

By: Harris, Lucio, Nelson

S.B. No. 1150

A BILL TO BE ENTITLED

AN ACT

relating to parental consent for the performance of an abortion;
providing penalties.

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

SECTION 1. Chapter 33, Family Code, is amended by adding
Section 33.0011 to read as follows:

Sec. 33.0011. ALTERNATIVE APPLICABILITY OF THIS CHAPTER AND
CHAPTER 34. Notwithstanding the provisions of this chapter, a
person who complies with the provisions of Chapter 34 satisfies the
requirements and duties imposed under this chapter.

SECTION 2. Subtitle A, Title 2, Family Code, is amended by
adding Chapter 34 to read as follows:

CHAPTER 34. CONSENT TO ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 34.001. DEFINITIONS. In this chapter:

(1) "Abortion" means the use of any means to terminate
the pregnancy of a female known by the attending physician to be
pregnant, with the intention that the termination of the pregnancy
by those means will with reasonable likelihood cause the death of
the fetus. This definition, as applied in this chapter, applies
only to an unemancipated minor known by the attending physician to
be pregnant and may not be construed to limit a minor's access to
contraceptives.

(2) "Fetus" means an individual human organism from

1 fertilization until birth.

2 (3) "Guardian" means a court-appointed guardian of the
3 person of the minor.

4 (4) "Physician" means an individual licensed to
5 practice medicine in this state.

6 (5) "Unemancipated minor" includes a minor who:

7 (A) is unmarried; and

8 (B) has not had the disabilities of minority
9 removed under Chapter 31.

10 Sec. 34.002. APPLICABILITY OF OTHER LAW. A person or
11 physician who complies with this chapter satisfies the requirements
12 and duties imposed under Chapter 33.

13 [Sections 34.003-34.050 reserved for expansion]

14 SUBCHAPTER B. CONSENT TO ABORTION

15 Sec. 34.051. CONSENT REQUIRED. (a) A physician may not
16 perform an abortion on a pregnant unemancipated minor unless:

17 (1) a parent, managing conservator, or
18 court-appointed guardian of the minor consents in a written
19 affidavit to an abortion and submits a valid governmental record of
20 identification to verify the identity of the person;

21 (2) the judge of a court having probate jurisdiction,
22 the judge of a county court at law, the judge of a district court,
23 including a family district court, or a court of appellate
24 jurisdiction issues an order authorizing the physician to perform
25 an abortion as provided by Subchapter C or D;

26 (3) a probate court, county court at law, district
27 court, including a family district court, or court of appeals, by

1 its inaction, constructively authorizes the physician to perform an
2 abortion as provided by Subchapter C or D; or

3 (4) the physician performing the abortion:

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

10 (B) certifies in writing to the Department of
11 State Health Services and in the patient's medical record the
12 medical indications supporting the physician's judgment that the
13 circumstances described by Paragraph (A) exist.

14 (b) A physician who performs an abortion may execute for
15 inclusion in a minor's medical record an affidavit stating that,
16 according to the best information and belief of the physician,
17 consent has been provided as required by this section. Execution of
18 an affidavit under this subsection creates a presumption that the
19 requirements of this section have been satisfied.

20 (c) A physician who performs an abortion with the consent
21 required by Subsection (a)(1) shall retain in the physician's
22 files:

23 (1) the written affidavit of the parent, managing
24 conservator, or guardian; and

25 (2) a copy of the identification submitted by the
26 person under that subsection.

27 (d) The Department of State Health Services shall prepare a

1 form to be used for making the certification required by Subsection
2 (a)(4).

3 Sec. 34.052. CONFIDENTIALITY OF CERTIFICATION. (a) A
4 certification required by Section 34.051(a)(4) is confidential and
5 privileged and is not subject to disclosure under Chapter 552,
6 Government Code, or to discovery, subpoena, or other legal process.

7 (b) Personal or identifying information about a minor,
8 including her name, address, or social security number, may not be
9 included in a certification under Section 34.051(a)(4).

