

By: Isett

H.B. No. 3305

A BILL TO BE ENTITLED

AN ACT

relating to coercing a woman to have an abortion and parental notification of abortion; creating offenses.

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

SECTION 1. This Act may be cited as the Child Predator Prevention Act.

SECTION 2. Section 33.001, Family Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Attempt to perform an abortion" means an act or an omission of an act required by law that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this chapter.

SECTION 3. Section 33.002, Family Code, is amended to read as follows:

Sec. 33.002. PARENTAL NOTICE. (a) A physician may not perform an abortion on a pregnant unemancipated minor unless:

(1) the physician performing the abortion or the physician's agent:

(A) gives at least 48 hours actual notice, in person at the facility [~~or by telephone~~], of the physician's intent to perform the abortion to:

(i) [(A)] a parent of the minor, who appears in person at the facility, if the minor has no managing

1 conservator or guardian; or

2 (ii) [~~B~~] a court-appointed managing
3 conservator or guardian, who appears in person at the facility;

4 (B) obtains:

5 (i) from the parent of the minor who
6 appears, if the minor has no managing conservator or guardian, a
7 copy of the parent's proof of identification and a completed,
8 signed form with the following statement:

9 "I certify that I, (insert parent's name), am
10 the parent of (insert minor daughter's name) and have been notified
11 that (insert physician's name) intends to perform an abortion on
12 (insert minor daughter's name). I understand that any person who
13 intentionally, knowingly, recklessly, or with criminal negligence
14 makes a fraudulent statement in this regard commits an offense
15 punishable by law."

16 _____ Signature
17 of parent

18 _____ Date of
19 signature; or

20 (ii) from the court-appointed managing
21 conservator or guardian who appears a copy of the conservator's or
22 guardian's proof of identification and a completed, signed form
23 with the following statement:

24 "I certify that I, (insert conservator's or
25 guardian's name), am the conservator or guardian of (insert minor's
26 name) and have been notified that (insert physician's name) intends
27 to perform an abortion on (insert minor's name). I understand that

1 any person who intentionally, knowingly, recklessly, or with
2 criminal negligence makes a fraudulent statement in this regard
3 commits an offense punishable by law."

4 _____ Signature of
5 conservator or guardian

6 _____ Date of
7 signature; and

8 (C) personally delivers to the parent, managing
9 conservator, or guardian at the usual place of abode of the parent,
10 managing conservator, or guardian at least 48 hours written notice,
11 addressed to the parent, managing conservator, or guardian of the
12 physician's intent to perform the abortion;

13 (2) the judge of a court having probate jurisdiction,
14 the judge of a county court at law, the judge of a district court,
15 including a family district court, if the court is located in the
16 county in which the minor resides or in which the abortion is to be
17 performed or a court of appellate jurisdiction issues an order
18 authorizing the [~~minor to consent to the~~] abortion as provided by
19 Section 33.003 or 33.004;

20 (3) a probate court, county court at law, district
21 court, including a family district court, if the court is located in
22 the county in which the minor resides or in which the abortion is to
23 be performed, or court of appeals, by its inaction, constructively
24 authorizes the [~~minor to consent to the~~] abortion as provided by
25 Section 33.003 or 33.004; or

26 (4) the physician performing the abortion:

27 (A) concludes that on the basis of the

1 physician's good faith clinical judgment, a condition exists that
2 complicates the medical condition of the pregnant minor and
3 necessitates the immediate abortion of her pregnancy to avert her
4 death or to avoid a serious risk of substantial and irreversible
5 impairment of a major bodily function; and

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

10 (b) A person unable to produce satisfactory proof of
11 identity, relationship, usual place of abode, or other fact
12 required by this section, or a pregnant female whose ability to
13 obtain an abortion is affected, may file a petition or motion with
14 any county court at law, court having probate jurisdiction, or
15 district court, including a family district court, if the court is
16 located in the county in which the person resides or in which the
17 abortion is to be performed. The court shall, upon petition or
18 motion, and after an appropriate hearing subject to the same
19 procedural requirements specified in Section 33.003 for a judicial
20 bypass hearing for a pregnant minor, authorize a physician to
21 perform the abortion if the judge determines, by a preponderance of
22 the evidence, the truth of the requisite fact or facts. Such an
23 authorization shall not be subject to an appeal, but an expedited
24 confidential appeal shall be available if the judge denies the
25 authorization, under the same procedural requirements specified in
26 Section 33.004 for an appeal arising out of a judicial bypass
27 hearing for a pregnant minor.

