

By: Harris

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. 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 unborn child. The term 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) "Clear and convincing evidence" has the meaning assigned by Section 101.007.

(3) "Coercion" has the meaning assigned by Section 1.07(a), Penal Code.

(4) "Contraceptive" means a drug or device prescribed to prevent pregnancy.

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

1 (6) "Physician" means an individual licensed to
2 practice medicine in this state.

3 (7) "Unborn child" means an individual human organism
4 from fertilization until birth.

5 (8) "Unemancipated minor" includes a minor who:
6 (A) is unmarried; and
7 (B) has not had the disability of minority
8 removed under Chapter 31.

9 [Sections 34.002-34.050 reserved for expansion]

10 SUBCHAPTER B. CONSENT TO ABORTION

11 Sec. 34.051. CONSENT REQUIRED. (a) A physician may not
12 perform an abortion on a pregnant unemancipated minor unless the
13 minor consents, without coercion, to the abortion and:

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

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

24 (3) a probate court, county court at law, district
25 court, including a family district court, or court of appeals, by
26 its inaction, constructively authorizes the physician to perform an
27 abortion as provided by Subchapter C or D; or

1 (4) the physician performing the abortion:

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

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

21 (1) the written affidavit of the parent, managing
22 conservator, or guardian; and

23 (2) a copy of the identification submitted by the
24 parent, managing conservator, or guardian under that subsection.

25 (d) The Department of State Health Services shall prepare a
26 form to be used for making the certification required by Subsection
27 (a)(4).

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

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

8 Sec. 34.053. RECORDS. A physician must keep medical
9 records on a minor to whom this chapter applies in compliance with
10 the rules adopted by the Texas State Board of Medical Examiners
11 under Section 153.003, Occupations Code.

12 Sec. 34.054. CRIMINAL PENALTY FOR RECKLESS VIOLATION OF
13 SUBCHAPTER. (a) In this section:

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

16 (2) "Recklessly" has the meaning assigned by Section
17 6.03(c), Penal Code.

18 (b) A physician who recklessly performs an abortion on a
19 pregnant unemancipated minor in violation of this subchapter
20 commits an offense under Section 165.151, Occupations Code, and is
21 subject to the penalty provided by that section.

22 (c) A physician shall assume that a pregnant woman is a
23 minor unless she presents a valid government record of
24 identification that she has reached the age of majority.

25 (d) It is a defense to prosecution under this section that
26 the minor falsely represented her age or identity to the physician
27 to be at least 18 years of age by displaying an apparently valid

1 governmental record of identification such that a reasonable person
2 under similar circumstances would have relied on the
3 representation.

4 (e) The defense provided by Subsection (d) does not apply if
5 the physician is shown to have had independent knowledge of the
6 minor's actual age or identity or failed to use due diligence in
7 determining the minor's age.

8 Sec. 34.055. TRIAL OF OFFENSE. (a) In relation to the
9 trial of an offense under Section 34.054 in which the conduct
10 charged involves a conclusion made by the physician under Section
11 34.051(a)(4), the defendant may seek a hearing before the Texas
12 State Board of Medical Examiners on whether the physician's conduct
13 was necessary to avert the death of the minor or to avoid a serious
14 risk of substantial and irreversible impairment of a major bodily
15 function.

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

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

24 Sec. 34.056. CRIMINAL PENALTY FOR COERCION. (a) A person
25 commits an offense if the person engages in conduct to coerce a
26 minor into consenting to an abortion.

27 (b) An offense under this section is a state jail felony.

1 [Sections 34.057-34.100 reserved for expansion]

2 SUBCHAPTER C. COURT ORDER AUTHORIZING ABORTION

3 Sec. 34.101. APPLICATION FOR COURT ORDER. (a) A pregnant
4 minor who wishes to have an abortion without the consent of one of
5 her parents, her managing conservator, or her guardian may file an
6 application for a court order authorizing a physician to perform an
7 abortion without the consent of either of her parents or a managing
8 conservator or guardian.

9 (b) The application may be filed in any county court at law,
10 court having probate jurisdiction, or district court, including a
11 family district court, for the minor's county of residence or for a
12 county that borders the minor's county of residence.