10 Sec. 34.053. AFFIDAVIT OF PHYSICIAN. (a) A physician may
11 execute for inclusion in the minor's medical record an affidavit
12 stating that, after reasonable inquiry, it is the belief of the
13 physician that:

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

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

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

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

24 Sec. 34.054. RECORDS. A physician must keep medical
25 records on a minor to whom this chapter applies in compliance with
26 the rules adopted by the Texas State Board of Medical Examiners
27 under Section 153.003, Occupations Code.

1 Sec. 34.055. CRIMINAL PENALTY FOR VIOLATION OF SUBCHAPTER.

2 (a) In this section:

3 (1) "Defense" has the meaning and application assigned
4 by Section 2.03, Penal Code.

5 (2) "Intentionally" has the meaning assigned by
6 Section 6.03(a), Penal Code.

7 (b) A physician who intentionally performs an abortion on a
8 pregnant unemancipated minor in violation of this subchapter
9 commits an offense. An offense under this subsection is punishable
10 by a fine not to exceed \$10,000.

11 (c) It is a defense to prosecution under this section that
12 the minor falsely represented her age or identity to the physician
13 to be at least 18 years of age by displaying an apparently valid
14 governmental record of identification such that a reasonable person
15 under similar circumstances would have relied on the
16 representation.

17 (d) The defense provided by Subsection (c) does not apply if
18 the physician is shown to have had independent knowledge of the
19 minor's actual age or identity or failed to use due diligence in
20 determining the minor's age.

21 Sec. 34.056. TRIAL OF OFFENSE. (a) In relation to the
22 trial of an offense under Section 34.055 in which the conduct
23 charged involves a conclusion made by the physician under Section
24 34.051(a)(4), the defendant may seek a hearing before the Texas
25 State Board of Medical Examiners on whether the physician's conduct
26 was necessary to avert the death of the minor or to avoid a serious
27 risk of substantial and irreversible impairment of a major bodily

1 function.

2 (b) The findings of the Texas State Board of Medical
3 Examiners under this section are admissible on that issue in the
4 trial of the defendant.

5 (c) Notwithstanding any other reason for a continuance
6 provided under the Code of Criminal Procedure or other law, on
7 motion of the defendant, the court shall delay the beginning of the
8 trial for not more than 30 days to permit a hearing under Subsection
9 (a) to take place.

10 [Sections 34.057-34.100 reserved for expansion]

11 SUBCHAPTER C. COURT ORDER AUTHORIZING ABORTION

12 Sec. 34.101. APPLICATION FOR COURT ORDER. (a) A pregnant
13 minor who wishes to have an abortion without the consent of one of
14 her parents, her managing conservator, or her guardian may file an
15 application for a court order authorizing a physician to perform an
16 abortion without the consent of either of her parents or a managing
17 conservator or guardian.

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

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

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

23 (2) a statement that the minor is unmarried, is under
24 18 years of age, and has not had her disabilities removed under
25 Chapter 31;

26 (3) a statement that the minor wishes to have an
27 abortion without the consent of either of her parents or a managing

1 conservator or guardian; and

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

5 (d) The clerk of the court shall deliver a courtesy copy of
6 the application made under this section to the judge who is to hear
7 the application.

8 (e) The clerk of the supreme court shall prescribe the
9 application form to be used by the minor filing an application under
10 this section.

11 Sec. 34.102. GUARDIAN AD LITEM AND ATTORNEY APPOINTMENTS.

12 (a) The court shall appoint a guardian ad litem for the applicant
13 minor.

14 (b) The court may appoint to serve as guardian ad litem:

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

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

19 (3) an appropriate employee of the Department of
20 Family and Protective Services;

21 (4) a member of the clergy; or

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

23 (c) If the minor has not retained an attorney, the court
24 shall appoint an attorney to represent the minor.