1 (c) A physician shall keep a copy of the minor's medical
2 records until the fifth anniversary of the date of the
3 unemancipated minor's majority or the seventh anniversary of the
4 date the physician received the document for the purposes of this
5 section, whichever is greater. The physician shall keep as part of
6 those records, if applicable:

7 (1) a copy of the parent's, conservator's, or
8 guardian's proof of identification and certified statement as
9 required by Subsection (a)(1)(B);

10 (2) a copy of any affidavits or certifications
11 required by this section;

12 (3) a copy of any written notices provided or mailed
13 under this section;

14 (4) a copy of the notice and return receipt required by
15 Subsection (e); and

16 (5) an original copy of a signed, sealed judicial
17 order obtained pursuant to Section 33.003 or 33.004.

18 (d) A physician who intentionally, knowingly, recklessly,
19 or with criminal negligence violates Subsection (c) is subject to
20 an administrative penalty under Section 245.017, Health and Safety
21 Code, as if the physician had violated Chapter 245, Health and
22 Safety Code, or a rule under that chapter.

23 (e) [~~(b)~~] If a person to whom notice may be given under
24 Subsection (a)(1) cannot be notified after a reasonable effort, a
25 physician may perform an abortion if the physician or physician's
26 agent gives 48 hours constructive notice, by certified mail,
27 restricted delivery, return receipt requested, sent to the last

1 known address, to the person to whom notice may be given under
2 Subsection (a)(1). The period under this subsection begins when
3 the notice is mailed. If the person required to be notified is not
4 notified within the 48-hour period, the abortion may proceed even
5 if the notice by mail is not received.

6 (f) [~~(e)~~] The requirement that 48 hours actual notice be
7 provided under this section may be waived by a parent, managing
8 conservator, or guardian providing proof of identification and the
9 certified statement as required by Subsection (a)(1)(B) provided,
10 however, that this waiver shall not be construed to waive any
11 waiting period mandated by Section 171.012, Health and Safety Code
12 [~~an affidavit of:~~

13 ~~(1) a parent of the minor, if the minor has no~~
14 ~~managing conservator or guardian; or~~

15 ~~(2) a court-appointed managing conservator or~~
16 ~~guardian].~~

17 (g) The [~~(d)~~ A] physician or physician's agent providing
18 actual notice under Subsection (a)(1) shall [~~may~~] execute for
19 inclusion in the minor's medical record an affidavit stating "I
20 (insert name of physician or physician's agent) certify that
21 according to my best information and belief, a reasonable person
22 under similar circumstances would rely on the information presented
23 by both the minor and her parent, managing conservator, or guardian
24 as sufficient evidence of identity. I understand that any person
25 who intentionally, knowingly, recklessly, or with criminal
26 negligence makes a fraudulent statement in this regard commits an
27 offense punishable by law." [~~that, according to the best~~

1 ~~information and belief of the physician, notice or constructive~~
2 ~~notice has been provided as required by this section. Execution of~~
3 ~~an affidavit under this subsection creates a presumption that the~~
4 ~~requirements of this section have been satisfied.]~~

5 (h) A physician or physician's agent providing constructive
6 notice under Subsection (e) shall execute for inclusion in the
7 minor's medical record an affidavit stating "I (insert name of
8 physician or physician's agent) personally mailed written notice of
9 intent to perform an abortion on (insert name of minor) to (insert
10 name of parent, managing conservator, or guardian) at (insert
11 address) on (insert date) and certify that according to my best
12 information and belief, a reasonable person under similar
13 circumstances would rely on the information presented as sufficient
14 evidence of the last known mailing address of the parent, managing
15 conservator, or guardian, in order to comply with the notice
16 requirements of Section 33.002, Family Code. I understand that any
17 person who intentionally, knowingly, recklessly, or with criminal
18 negligence makes a fraudulent statement in this regard commits an
19 offense punishable by law."

