

By: Villarreal

H.B. No. 3392

A BILL TO BE ENTITLED

1 AN ACT

2 relating to parental consent before an abortion may be performed on
3 certain minors; providing penalties.

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

5 SECTION 1. Chapter 33, Family Code, is amended to read as
6 follows:

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

8 Sec. 33.001. DEFINITIONS. In this chapter:

9 (1) "Abortion" has the meaning assigned by Section
10 171.002, Health and Safety Code [~~means the use of any means to~~
11 ~~terminate the pregnancy of a female known by the attending~~
12 ~~physician to be pregnant, with the intention that the termination~~
13 ~~of the pregnancy by those means will with reasonable likelihood~~
14 ~~cause the death of the fetus~~]. This definition, as applied in this
15 chapter, applies only to an unemancipated minor known by the
16 attending physician to be pregnant and may not be construed to limit
17 a minor's access to contraceptives.

18 (2) [~~"Fetus" means an individual human organism from~~
19 ~~fertilization until birth.~~

20 ~~(3)]~~ (3) "Guardian" means a court-appointed guardian of
21 the person of the minor.

22 (3) [~~(4)~~] "Physician" means an individual licensed to
23 practice medicine in this state.

24 (4) [~~(5)~~] "Unemancipated minor" includes a minor who:

1 (A) is unmarried; and

2 (B) has not had the disabilities of minority
3 removed under Chapter 31.

4 Sec. 33.002. PARENTAL CONSENT [~~NOTICE~~]. (a) A physician
5 may not perform an abortion on a pregnant unemancipated minor
6 unless:

7 (1) a parent, managing conservator, or
8 court-appointed guardian of the minor consents in writing to the
9 abortion [~~the physician performing the abortion gives at least 48~~
10 ~~hours actual notice, in person or by telephone, of the physician's~~
11 ~~intent to perform the abortion to:~~

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

14 [~~(b) a court-appointed managing conservator or~~
15 ~~guardian];~~

16 (2) a grandparent, step-parent, sibling over the age
17 of 25 years, or other adult relative within the 2nd degree of
18 consanguinity or affinity to the minor and with whom the minor has
19 resided for no less than the 6 months preceding the date of the
20 abortion consents in a writing affidavit to the abortion, provided
21 that the minor has not resided with a parent, managing conservator
22 or court-appointed guardian during that period.

23 (3) [~~(2)~~] the judge of a court having probate
24 jurisdiction, the judge of a county court at law, the judge of a
25 district court, including a family district court, or a court of
26 appellate jurisdiction issues an order authorizing the minor to
27 consent to the abortion as provided by Section 33.003 or 33.004;

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

5 (5) [~~(4)~~] the physician performing the abortion:

6 [A] concludes that the pregnant minor has
7 previously had at least one live birth prior to the current
8 pregnancy, or]

9 (A B) concludes that on the basis of the
10 physician's good faith clinical judgment, a condition exists that
11 complicates the medical condition of the pregnant minor and
12 necessitates the immediate abortion of her pregnancy to avert her
13 death or to avoid a serious risk of substantial and irreversible
14 impairment of a major bodily function; and

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

19 (b) [~~If a person to whom notice may be given under~~
20 ~~Subsection (a)(1) cannot be notified after a reasonable effort, a~~
21 ~~physician may perform an abortion if the physician gives 48 hours~~
22 ~~constructive notice, by certified mail, restricted delivery, sent~~
23 ~~to the last known address, to the person to whom notice may be given~~
24 ~~under Subsection (a)(1). The period under this subsection begins~~
25 ~~when the notice is mailed. If the person required to be notified is~~
26 ~~not notified within the 48-hour period, the abortion may proceed~~
27 ~~even if the notice by mail is not received.~~

1 ~~(c) The requirement that 48 hours actual notice be provided~~
2 ~~under this section may be waived by an affidavit of:~~

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

5 ~~(2) a court-appointed managing conservator or~~
6 ~~guardian.~~

7 ~~(d) A physician may execute for inclusion in the minor's~~
8 ~~medical record an affidavit stating that, according to the best~~
9 ~~information and belief of the physician, notice or constructive~~
10 ~~notice has been provided as required by this section. Execution of~~
11 ~~an affidavit under this subsection creates a presumption that the~~
12 ~~requirements of this section have been satisfied.~~

13 ~~(e)]~~ The [~~Texas~~] Department of State Health Services shall
14 prepare a form to be used for making the certification required by
15 Subsection (a) ~~(4)~~ (5).