25 (d) If the guardian ad litem is an attorney admitted to the
26 practice of law in this state, the court may appoint the guardian ad
27 litem to serve as the minor's attorney.

1 Sec. 34.103. COURT PROCEEDING. (a) The court shall fix a
2 time for a hearing on an application filed under Section 34.101 and
3 shall keep a record of all testimony and other oral proceedings in
4 the action.

5 (b) The court shall enter judgment on the application
6 immediately after the hearing under Subsection (a) is concluded.

7 (c) The court shall rule on an application submitted under
8 Section 34.101 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.

11 (d) On request by the minor, the court shall grant an
12 extension of the period specified by Subsection (c). If a request
13 for an extension is made, the court shall rule on an application and
14 shall issue written findings of fact and conclusions of law not
15 later than 5 p.m. on the second business day after the date the
16 minor states she is ready to proceed to hearing.

17 (e) Proceedings under this section shall be given
18 precedence over other pending matters to the extent necessary to
19 assure that the court reaches a decision promptly.

20 (f) The court shall determine by a preponderance of the
21 evidence:

22 (1) whether the minor is mature and sufficiently well
23 informed to make an abortion decision without the consent of either
24 of her parents or a managing conservator or guardian;

25 (2) whether obtaining the consent of either of her
26 parents or a managing conservator or guardian would not be in the
27 best interest of the minor; or

1 (3) whether obtaining the consent of either of her
2 parents or a managing conservator or guardian may lead to physical,
3 sexual, or emotional abuse of the minor.

4 (g) If the court finds that any of the requirements of
5 Subsection (f) are met, the court shall enter an order authorizing a
6 physician to perform the abortion without the consent required
7 under Section 34.051(a)(1) and shall execute the required forms.

8 (h) If the court finds that the requirements of Subsection
9 (f) are not met, the court may not authorize a physician to perform
10 an abortion without the consent required under Section
11 34.051(a)(1).

12 (i) If the court fails to rule on the application and issue
13 written findings of fact and conclusions of law within the period
14 specified by Subsection (c) or (d), the application is deemed to be
15 granted and the physician may perform the abortion as if the court
16 had issued an order authorizing the minor to consent to the
17 performance of the abortion without the consent required under
18 Section 34.051(a)(1).

19 Sec. 34.104. PROHIBITED NOTIFICATION; ANONYMITY. (a) The
20 court may not notify a parent, managing conservator, or guardian
21 that the minor is pregnant or that the minor wants to have an
22 abortion.

23 (b) The court proceedings under this subchapter shall be
24 conducted in a manner that protects the anonymity of the minor. The
25 application and all other court documents pertaining to the
26 proceedings are confidential and privileged and are not subject to
27 disclosure under Chapter 552, Government Code, or to discovery,

1 subpoena, or other legal process. The minor may file the
2 application using a pseudonym or using only her initials. The
3 supreme court may adopt rules to allow confidential docketing of an
4 application filed under this subchapter.

5 Sec. 34.105. CONFIDENTIALITY OF COURT ORDER. An order of
6 the court issued under this subchapter is confidential and
7 privileged and is not subject to disclosure under Chapter 552,
8 Government Code, or discovery, subpoena, or other legal process.
9 The order may not be released to any person except:

- 10 (1) the pregnant minor;
11 (2) the pregnant minor's guardian ad litem;
12 (3) the pregnant minor's attorney;
13 (4) another person designated to receive the order by
14 the minor; or
15 (5) a governmental agency or attorney in a criminal or
16 administrative action seeking to assert or protect the interest of
17 the minor.

18 Sec. 34.106. FEES AND COSTS. A filing fee is not required
19 of and court costs may not be assessed against a minor filing an
20 application under this subchapter.

21 [Sections 34.107-34.150 reserved for expansion]

22 SUBCHAPTER D. APPEAL OF COURT ORDER

23 Sec. 34.151. APPEAL. (a) A minor whose application under
24 Subchapter C is denied may appeal to the court of appeals having
25 jurisdiction over civil matters in the county in which the
26 application was filed.