20 (i) [~~(e)~~] The [~~Texas~~] Department of State Health Services
21 shall prepare a form to be used for making the certification
22 required by Subsections (a)(1)(B), (a)(4), (g), and (h) [~~Subsection~~
23 ~~(a)(4)~~].

24 (j) [~~(f)~~] A certification required by Subsection (a)(4) is
25 confidential and privileged and is not subject to disclosure under
26 Chapter 552, Government Code, or to discovery, subpoena, or other
27 legal process. Personal or identifying information about the

1 minor, including her name, address, or social security number, may
2 not be included in a certification under Subsection (a)(4). The
3 physician must keep the medical records on the minor in compliance
4 with the rules adopted by the Texas State Board of Medical Examiners
5 under Section 153.003, Occupations Code.

6 (k) [~~(g)~~] A physician who intentionally, knowingly,
7 recklessly, or with criminal negligence performs an abortion or
8 attempts to perform an abortion on a pregnant unemancipated minor
9 in violation of this section commits an offense. An offense under
10 this subsection is a Class A misdemeanor [~~punishable by a fine not~~
11 ~~to exceed \$10,000. In this subsection, "intentionally" has the~~
12 ~~meaning assigned by Section 6.03(a), Penal Code]~~.

13 (l) [~~(h)~~] It is a defense to prosecution under this section
14 that the minor falsely represented her age or identity to the
15 physician to be at least 18 years of age by displaying an apparently
16 valid governmental record of identification such that a reasonable
17 person under similar circumstances would have relied on the
18 representation. The defense does not apply if the physician is
19 shown to have had independent knowledge of the minor's actual age or
20 identity or failed to use due diligence in determining the minor's
21 age or identity. In this subsection, "defense" has the meaning and
22 application assigned by Section 2.03, Penal Code.

23 (m) A person commits an offense if the person:

24 (1) intentionally, knowingly, recklessly, or with
25 criminal negligence makes a false representation of fact on any
26 certification or affidavit required by this section; or

27 (2) intentionally, knowingly, recklessly, or with

1 criminal negligence makes, presents, or uses any record, document,
2 or thing with knowledge of its falsity, and with the intent that it
3 be taken as a valid governmental record, as defined by Section
4 37.01, Penal Code, in order to fraudulently represent that the
5 person is the parent, managing conservator, or guardian of the
6 pregnant minor for the purpose of obtaining an abortion for the
7 pregnant minor.

8 (n) An offense under Subsection (m) is a Class A
9 misdemeanor.

10 (o) [~~(i)~~] In relation to the trial of an offense under this
11 section in which the conduct charged involves a conclusion made by
12 the physician under Subsection (a)(4), the defendant may seek a
13 hearing before the Texas State Board of Medical Examiners on
14 whether the physician's conduct was necessary to avert the death of
15 the minor or to avoid a serious risk of substantial and irreversible
16 impairment of a major bodily function. The findings of the Texas
17 State Board of Medical Examiners under this subsection are
18 admissible on that issue in the trial of the defendant.
19 Notwithstanding any other reason for a continuance provided under
20 the Code of Criminal Procedure or other law, on motion of the
21 defendant, the court shall delay the beginning of the trial for not
22 more than 30 days to permit a hearing under this subsection to take
23 place.

24 (p) A parent, managing conservator, or guardian of an
25 unemancipated minor who has an abortion performed in violation of
26 this chapter may maintain a cause of action under Chapter 74, Civil
27 Practice and Remedies Code, for any subsequent treatment the minor

1 requires as a result of complications from the abortion.

2 (g) A minor or the parent, managing conservator, or guardian
3 of a minor upon whom an abortion has been performed or attempted to
4 be performed in violation of this chapter may maintain a cause of
5 action under Chapter 74, Civil Practice and Remedies Code, against
6 the person who performed or attempted to perform the abortion.

7 (r) An unemancipated minor does not have capacity to consent
8 to any action that violates this chapter.

9 SECTION 4. Sections 33.003(b), (e), and (i), Family Code,
10 are amended to read as follows:

11 (b) The application may be filed in any county court at law,
12 court having probate jurisdiction, or district court, including a
13 family district court, in the minor's county of residence or the
14 county in which the abortion is to be performed [~~this state~~].

