

BILL ANALYSIS

C.S.H.B. 1212
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Parental Consent Bill, CSHB 1212, requires physicians to obtain the consent of parents before performing abortions on their minor daughters (17 years of age and younger). This bill also protects minor girls from being coerced into abortion.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 and SECTION 4 of this bill.

ANALYSIS

Adds Chapter 34 to the Family Code. Requires physicians to obtain consent of a parent, managing conservator, or guardian before performing abortions on young girls in Texas, 17 years of age or younger. Defines criminal penalties for violations of Chapter 34.

Adds provisions to the Penal Code to create an offense for coercing a pregnant minor to have an abortion and assault on a pregnant minor in order to force that minor to have an abortion.

Reforms the judicial bypass procedure whereby a minor girl can obtain a court order to allow a physician to perform an abortion without involving a parent (as required by the U.S. Supreme Court). The reform fills several loopholes in the current Chapter 33 of the Texas Family Code (Parental Notification for Abortion).

EFFECTIVE DATE

September 1, 2005, except Section 34.054 of the Family Code as added by this Act takes effect January 1, 2006.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 1212 removes Section 4 of the introduced version which provided that this Act was not to be construed to repeal the pre-*Roe* abortion statutes, which the legislature has never repealed.

CSHB 1212 removes references to coercion that were in Section 1 of the bill as filed and creates a new Section 3 which moves third-party liability for coercing a minor from Chapter 34 of the Family Code to Section 25.11 of the Penal Code. CSHB 1212 also adds to the Penal Code offense of "assault on a pregnant minor." Both the offenses of coercion of abortion and assault on a pregnant minor are state jail felonies. CSHB 1212 provides that if either of the two offenses constitute an offense under another section, the conduct may be prosecuted under either or both applicable sections.

CSHB 1212 adds definition of and liability for "attempting to perform an abortion" on a pregnant minor.

CSHB 1212 requires the retention of certain information in the "minor's medical records;" the introduced version referred to "physician's files" rather than "minor's medical records. CSHB 1212 adds the original or certified copy of the court order or the clerk's certificate to the list of information required to be retained in the minor's medical records.

CSHB 1212 removes "reckless" from the Section 34.054 heading. Adds definitions for "criminal negligence," "intentionally," and "knowingly." CSHB 1212 adds "intentionally," "knowingly," and "with criminal negligence" to the mens rea requirements for the offense listed in 34.054(b) and adds attempt as an offense. These sections to the Penal Code apply only to an offense committed on or after January 1, 2006.

CSHB 1212 includes a "due diligence" standard that a physician must use in the case of persons with no form of government ID.

CSHB 1212 removes Section 34.056 that was in the introduced version of the bill. Also removes the reference in Section 7 to Section 34.056.

CSHB 1212 requires venue of the judicial bypass procedure to be limited to the minor's county of residence or the county in which she intends to have an abortion. CSHB 1212 also adds language that the minor must be present before the judge.

CSHB 1212 requires guardians ad litem to represent the best interests of the minor. CSHB 1212 removes presumption that involving parent, managing conservator, or guardian is in the best interests of minor has been.

CSHB 1212 changes the requirement that the court determine by clear and convincing evidence that "the minor is mature and sufficiently well informed" to "the minor is sufficiently mature and well informed."

Under CSHB 1212 the physician must keep his affidavit and the copy of the court order or clerk's certificate in the patient's records. (The provision that the court order and clerk's certificate expire after 91 days is removed.) The physician must retain the patient's records according the rules of the Board of Medical Examiners. Minor has access to her own records.

Lists items the court reports to the Office of Court Administration. Under CSHB 1212, the name of the judge is not required to be reported to the Office of Administration. The name of the county where the court is located is prohibited from being made public by the Office of Court Administration.

CSHB 1212 changes Section 34.156 to require a court of appeals to hand down an opinion in accordance with the Texas Rules of Appellate Procedure for each case before the court.

CSHB 1212 requires courts to keep records according to the rules for civil cases. Minor has access to her own records.

CSHB 1212 requires an expedited appeal be available to a pregnant minor to whom a court of appeals denies an order authorizing a physician to perform and abortion without the consent required under the bill.