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

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

15 (2) a statement that the minor is unmarried, is under
16 18 years of age, and has not had her disabilities removed under
17 Chapter 31;

18 (3) a statement that the minor wishes to have an
19 abortion without the consent of either of her parents or a managing
20 conservator or guardian; and

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

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

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

1 (a) The court shall appoint a guardian ad litem for the applicant
2 minor.

3 (b) A guardian ad litem appointed under this section:

4 (1) may not be the same person as the minor's attorney
5 or attorney ad litem; and

6 (2) shall represent the best interests of the minor
7 and presume that involving a parent, managing conservator, or
8 guardian in the minor's abortion decisions is in the best interests
9 of the minor.

10 (c) The court may appoint to serve as guardian ad litem:

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

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

15 (3) an appropriate employee of the Department of
16 Family and Protective Services;

17 (4) a member of the clergy; or

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

19 (d) If the minor has not retained an attorney, the court
20 shall appoint an attorney to represent the minor.

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

25 (b) The court shall rule on an application submitted under
26 Section 34.101 and shall issue written findings of fact and
27 conclusions of law not later than 5 p.m. on the fifth business day

1 after the date the application is filed with the court.

2 (c) On request by the minor, the court shall grant an
3 extension of the period specified by Subsection (b). If a request
4 for an extension is made, the court shall rule on an application and
5 shall issue written findings of fact and conclusions of law not
6 later than 5 p.m. on the fifth business day after the date the minor
7 states she is ready to proceed to hearing.

8 (d) Proceedings under this section shall be given
9 precedence over other pending matters to the extent necessary to
10 assure that the court reaches a decision promptly regardless of
11 whether the minor is granted an extension under this section.

12 (e) The court shall determine by clear and convincing
13 evidence:

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

17 (2) whether the abortion would be in the best interest
18 of the minor; or

19 (3) whether obtaining the consent of either of her
20 parents or a managing conservator or guardian would lead to abuse,
21 as that term is defined by Section 261.001, of the minor.

22 (f) In determining whether the minor meets the requirements
23 of Subsection (e)(1), the court may:

24 (1) inquire into the minor's reasons for seeking an
25 abortion; and

26 (2) consider the degree to which the minor is informed
27 about the state-published information materials described under

1 Chapter 171, Health and Safety Code.

2 (g) If the court finds that any of the requirements of
3 Subsection (e) are met, the court shall enter an order authorizing a
4 physician to perform the abortion without the consent required
5 under Section 34.051(a)(1). The order is valid until the 91st day
6 after the date the order is entered.

7 (h) If the court finds that the minor does not meet the
8 requirements of Subsection (e), the court may not authorize a
9 physician to perform an abortion without the consent required under
10 Section 34.051(a)(1).

11 (i) If the court fails to rule on the application and issue
12 written findings of fact and conclusions of law within the period
13 specified by Subsection (b) or (c), the application is deemed to be
14 granted. The clerk of the court shall issue a certificate to that
15 effect to the minor, and the physician may perform the abortion as
16 if the court had issued an order authorizing the minor to consent to
17 the performance of the abortion without the consent required under
18 Section 34.051(a)(1). A certificate issued under this subsection
19 is valid until the 91st day after the date the certificate is
20 issued.

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

25 (b) The court proceedings under this subchapter shall be
26 conducted in a manner that protects the anonymity of the minor. The
27 application and all other court documents and reports shall protect

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

5 (c) The minor shall be granted access to the records of her
6 case.

7 Sec. 34.105. REPORT. (a) For each case brought before a
8 court in this state under this section, the court shall report to
9 the Office of Court Administration:

- 10 (1) the number and style of the case;
11 (2) the applicant's county of residence;
12 (3) the name of the county where the court is located
13 and of the judge who presided over the case;
14 (4) the filing date of the case;
15 (5) the date of disposition of the case; and
16 (6) the nature of the disposition, whether the order
17 was granted, denied, dismissed for want of prosecution, voluntarily
18 dismissed, mooted, deemed granted for failure to timely rule under
19 Section 34.103(b) or (c), or other disposition.