15 (e) The court shall appoint a guardian ad litem for the
16 minor. If the minor has not retained an attorney, the court shall
17 appoint an attorney to represent the minor. A person may not
18 concurrently serve as both guardian ad litem and attorney ad litem
19 for the minor [~~If the guardian ad litem is an attorney admitted to~~
20 ~~the practice of law in this state, the court may appoint the~~
21 ~~guardian ad litem to serve as the minor's attorney~~].

22 (i) The court shall determine by clear and convincing [~~a~~
23 ~~preponderance of the~~] evidence whether the minor is mature and
24 sufficiently well informed to make the decision to have an abortion
25 performed without notification to either of her parents or a
26 managing conservator or guardian or [~~7~~] whether notification would
27 not be in the best interest of the minor [~~7~~ ~~or whether notification~~

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

10 SECTION 5. Section 171.002, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 171.002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

13 (1) "Abortion" [~~,"abortion"~~] means the use of any
14 means to terminate the pregnancy of a female known by the attending
15 physician to be pregnant with the intention that the termination of
16 the pregnancy by those means will, with reasonable likelihood,
17 cause the death of the fetus.

18 (2) "Medical emergency" means a condition that, on the
19 basis of a physician's good faith clinical judgment, so complicates
20 the medical condition of a pregnant woman that the condition
21 necessitates the immediate abortion of her pregnancy to avert her
22 death or to avoid a serious risk of substantial and irreversible
23 impairment of a major bodily function.

24 SECTION 6. Subchapter A, Chapter 171, Health and Safety
25 Code, is amended by adding Section 171.006 to read as follows:

26 Sec. 171.006. PROOF OF AGE REQUIRED. (a) Except as
27 provided by Subsection (b), or in the case of a medical emergency as

1 defined by Section 171.002, a physician may not perform an abortion
2 on a pregnant female unless:

3 (1) the physician or the physician's agent has
4 obtained proof of age demonstrating that the female is not a minor;

5 (2) the physician or the physician's agent has
6 obtained proof that the female, although a minor, is emancipated;
7 or

8 (3) the physician has complied with Sections 33.002
9 (a), (e), or (f), Family Code.

10 (b) If the pregnant female is unable to produce satisfactory
11 proof that the pregnant female is not a minor or is an emancipated
12 minor, any judge of a county court at law, court having probate
13 jurisdiction, or district court, including a family district court,
14 if the court is located in the county in which the person resides or
15 in which the abortion is to be performed, shall, upon petition or
16 motion, and after an appropriate hearing subject to the same
17 procedural requirements specified in Section 33.003, Family Code,
18 for a judicial bypass hearing for a pregnant minor, authorize a
19 physician to perform the abortion if the judge determines, by a
20 preponderance of the evidence, that the pregnant female is not a
21 minor or that she is an emancipated minor. Such an authorization
22 shall not be subject to an appeal, but an expedited confidential
23 appeal shall be available if the judge denies the authorization
24 under the same procedural requirements specified in Section 33.004,
25 Family Code, for an appeal arising out of a judicial bypass hearing
26 for a pregnant minor.

27 SECTION 7. Section 171.012, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Except
3 in the case of a medical emergency, consent to an abortion is
4 voluntary and informed only if:

5 (1) the physician determines that the pregnant woman
6 has made the decision to obtain an abortion of her own free will;

7 (2) the physician who is to perform the abortion or the
8 referring physician informs the woman on whom the abortion is to be
9 performed of:

10 (A) the name of the physician who will perform
11 the abortion;

12 (B) the particular medical risks associated with
13 the particular abortion procedure to be employed, including, when
14 medically accurate:

15 (i) the risks of infection and hemorrhage;

16 (ii) the potential danger to a subsequent
17 pregnancy and of infertility; and

18 (iii) the possibility of increased risk of
19 breast cancer following an induced abortion and the natural
20 protective effect of a completed pregnancy in avoiding breast
21 cancer;

22 (C) the probable gestational age of the unborn
23 child at the time the abortion is to be performed; and

24 (D) the medical risks associated with carrying
25 the child to term;

26 (3) [~~2~~] the physician who is to perform the abortion
27 or the physician's agent informs the woman that:

1 (A) medical assistance benefits may be available
2 for prenatal care, childbirth, and neonatal care;

3 (B) the father is liable for assistance in the
4 support of the child without regard to whether the father has
5 offered to pay for the abortion; and