16 (f) A certification required by Subsection (a) ~~(4)~~ (5) is
17 confidential and privileged and is not subject to disclosure under
18 Chapter 552, Government Code, or to discovery, subpoena, or other
19 legal process. Personal or identifying information about the
20 minor, including her name, address, or social security number, may
21 not be included in a certification under Subsection (a) ~~(4)~~. The
22 physician must keep the medical records on the minor in compliance
23 with the rules adopted by the Texas State Board of Medical Examiners
24 under Section 153.003, Occupations Code.

25 (g) A physician who intentionally performs an abortion on a
26 pregnant unemancipated minor in violation of this section commits
27 an offense. An offense under this subsection is punishable by a

1 fine not to exceed \$10,000. In this subsection, "intentionally" has
2 the meaning assigned by Section 6.03(a), Penal Code.

3 (h) It is a defense to prosecution under this section that
4 the minor falsely represented her age or identity to the physician
5 to be at least 18 years of age by displaying an apparently valid
6 governmental record of identification such that a reasonable person
7 under similar circumstances would have relied on the
8 representation. The defense does not apply if the physician is
9 shown to have had independent knowledge of the minor's actual age or
10 identity or failed to use due diligence in determining the minor's
11 age or identity. In this subsection, "defense" has the meaning and
12 application assigned by Section 2.03, Penal Code.

13 (i) In relation to the trial of an offense under this
14 section in which the conduct charged involves a conclusion made by
15 the physician under Subsection (a) ~~(4)~~ (5)., the defendant may seek
16 a hearing before the Texas State Board of Medical Examiners on
17 whether the physician's conduct was necessary to avert the death of
18 the minor or to avoid a serious risk of substantial and irreversible
19 impairment of a major bodily function. The findings of the Texas
20 State Board of Medical Examiners under this subsection are
21 admissible on that issue in the trial of the defendant.
22 Notwithstanding any other reason for a continuance provided under
23 the Code of Criminal Procedure or other law, on motion of the
24 defendant, the court shall delay the beginning of the trial for not
25 more than 30 days to permit a hearing under this subsection to take
26 place.

27 Sec. 33.003. JUDICIAL APPROVAL. (a) A pregnant minor who

1 wishes to have an abortion without the consent of [~~notification to~~
2 one of her parents, her managing conservator, or her guardian may
3 file an application for a court order authorizing the minor to
4 consent to the performance of an abortion without the consent of
5 [~~notification to~~] either of her parents or a managing conservator
6 or guardian.

7 (b) The application may be filed in any county court at law,
8 court having probate jurisdiction, or district court, including a
9 family district court, in this state.

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

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

12 (2) a statement that the minor is unmarried, is under
13 18 years of age, and has not had her disabilities removed under
14 Chapter 31;

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

18 (4) a statement as to whether the minor has retained an
19 attorney and, if she has retained an attorney, the name, address,
20 and telephone number of her attorney[;

21 (5) a statement as to whether the minor has not resided
22 with a parent, managing conservator or court-appointed guardian in
23 the 6 months preceding the filing of her application; and

24 (6) a statement as to whether the minor has previously
25 had at least one live birth prior to the current pregnancy].

26 (d) The clerk of the court shall deliver a courtesy copy of
27 the application made under this section to the judge who is to hear

1 the application.

2 (e) The court shall appoint a guardian ad litem for the
3 minor. If the minor has not retained an attorney, the court shall
4 appoint an attorney to represent the minor. If the guardian ad
5 litem is an attorney admitted to the practice of law in this state,
6 the court may appoint the guardian ad litem to serve as the minor's
7 attorney.

8 (f) The court may appoint to serve as guardian ad litem:

9 (1) a person who may consent to treatment for the minor
10 under Sections 32.001(a)(1)-(3);

11 (2) a psychiatrist or an individual licensed or
12 certified as a psychologist under Chapter 501, Occupations Code;

13 (3) an appropriate employee of the Department of
14 Family and Protective [~~and Regulatory~~] Services;

15 (4) a member of the clergy; or

16 (5) another appropriate person selected by the court.

17 (g) The court shall fix a time for a hearing on an
18 application filed under Subsection (a) and shall keep a record of
19 all testimony and other oral proceedings in the action. The court
20 shall enter judgment on the application immediately after the
21 hearing is concluded.