20 (b) The Office of Court Administration shall annually
21 publish the information required under Subsections (a)(2), (3), and
22 (6).

23 Sec. 34.106. CONFIDENTIALITY OF COURT ORDER. An order of
24 the court issued under this subchapter is confidential and
25 privileged and is not subject to disclosure under Chapter 552,
26 Government Code, or discovery, subpoena, or other legal process.
27 The order may not be released to any person except:

- 1 (1) the pregnant minor;
2 (2) the pregnant minor's guardian ad litem;
3 (3) the pregnant minor's attorney;
4 (4) another person designated to receive the order by
5 the minor; or
6 (5) a governmental agency or attorney in a criminal or
7 administrative action seeking to assert or protect the interest of
8 the minor.

9 Sec. 34.107. FEES AND COSTS. A filing fee is not required
10 of and court costs may not be assessed against a minor filing an
11 application under this subchapter.

12 [Sections 34.108-34.150 reserved for expansion]

13 SUBCHAPTER D. APPEAL OF COURT ORDER

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

18 (b) On receipt of a notice of appeal under this section, the
19 clerk of the court that denied the application shall deliver a copy
20 of the notice of appeal and record on appeal to the clerk of the
21 court of appeals.

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

24 Sec. 34.152. TIME FOR APPEAL. (a) The court of appeals
25 shall rule on an appeal under this subchapter not later than 5 p.m.
26 on the fifth business day after the date the notice of appeal is
27 filed with the court that denied the application.

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

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

6 (d) If the court of appeals fails to rule on the appeal
7 within the period specified by this section, the appeal is deemed to
8 be granted and the physician may perform the abortion as if the
9 court had issued an order authorizing the minor to consent to the
10 performance of the abortion without the consent required under
11 Section 34.051(a)(1).

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

15 Sec. 34.154. NOTIFICATION PROHIBITED; ANONYMITY. (a) The
16 court of appeals may not notify a parent, managing conservator, or
17 guardian that the minor is pregnant or that the minor wants to have
18 an abortion. The court of appeals proceeding shall be conducted in
19 a manner that protects the anonymity of the minor.

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

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

27 (1) the pregnant minor;

1 (2) the pregnant minor's guardian ad litem;

2 (3) the pregnant minor's attorney;

3 (4) another person designated to receive the ruling by
4 the minor; or

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

8 Sec. 34.156. OPINION REQUIRED. A court of appeals shall
9 issue an opinion or memorandum opinion for each case before the
10 court under this subchapter and make the opinion available to the
11 public. The opinion or memorandum opinion must protect the
12 anonymity of the minor.

13 Sec. 34.157. FEES AND COSTS. A filing fee is not required
14 of and court costs may not be assessed against a minor filing an
15 appeal under this subchapter.

16 Sec. 34.158. EXPEDITED APPEAL. An expedited confidential
17 appeal shall be available to any pregnant minor to whom a court of
18 appeals denies an order authorizing the minor to consent to the
19 performance of an abortion without the consent required under
20 Section 34.051(a)(1).

21 [Sections 34.159-34.200 reserved for expansion]

22 SUBCHAPTER E. IMMUNITY; COSTS; DUTIES

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

27 (b) The immunity granted by this section does not apply if

1 the conduct of the guardian ad litem is committed in a manner that
2 is:

- 3 (1) wilfully wrong;
4 (2) done with conscious indifference or reckless
5 disregard to the safety of another;
6 (3) done in bad faith or with malice; or
7 (4) grossly negligent.

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

- 10 (1) the costs of any attorney ad litem and any guardian
11 ad litem appointed for the minor;
12 (2) notwithstanding Sections 34.107 and 34.157, the
13 costs of court associated with the application or appeal; and
14 (3) any court reporter's fees incurred.

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

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

27 (b) The Department of Family and Protective Services shall

1 investigate suspected abuse reported under this section and, if
2 appropriate, shall assist the minor in making an application with a
3 court under Subchapter C.