27 (b) On receipt of a notice of appeal under this section, the

1 clerk of the court that denied the application shall deliver a copy
2 of the notice of appeal and record on appeal to the clerk of the
3 court of appeals.

4 (c) On receipt of the notice and record, the clerk of the
5 court of appeals shall place the appeal on the docket of the court.

6 (d) The clerk of the supreme court shall prescribe the
7 notice of appeal form to be used by the minor appealing a judgment
8 under this subchapter.

9 Sec. 34.152. TIME FOR APPEAL. (a) The court of appeals
10 shall rule on an appeal under this subchapter not later than 5 p.m.
11 on the second business day after the date the notice of appeal is
12 filed with the court that denied the application.

13 (b) On request by the minor, the court shall grant an
14 extension of the period specified by this section.

15 (c) If a request for an extension is made, the court shall
16 rule on the appeal not later than 5 p.m. on the second business day
17 after the date the minor states she is ready to proceed.

18 (d) If the court of appeals fails to rule on the appeal
19 within the period specified by this section, the appeal is deemed to
20 be granted and the physician may perform the abortion as if the
21 court had issued an order authorizing the minor to consent to the
22 performance of the abortion without the consent required under
23 Section 34.051(a)(1).

24 Sec. 34.153. PRECEDENCE. Proceedings under this subchapter
25 shall be given precedence over other pending matters to the extent
26 necessary to assure that the court reaches a decision promptly.

27 Sec. 34.154. NOTIFICATION PROHIBITED; ANONYMITY. (a) The

1 court of appeals may not notify a parent, managing conservator, or
2 guardian that the minor is pregnant or that the minor wants to have
3 an abortion. The court of appeals proceeding shall be conducted in
4 a manner that protects the anonymity of the minor.

5 (b) The application and all other court documents and
6 reports shall protect the anonymity of the minor.

7 (c) The supreme court may adopt rules to allow confidential
8 docketing of an appeal under this subchapter.

9 Sec. 34.155. CONFIDENTIALITY OF APPEAL. An order of the
10 court of appeals issued under this subchapter is confidential and
11 privileged and is not subject to disclosure under Chapter 552,
12 Government Code, or discovery, subpoena, or other legal process.
13 The court order may not be released to any person except:

14 (1) the pregnant minor;
15 (2) the pregnant minor's guardian ad litem;
16 (3) the pregnant minor's attorney;
17 (4) another person designated to receive the ruling by
18 the minor; or

19 (5) a governmental agency or attorney in a criminal or
20 administrative action seeking to assert or protect the interest of
21 the minor.

22 Sec. 34.156. FEES AND COSTS. A filing fee is not required
23 of and court costs may not be assessed against a minor filing an
24 appeal under this subchapter.

25 Sec. 34.157. EXPEDITED APPEAL. An expedited confidential
26 appeal shall be available to any pregnant minor to whom a court of
27 appeals denies an order authorizing the minor to consent to the

1 performance of an abortion without the consent required under
2 Section 34.051(a)(1).

3 [Sections 34.158-34.200 reserved for expansion]

4 SUBCHAPTER E. IMMUNITY; COSTS; DUTIES

5 Sec. 34.201. GUARDIAN AD LITEM IMMUNITY. (a) A guardian
6 ad litem appointed under this chapter and acting in the course and
7 scope of the appointment is not liable for damages arising from an
8 act or omission of the guardian ad litem committed in good faith.

9 (b) The immunity granted by this section does not apply if
10 the conduct of the guardian ad litem is committed in a manner
11 described by Section 107.009(b).

12 Sec. 34.202. COSTS PAID BY STATE. (a) A court acting under
13 Subchapter C or D may issue an order requiring the state to pay:

14 (1) the costs of any attorney ad litem and any guardian
15 ad litem appointed for the minor;

16 (2) notwithstanding Sections 34.106 and 34.156, the
17 costs of court associated with the application or appeal; and

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

19 (b) An order issued under Subsection (a) must be directed to
20 the comptroller, who shall pay the amount ordered from funds
21 appropriated to the Department of State Health Services.