22 (h) The court shall rule on an application submitted under
23 this section and shall issue written findings of fact and
24 conclusions of law not later than 5 p.m. on the second business day
25 after the date the application is filed with the court. On request
26 by the minor, the court shall grant an extension of the period
27 specified by this subsection. If a request for an extension is

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

13 (i) The court shall determine by a preponderance of the
14 evidence whether the minor is mature and sufficiently well informed
15 to make the decision to have an abortion performed without the
16 consent of [~~notification to~~] either of her parents or a managing
17 conservator or guardian, whether requiring consent [~~notification~~]
18 would not be in the best interest of the minor, [~~or~~] whether
19 requiring consent [~~notification~~] may lead to physical, sexual, or
20 emotional abuse of the minor[, whether the minor has not resided
21 with a parent, managing conservator or court-appointed guardian in
22 the 6 months preceding the filing of her application, or whether the
23 minor has previously had at least one live birth prior to the
24 current pregnancy]. If the court finds that the minor is mature and
25 sufficiently well informed, that requiring consent [~~notification~~]
26 would not be in the minor's best interest, [~~or~~] that requiring
27 consent [~~notification~~] may lead to physical, sexual, or emotional

1 abuse of the minor, [that the minor has not resided with a parent,
2 managing conservator or court-appointed guardian in the 6 months
3 preceding the filing of her application, or that the minor has
4 previously had at least one live birth prior to the current
5 pregnancy] the court shall enter an order authorizing the minor to
6 consent to the performance of the abortion without requiring the
7 consent of [~~notification to~~] either of her parents or a managing
8 conservator 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 (k) The court may not notify a parent, managing conservator,
14 or guardian that the minor is pregnant or that the minor wants to
15 have an abortion. The court proceedings shall be conducted in a
16 manner that protects the anonymity of the minor. The application
17 and all other court documents pertaining to the proceedings are
18 confidential and privileged and are not subject to disclosure under
19 Chapter 552, Government Code, or to discovery, subpoena, or other
20 legal process. The minor may file the application using a pseudonym
21 or using only her initials.

22 (l) An order of the court issued under this section is
23 confidential and privileged and is not subject to disclosure under
24 Chapter 552, Government Code, or discovery, subpoena, or other
25 legal process. The order may not be released to any person but the
26 pregnant minor, the pregnant minor's guardian ad litem, the
27 pregnant minor's attorney, another person designated to receive the

1 order by the minor, or a governmental agency or attorney in a
2 criminal or administrative action seeking to assert or protect the
3 interest of the minor. The supreme court may adopt rules to permit
4 confidential docketing of an application under this section.

5 (m) The clerk of the supreme court shall prescribe the
6 application form to be used by the minor filing an application under
7 this section.

8 (n) A filing fee is not required of and court costs may not
9 be assessed against a minor filing an application under this
10 section.

11 Sec. 33.004. APPEAL. (a) A minor whose application under
12 Section 33.003 is denied may appeal to the court of appeals having
13 jurisdiction over civil matters in the county in which the
14 application was filed. On receipt of a notice of appeal, the clerk
15 of the court that denied the application shall deliver a copy of the
16 notice of appeal and record on appeal to the clerk of the court of
17 appeals. On receipt of the notice and record, the clerk of the
18 court of appeals shall place the appeal on the docket of the court.

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

1 subsection, the appeal is deemed to be granted and the physician may
2 perform the abortion as if the court had issued an order authorizing
3 the minor to consent to the performance of the abortion without the
4 consent required [~~notification~~] under Section 33.002. Proceedings
5 under this section shall be given precedence over other pending
6 matters to the extent necessary to assure that the court reaches a
7 decision promptly.

8 (c) A ruling of the court of appeals issued under this
9 section is confidential and privileged and is not subject to
10 disclosure under Chapter 552, Government Code, or discovery,
11 subpoena, or other legal process. The ruling may not be released to
12 any person but the pregnant minor, the pregnant minor's guardian ad
13 litem, the pregnant minor's attorney, another person designated to
14 receive the ruling by the minor, or a governmental agency or
15 attorney in a criminal or administrative action seeking to assert
16 or protect the interest of the minor. The supreme court may adopt
17 rules to permit confidential docketing of an appeal under this
18 section.

19 (d) The clerk of the supreme court shall prescribe the
20 notice of appeal form to be used by the minor appealing a judgment
21 under this section.

22 (e) A filing fee is not required of and court costs may not
23 be assessed against a minor filing an appeal under this section.

24 (f) An expedited confidential appeal shall be available to
25 any pregnant minor to whom a court of appeals denies an order
26 authorizing the minor to consent to the performance of an abortion
27 without the consent of [~~notification to~~] either of her parents or a

1 managing conservator or guardian.

