

By: King

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 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, 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 an order authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004;

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

5           (4) the physician performing the abortion:

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

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

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

23           (k) The Texas State Board of Medical Examiners shall suspend  
24 for one year the license of a physician who performs an abortion in  
25 violation of this section. Complaints and investigations under this  
26 subsection shall be conducted in accordance with Chapters 154 and  
27 164, Occupations Code.

1 SECTION 2. The heading to Section 33.002, Family Code, is  
2 amended to read as follows:

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

4 SECTION 3. Sections 33.003(a), (b), (c), (h), (i), and (j),  
5 Family Code, are amended to read as follows:

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

12 (b) The application may be filed in the [~~any~~] county court  
13 at law, court having probate jurisdiction, or district court,  
14 including a family district court, for the county in which the minor  
15 resides [~~in this state~~].

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 (h) The court shall rule on an application submitted under

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

19 (i) The court shall determine by clear and convincing ~~[a~~  
20 ~~preponderance of the]~~ evidence whether the minor is mature and  
21 sufficiently well informed to make the decision to have an abortion  
22 performed without the consent of ~~[notification to]~~ either of her  
23 parents or a managing conservator or guardian, whether requiring  
24 that consent ~~[notification]~~ would not be in the best interest of the  
25 minor, or whether requiring that consent ~~[notification]~~ may lead to  
26 ~~[physical, sexual, or emotional]~~ abuse, as that term is defined by  
27 Section 261.001, of the minor. If the court finds that the minor is

1 mature and sufficiently well informed, that requiring consent  
2 [~~notification~~] would not be in the minor's best interest, or that  
3 requiring consent [~~notification~~] may lead to [~~physical, sexual, or~~  
4 ~~emotional~~] abuse, as that term is defined by Section 261.001, of the  
5 minor, the court shall enter an order authorizing the minor to  
6 consent to the performance of the abortion without consent of  
7 [~~notification to~~] either of her parents or a managing conservator  
8 or guardian and shall execute the required forms.

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

13 SECTION 4. Sections 33.004(b) and (f), Family Code, are  
14 amended to read as follows:

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

1 under this section shall be given precedence over other pending  
2 matters to the extent necessary to assure that the court reaches a  
3 decision promptly.

4 (f) An expedited confidential appeal shall be available to  
5 any pregnant minor to whom a court of appeals denies an order  
6 authorizing the minor to consent to the performance of an abortion  
7 without consent of [~~notification to~~] either of her parents or a  
8 managing conservator or guardian.

9 SECTION 5. The heading to Chapter 33, Family Code, is  
10 amended to read as follows:

11 CHAPTER 33. CONSENT TO [~~NOTICE OF~~] ABORTION

12 SECTION 6. The following sections of the Family Code are  
13 repealed:

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

15 (2) Section 33.005.

16 SECTION 7. Chapter 33, Family Code, as amended by this Act,  
17 applies only to an abortion performed on or after the 90th day after  
18 the effective date of this Act. An abortion performed before that  
19 day is governed by the law as it existed immediately before the  
20 effective date of this Act, and that law is continued in effect for  
21 that purpose.

22 SECTION 8. The Texas Department of Health shall amend the  
23 form to be used under Section 33.002(a)(4), Family Code, to conform  
24 to that section as amended by this Act, not later than the 60th day  
25 after the effective date of this Act.

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

1           SECTION 10. The clerk of the Texas Supreme Court shall amend  
2 the application form and notice of appeal form to be used under  
3 Sections 33.003 and 33.004, Family Code, to conform to those  
4 sections as amended by this Act, not later than the 60th day after  
5 the effective date of this Act.

6           SECTION 11. This Act takes effect immediately if it  
7 receives a vote of two-thirds of all the members elected to each  
8 house, as provided by Section 39, Article III, Texas  
9 Constitution. If this Act does not receive the vote necessary for  
10 immediate effect, this Act takes effect September 1, 2003.