

By: Villarreal

H.B. No. 3077

A BILL TO BE ENTITLED

1 AN ACT

2 relating to consent by certain adults serving as a parent to the  
3 performance of an abortion on a minor.

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

5 SECTION 1. Section 33.002(a), Family Code, is amended to  
6 read as follows:

7 (a) A physician may not perform an abortion on a pregnant  
8 unemancipated minor unless:

9 (1) the physician performing the abortion gives at  
10 least 48 hours actual notice, in person or by telephone, of the  
11 physician's 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) the judge of a court having probate jurisdiction,  
17 the judge of a county court at law, the judge of a district court,  
18 including a family district court, or a court of appellate  
19 jurisdiction issues an order authorizing:

20 (A) the minor to consent to the abortion as  
21 provided by Section 33.003 or 33.004; or

22 (B) an adult who has had care, control and  
23 possession of the minor for the immediately preceding six months to  
24 consent for the minor as provided by Section 33.0031;

1           (3) a probate court, county court at law, district  
2 court, including a family district court, or court of appeals, by  
3 its inaction, constructively authorizes:

4           (A) the minor to consent to the abortion as  
5 provided by Section 33.003 or 33.004; or

6           (B) an adult who has had care, control and  
7 possession of the minor for six months preceding the date of the  
8 application to consent for the minor as provided by Section  
9 33.0031; or

10          (4) the physician performing the abortion:

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

17           (B) certifies in writing to the Texas Department  
18 of Health and in the patient's medical record the medical  
19 indications supporting the physician's judgment that the  
20 circumstances described by Paragraph (A) exist.

21          SECTION 2. Chapter 33, Family Code, is amended by adding  
22 Section 33.0031 to read as follows:

23          Sec. 33.0031. APPLICATION FOR CONSENT BY CERTAIN ADULTS.

24          (a) An adult who has had care, control and possession of a pregnant  
25 minor for the preceding six months who wishes to consent to an  
26 abortion on behalf of the minor may file an application with any  
27 county court at law, court having probate jurisdiction, or district

1 court, including a family district court, in this state.

2 (b) The application must be made under oath, under penalty  
3 of perjury, and include:

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

5 (2) a statement that the minor is unmarried, is under  
6 18 years of age, and has not had her disabilities removed under  
7 Chapter 31;

8 (3) a statement that the adult applicant has had  
9 actual care, control and possession of the minor for the period  
10 provided by Subsection (a); and

11 (4) a statement that a parent, managing conservator,  
12 or guardian has not had actual care, control and possession of the  
13 minor for that period.

14 (c) The clerk of the court shall deliver instanter the  
15 original application to the judge who is to rule on the application.

16 (d) The court shall grant the application made under this  
17 section without a hearing if the application is valid on its face  
18 and shall issue and order not later than 5 p.m. on the first  
19 business day after the date the application is filed. If the court  
20 fails to rule on the application within the period specified by this  
21 subsection, the application is deemed to be granted.

22 (e) If an application is granted under this section, a  
23 physician may perform the abortion without the notification  
24 required under Section 33.002 or the consent required under Section  
25 164.052(a)(19), Occupations Code. A physician who performs an  
26 abortion in accordance with this subsection is not committing a  
27 prohibited practice for purposes of Section 164.052, Occupations

1 Code.

2 (f) A denial by a court of an application under this section  
3 is without prejudice to a minor submitting an application under  
4 Section 33.003.

5 (g) The court may not notify a parent, managing conservator,  
6 or guardian that the minor is pregnant or that the minor wants to  
7 have an abortion. The court proceedings shall be conducted in a  
8 manner that protects the confidentiality and anonymity of the minor  
9 and the adult applicant. The application, order, and all other  
10 court documents pertaining to the proceedings are confidential and  
11 privileged and are not subject to disclosure under Chapter 552,  
12 Government Code, or to discovery, subpoena, or other legal process,  
13 except for a case involving a criminal prosecution under Section  
14 22.011, 22.021, or 25.02, Penal Code. The order may not be released  
15 to any person other than the adult applicant.

16 (h) The supreme court may adopt rules to permit confidential  
17 docketing of any application submitted under this section.

18 SECTION 3. Section 33.004, Family Code, is amended to read  
19 as follows:

20 Sec. 33.004. APPEAL. (a) A minor whose application under  
21 Section 33.003 is denied or an adult whose application under  
22 Section 33.0031 is denied may appeal to the court of appeals having  
23 jurisdiction over civil matters in the county in which the  
24 application was filed. On receipt of a notice of appeal, the clerk  
25 of the court that denied the application shall deliver a copy of the  
26 notice of appeal and record on appeal to the clerk of the court of  
27 appeals. On receipt of the notice and record, the clerk of the

1 court of appeals shall place the appeal on the docket of the court.

2 (b) The court of appeals shall rule on an appeal under this  
3 section not later than 5 p.m. on the second business day after the  
4 date the notice of appeal is filed with the court that denied the  
5 application. In the case of an appeal from an order denying an  
6 application of an adult under Section 33.0031, the court of appeals  
7 shall grant the appeal if the application is valid on its face. On  
8 request by the minor or the adult, as applicable, the court shall  
9 grant an extension of the period specified by this subsection. If a  
10 request for an extension is made, the court shall rule on the appeal  
11 not later than 5 p.m. on the second business day after the date the  
12 minor or adult states the minor or adult, as applicable, [~~she~~] is  
13 ready to proceed. If the court of appeals fails to rule on the  
14 appeal within the period specified by this subsection, the appeal  
15 is deemed to be granted and the physician may perform the abortion  
16 as if the court had issued an order authorizing the minor or the  
17 adult on behalf of the minor to consent to the performance of the  
18 abortion without notification under Section 33.002. Proceedings  
19 under this section shall be given precedence over other pending  
20 matters to the extent necessary to assure that the court reaches a  
21 decision promptly.

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

1 receive the ruling by the minor, the adult who filed the application  
2 under Section 33.0031, or a governmental agency or attorney in a  
3 criminal or administrative action seeking to assert or protect the  
4 interest of the minor. The supreme court may adopt rules to permit  
5 confidential docketing of an appeal under this section.

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

9 (e) A filing fee is not required of and court costs may not  
10 be assessed against a minor or an adult filing an appeal under this  
11 section.

12 (f) An expedited confidential appeal shall be available to  
13 any pregnant minor or an adult who files an application under  
14 Section 33.0031 to whom a court of appeals denies an order  
15 authorizing the minor or the adult on behalf of the minor to consent  
16 to the performance of an abortion without notification to either of  
17 her parents or a managing conservator or guardian.

18 SECTION 4. Chapter 33, Family Code, as amended by this Act,  
19 applies only to an abortion performed on or after January 1, 2008.  
20 An abortion performed before that day is governed by the law as it  
21 existed immediately before the effective date of this Act, and that  
22 law is continued in effect for that purpose.

23 SECTION 5. The Texas Supreme Court shall promptly issue any  
24 rules necessary to conform to the change in law made by this Act.

25 SECTION 6. The clerk of the Texas Supreme Court shall amend  
26 the application form and notice of appeal form to be used under  
27 Sections 33.003 and 33.004, Family Code, to conform to those

1 sections as amended by this Act, and develop the application form  
2 required by Section 33.0031, Family Code, as added by this Act, not  
3 later than the 60th day after the effective date of this Act.

4 SECTION 7. This Act takes effect September 1, 2007.