2 Sec. 33.005. AFFIDAVIT OF PHYSICIAN. (a) A physician may
3 execute for inclusion in the minor's medical record an affidavit
4 stating that, after reasonable inquiry, it is the belief of the
5 physician that:

6 (1) the minor has made an application or filed a notice
7 of an appeal with a court under this chapter;

8 (2) the deadline for court action imposed by this
9 chapter has passed; and

10 (3) the physician has been notified that the court has
11 not denied the application or appeal.

12 (b) A physician who in good faith has executed an affidavit
13 under Subsection (a) may rely on the affidavit and may perform the
14 abortion as if the court had issued an order granting the
15 application or appeal.

16 Sec. 33.006. GUARDIAN AD LITEM IMMUNITY. A guardian ad
17 litem appointed under this chapter and acting in the course and
18 scope of the appointment is not liable for damages arising from an
19 act or omission of the guardian ad litem committed in good faith.
20 The immunity granted by this section does not apply if the conduct
21 of the guardian ad litem is committed in a manner described by
22 Sections 107.003(b)(1)-(4).

23 Sec. 33.007. COSTS PAID BY STATE. (a) A court acting
24 under Section 33.003 or 33.004 may issue an order requiring the
25 state to pay:

26 (1) the cost of any attorney ad litem and any guardian
27 ad litem appointed for the minor;

1 (2) notwithstanding Sections 33.003(n) and 33.004(e),
2 the costs of court associated with the application or appeal; and

3 (3) any court reporter's fees incurred.

4 (b) An order issued under Subsection (a) must be directed to
5 the comptroller, who shall pay the amount ordered from funds
6 appropriated to the [~~Texas~~] Department of State Health Services.

7 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
8 INVESTIGATION AND ASSISTANCE. (a) A physician who has reason to
9 believe that a minor has been or may be physically or sexually
10 abused by a person responsible for the minor's care, custody, or
11 welfare, as that term is defined by Section 261.001, shall
12 immediately report the suspected abuse to the Department of Family
13 and Protective [~~and Regulatory~~] Services and shall refer the minor
14 to the department for services or intervention that may be in the
15 best interest of the minor.

16 (b) The Department of Family and Protective [~~and~~
17 ~~Regulatory~~] Services shall investigate suspected abuse reported
18 under this section and, if appropriate, shall assist the minor in
19 making an application with a court under Section 33.003.

20 Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A
21 court or the guardian ad litem or attorney ad litem for the minor
22 shall report conduct reasonably believed to violate Section 22.011,
23 22.021, or 25.02, Penal Code, based on information obtained during
24 a confidential court proceeding held under this chapter to:

25 (1) any local or state law enforcement agency;

26 (2) the Department of Family and Protective [~~and~~
27 ~~Regulatory~~] Services, if the alleged conduct involves a person

1 responsible for the care, custody, or welfare of the child;

2 (3) the state agency that operates, licenses,
3 certifies, or registers the facility in which the alleged conduct
4 occurred, if the alleged conduct occurred in a facility operated,
5 licensed, certified, or registered by a state agency; or

6 (4) an appropriate agency designated by the court.

7 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other
8 law, information obtained by the Department of Family and
9 Protective [~~and Regulatory~~] Services or another entity under
10 Section 33.008 or 33.009 is confidential except to the extent
11 necessary to prove a violation of Section 22.011, 22.021, or 25.02,
12 Penal Code.

13 Sec. 33.011. INFORMATION RELATING TO JUDICIAL BYPASS. The
14 [~~Texas~~] Department of State Health Services shall produce and
15 distribute informational materials that explain the rights of a
16 minor under this chapter. The materials must explain the
17 procedures established by Sections 33.003 and 33.004 and must be
18 made available in English and in Spanish. The material provided by
19 the department shall also provide information relating to
20 alternatives to abortion and health risks associated with abortion.

21 SECTION 2. (a) The change in law made by this Act to Chapter
22 33, Family Code, applies only to an offense committed on or after
23 the effective date of this Act. For purposes of this section, an
24 offense is committed before the effective date of this Act if any
25 element of the offense occurs before that date.

26 (b) An offense committed before the effective date of this
27 Act is covered by the law in effect when the offense was committed,

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1 and the former law is continued in effect for that purpose.

2 SECTION 3. EFFECTIVE DATE. This Act takes effect September
3 1, 2005.