22 Sec. 34.203. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
23 INVESTIGATION AND ASSISTANCE. (a) A physician who has reason to
24 believe that a minor has been or may be physically or sexually
25 abused by a person responsible for the minor's care, custody, or
26 welfare, as that term is defined by Section 261.001, shall
27 immediately report the suspected abuse to the Department of Family

1 and Protective Services and shall refer the minor to the department
2 for services or intervention that may be in the best interest of the
3 minor.

4 (b) The Department of Family and Protective Services shall
5 investigate suspected abuse reported under this section and, if
6 appropriate, shall assist the minor in making an application with a
7 court under Subchapter C.

8 Sec. 34.204. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A
9 court or the guardian ad litem or attorney ad litem for the minor
10 shall report conduct reasonably believed to violate Section 22.011,
11 22.021, or 25.02, Penal Code, based on information obtained during
12 a confidential court proceeding held under this chapter to:

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

14 (2) the Department of Family and Protective Services,
15 if the alleged conduct involves a person responsible for the care,
16 custody, or welfare of the child;

17 (3) the state agency that operates, licenses,
18 certifies, or registers the facility in which the alleged conduct
19 occurred, if the alleged conduct occurred in a facility operated,
20 licensed, certified, or registered by a state agency; or

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

22 Sec. 34.205. CONFIDENTIALITY. Notwithstanding any other
23 law, information obtained by the Department of Family and
24 Protective Services or another entity under Section 34.203 or
25 34.204 is confidential except to the extent necessary to prove a
26 violation of Section 22.011, 22.021, or 25.02, Penal Code.

27 Sec. 34.206. INFORMATION RELATING TO JUDICIAL BYPASS.

1 (a) The Department of State Health Services shall produce and
2 distribute informational materials that explain the rights of a
3 minor under this chapter.

4 (b) The materials provided by the department must:

5 (1) explain the procedures established by Subchapters
6 C and D;

7 (2) be made available in English and in Spanish; and

8 (3) provide information relating to alternatives to
9 abortion and health risks associated with abortion.

10 SECTION 3. (a) The Supreme Court of Texas as soon as
11 practical after the effective date of this Act shall adopt the rules
12 necessary to ensure the proceedings under Subchapters C and D,
13 Chapter 34, Family Code, as added by this Act, are conducted in a
14 manner that protects the anonymity of the minor and have sufficient
15 precedence over all other pending matters to ensure promptness of
16 disposition.

17 (b) The clerk of the Supreme Court of Texas shall adopt the
18 application form and notice of appeal form required under Sections
19 34.101 and 34.151, Family Code, as added by this Act, not later than
20 December 15, 2005.

21 (c) The executive commissioner of the Health and Human
22 Services Commission shall adopt the form required for making a
23 certification under Section 34.051, Family Code, as added by this
24 Act, not later than December 1, 2005.

25 SECTION 4. Chapter 34, Family Code, as added by this Act,
26 applies only to an abortion performed on or after January 1, 2006.
27 An abortion performed before that date is governed by the law as it

1 existed immediately before the effective date of this Act, and that
2 law is continued in effect for that purpose.

3 SECTION 5. (a) Chapter 34, Family Code, as added by this
4 Act, applies only to an offense committed on or after January 1,
5 2006. For the purposes of this section, an offense is committed
6 before January 1, 2006, if any element of the offense occurs before
7 that date.

8 (b) An offense committed before January 1, 2006, is governed
9 by the law in effect when the offense was committed, and the former
10 law is continued in effect for that purpose.

11 SECTION 6. (a) Except as provided by Subsection (b), this
12 Act takes effect September 1, 2005.

13 (b) Section 34.055, Family Code, as added by this Act, takes
14 effect January 1, 2006.