6 (C) [~~public and private agencies provide~~
7 ~~pregnancy prevention counseling and medical referrals for~~
8 ~~obtaining pregnancy prevention medications or devices, including~~
9 ~~emergency contraception for victims of rape or incest; and~~

10 [~~(D)~~] the woman has the right to review the
11 printed materials described by Section 171.014, that those
12 materials have been provided by the [~~Texas~~] Department of State
13 Health Services and are accessible on an Internet website sponsored
14 by the department, and that the materials describe the unborn child
15 and list agencies that offer alternatives to abortion;

16 (4) [~~(3)~~] the woman certifies in writing before the
17 abortion is performed that the information described by
18 Subdivisions (2) [~~(1)~~] and (3) [~~(2)~~] has been provided to her and
19 that she has been informed of her opportunity to review the
20 information described by Section 171.014; and

21 (5) [~~(4)~~] before the abortion is performed, the
22 physician who is to perform the abortion receives a copy of the
23 written certification required by Subdivision (4) [~~(3)~~].

24 (b) The information required to be provided under
25 Subsections (a)(2) [~~(a)(1)~~] and (3) [~~(2)~~] must be provided:

26 (1) orally by telephone or in person; and

27 (2) at least 24 hours before the abortion is to be

1 performed.

2 (c) When providing the information under Subsection
3 (a)(3)(C) [~~(a)(2)(D)~~], the physician or the physician's agent must
4 provide the woman with the address of the Internet website on which
5 the printed materials described by Section 171.014 may be viewed as
6 required by Section 171.014(e).

7 (d) The information provided to the woman under Subsection
8 (a)(3)(B) [~~(a)(2)(B)~~] must include, based on information available
9 from the Office of the Attorney General and the United States
10 Department of Health and Human Services Office of Child Support
11 Enforcement for the three-year period preceding the publication of
12 the information, information regarding the statistical likelihood
13 of collecting child support.

14 (e) The department is not required to republish
15 informational materials described by Subsection (a)(3)(B)
16 [~~(a)(2)(B)~~] because of a change in information described by
17 Subsection (d) unless the statistical information in the materials
18 changes by five percent or more.

19 SECTION 8. Chapter 25, Penal Code, is amended by adding
20 Sections 25.11 and 25.12 to read as follows:

21 Sec. 25.11. COERCION OF ABORTION. (a) A person commits an
22 offense if the person uses coercion to induce a pregnant woman to
23 have an abortion.

24 (b) An offense under this section is a Class C misdemeanor.

25 Sec. 25.12. ASSAULT ON PREGNANT WOMAN. (a) A person
26 commits an offense if the person assaults a pregnant woman in order
27 to force the woman to have an abortion.

1 (b) An offense under this section is an offense under
2 Chapters 19 and 22.

3 SECTION 9. If any one or more provisions, sections,
4 subsections, sentences, clauses, phrases, or words of the law as
5 amended by this Act are ever temporarily or permanently restrained
6 or enjoined by judicial order, the original provisions shall remain
7 in force as though the law was never amended by this Act; provided,
8 however, that if such temporary or permanent restraining order or
9 injunction is ever stayed or dissolved, or otherwise ceases to have
10 effect, the entire law as amended by this Act shall have full force
11 and effect.

12 SECTION 10. If any one or more provisions, sections,
13 subsections, sentences, clauses, phrases, or words of this Act or
14 the application thereof to any person or circumstance are found to
15 be unconstitutional, the same is hereby declared to be severable
16 and the balance of this Act shall remain effective notwithstanding
17 such unconstitutionality. The legislature hereby declares that it
18 would have passed this Act and each provision, section, subsection,
19 sentence, clause, phrase, or word thereof, irrespective of the fact
20 that any one or more provision, section, subsection, sentence,
21 clause, phrase, or word be declared unconstitutional.

22 SECTION 11. (a) The change in law made by this Act applies
23 only to an offense committed on or after the effective date of this
24 Act. For purposes of this section, an offense is committed before
25 the effective date of this Act if any element of the offense occurs
26 before that date.

27 (b) An offense committed before the effective date of this

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1 Act is covered by the law in effect when the offense was committed,
2 and the former law is continued in effect for that purpose.

3 SECTION 12. This Act takes effect September 1, 2005.