4 Sec. 34.204. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A
5 court or the guardian ad litem or attorney ad litem for the minor
6 shall report conduct reasonably believed to violate Section 22.011,
7 22.021, or 25.02, Penal Code, based on information obtained during
8 a confidential court proceeding held under this chapter to:

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

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

13 (3) the state agency that operates, licenses,
14 certifies, or registers the facility in which the alleged conduct
15 occurred, if the alleged conduct occurred in a facility operated,
16 licensed, certified, or registered by a state agency; or

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

18 Sec. 34.205. CONFIDENTIALITY. Notwithstanding any other
19 law, information obtained by the Department of Family and
20 Protective Services or another entity under Section 34.203 or
21 34.204 is confidential except to the extent necessary to prove a
22 violation of Section 22.011, 22.021, or 25.02, Penal Code.

23 Sec. 34.206. INFORMATION RELATING TO JUDICIAL BYPASS. (a)
24 The Department of State Health Services shall produce and
25 distribute informational materials that explain the rights of a
26 minor under this chapter.

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

- 1 (1) explain the procedures established by Subchapters
2 C and D;
3 (2) be made available in English and in Spanish; and
4 (3) provide information relating to alternatives to
5 abortion and health risks associated with abortion.

6 Sec. 34.207. APPLICABILITY OF OTHER LAW. A physician who
7 performs an abortion in accordance with this chapter satisfies the
8 duties imposed on the physician under Chapter 33.

9 SECTION 2. Section 245.011(c), Health and Safety Code, is
10 amended to read as follows:

11 (c) The report must include:

- 12 (1) whether the abortion facility at which the
13 abortion is performed is licensed under this chapter;
14 (2) the patient's year of birth, race, marital status,
15 and state and county of residence;
16 (3) the type of abortion procedure;
17 (4) the date the abortion was performed;
18 (5) whether the patient survived the abortion, and if
19 the patient did not survive, the cause of death;
20 (6) the period of gestation based on the best medical
21 judgment of the attending physician at the time of the procedure;
22 (7) the date, if known, of the patient's last menstrual
23 cycle;
24 (8) the number of previous live births of the patient;
25 [~~and~~]
26 (9) the number of previous induced abortions of the
27 patient; and

1 (10) for an abortion performed on a minor:

2 (A) whether consent for the abortion was obtained
3 from the parent, managing conservator, or guardian;

4 (B) whether the minor was emancipated;

5 (C) whether the minor had a valid court order
6 authorizing the abortion without the consent of a parent, managing
7 conservator, or guardian, and if so, the court that granted the
8 order, and whether the court granted the order by action or
9 inaction;

10 (D) whether the abortion was performed because of
11 a medical emergency; and

12 (E) the age of the patient's sexual partner who
13 impregnated the patient and whether suspected child abuse was
14 reported under Section 261.101, Family Code.

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

22 (b) The Supreme Court of Texas shall adopt the application
23 form and notice of appeal form required under Sections 34.101 and
24 34.151, Family Code, as added by this Act, not later than December
25 15, 2005.

26 (c) The executive commissioner of the Health and Human
27 Services Commission shall adopt the form required for making a

1 certification under Section 34.051, Family Code, as added by this
2 Act, not later than December 1, 2005.

3 SECTION 4. This Act shall not be construed to repeal
4 Articles 4512.1-4512.6, Revised Statutes.

5 SECTION 5. Chapter 34, Family Code, as added by this Act,
6 applies only to an abortion performed on or after January 1, 2006.
7 An abortion performed before that date is governed by the law as it
8 existed immediately before the effective date of this Act, and that
9 law is continued in effect for that purpose.

10 SECTION 6. (a) Chapter 34, Family Code, as added by this
11 Act, applies only to an offense committed on or after January 1,
12 2006. For the purposes of this section, an offense is committed
13 before January 1, 2006, if any element of the offense occurs before
14 that date.

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

18 SECTION 7. (a) Except as provided by Subsection (b), this
19 Act takes effect September 1, 2005.

20 (b) Sections 34.054 and 34.056, Family Code, as added by
21 this Act take effect January 1, 2006.