed with the court that denied the
26 application. On request by the minor, the court shall grant an
27 extension of the period specified by this subsection. If a request

1 for an extension is made, the court shall rule on the appeal not
2 later than 5 p.m. on the second business day after the date the
3 minor states she is ready to proceed. If the court of appeals fails
4 to rule on the appeal within the period specified by this
5 subsection, the appeal is deemed to be granted and the physician may
6 perform the abortion as if the court had issued an order authorizing
7 the minor to consent to the performance of the abortion without the
8 consent required [notification] under Section 33.002. Proceedings
9 under this section shall be given precedence over other pending
10 matters to the extent necessary to assure that the court reaches a
11 decision promptly regardless of whether the minor is granted an
12 extension under this section.

13 (f) An expedited confidential appeal shall be available to
14 any pregnant minor to whom a court of appeals denies an order
15 authorizing the minor to consent to the performance of an abortion
16 without consent of [notification to] either of her parents or a
17 managing conservator or guardian.

18 SECTION 6. The heading to Chapter 33, Family Code, is
19 amended to read as follows:

20 CHAPTER 33. CONSENT TO [NOTICE OF] ABORTION

21 SECTION 7. The following sections of the Family Code are
22 repealed:

23 (1) Sections 33.002(b), (c), and (d); and

24 (2) Section 33.005.

25 SECTION 8. Chapter 33, Family Code, as amended by this Act,
26 applies only to an abortion performed on or after the 90th day after
27 the effective date of this Act. An abortion performed before that

1 day is governed by the law as it existed immediately before the
2 effective date of this Act, and that law is continued in effect for
3 that purpose.

4 SECTION 9. The Texas Department of Health shall amend the
5 form to be used under Section 33.002(a)(4), Family Code, to conform
6 to that section as amended by this Act, not later than the 60th day
7 after the effective date of this Act.

8 SECTION 10. The Texas Supreme Court shall promptly issue
9 any rules necessary to conform to the change in law made by this
10 Act.

11 SECTION 11. The clerk of the Texas Supreme Court shall amend
12 the application form and notice of appeal form to be used under
13 Sections 33.003 and 33.004, Family Code, to conform to those
14 sections as amended by this Act, not later than the 60th day after
15 the effective date of this Act.

16 SECTION 12. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas
19 Constitution. If this Act does not receive the vote necessary for
20 immediate effect, this Act takes effect September 1, 2003.