

By: Brown

H.B. No. 2555

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of abortion procedures; providing penalties.

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

SECTION 1. The heading to Chapter 33, Family Code, is amended to read as follows:

CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

SECTION 2. Section 33.001, Family Code, is amended to read as follows:

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Abortion" means the intentional use or prescription of any instrument, medicine, drug, or other substance, device, or method ~~[means]~~ to terminate the life of an unborn child or to terminate the pregnancy of a female known ~~[by the attending physician]~~ to be pregnant ~~[7]~~ with an ~~[the]~~ intention other than to produce a live birth and preserve the life and health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of natural causes, accidental trauma, or a criminal assault on the pregnant female or her unborn child ~~[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~~

1 contraceptives].

2 (2) "Attempt to perform or induce an abortion" means
3 an act or an omission of a statutorily required act that, under the
4 circumstances as the actor believes them to be, constitutes a
5 substantial step in a course of conduct planned to culminate in the
6 performance or induction of an abortion in this state. ["Fetus"
7 means an individual human organism from fertilization until birth.]

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

10 (4) "Medical emergency" means a condition that, in
11 reasonable medical judgment, complicates the medical condition of
12 the pregnant female to the extent that it necessitates the
13 immediate abortion of her pregnancy to avert her death or
14 concerning which a delay will create serious risk of substantial
15 and irreversible physical impairment of a major bodily function,
16 not including psychological or emotional conditions. The term does
17 not include a condition based on a claim or diagnosis that the
18 female will engage in conduct that would result in her death or in
19 substantial and irreversible physical impairment of a major bodily
20 function.

21 (5) [~~(4)~~] "Physician" means an individual licensed to
22 practice medicine in this state.

23 (6) "Positive proof of age" means a government-issued
24 document, including a birth certificate or driver's license, that
25 indicates a person's age.

26 (7) "Positive proof of identification" means a
27 government-issued photo identification card, including a driver's

1 license or similar state-issued or federal government-issued
2 identification card.

3 (8) "Reasonable medical judgment" means a medical
4 judgment that would be made by a reasonably prudent physician who is
5 knowledgeable about a patient's case and the treatment
6 possibilities for the patient related to the medical conditions
7 related to the case.

8 (9) "Unborn child" means an individual human organism
9 from fertilization to birth.

10 (10) [~~5~~] "Unemancipated minor" includes a minor
11 who:

12 (A) is unmarried; and

13 (B) has not had the disabilities of minority
14 removed under Chapter 31.

15 SECTION 3. Chapter 33, Family Code, is amended by adding
16 Section 33.0011 to read as follows:

17 Sec. 33.0011. POSITIVE PROOF OF AGE. Except in the case of
18 a medical emergency or as provided by this chapter, a physician may
19 not perform or induce an abortion on any pregnant female unless the
20 physician has obtained:

21 (1) positive proof of age demonstrating that the
22 pregnant female is not a minor; or

23 (2) proof that the pregnant female is an emancipated
24 minor.

25 SECTION 4. Sections 33.002(a), (d), (e), (f), and (g),
26 Family Code, are amended to read as follows:

27 (a) A physician may not perform or induce an abortion or

1 attempt to perform or induce an abortion on a pregnant
2 unemancipated minor unless:

3 (1) a parent of the minor or the managing conservator
4 or guardian of the minor provides in person to the physician
5 positive proof of identification and the certified consent
6 statement described by Section 33.0021 [~~the physician performing~~
7 ~~the abortion gives at least 48 hours actual notice, in person or by~~
8 ~~telephone, of the physician's intent to perform the abortion to:~~

9 [(A) ~~a parent of the minor, if the minor has no~~
10 ~~managing conservator or guardian; or~~

11 [(B) ~~a court-appointed managing conservator or~~
12 ~~guardian];~~

13 (2) 48 hours have elapsed since the time written
14 notice of the pending abortion was personally delivered by the
15 physician who is to perform the abortion or attempt to perform or
16 induce the abortion, or an agent of the physician, to the usual
17 place of residence of a parent of the minor or the managing
18 conservator or guardian of the minor and the parent, managing
19 conservator, or guardian provides to the delivering physician or
20 agent a copy of the person's positive proof of identification and
21 the certified consent statement described by Section 33.0021 [~~the~~
22 ~~judge of a court having probate jurisdiction, the judge of a county~~
23 ~~court at law, the judge of a district court, including a family~~
24 ~~district court, or a court of appellate jurisdiction issues an~~
25 ~~order authorizing the minor to consent to the abortion as provided~~
26 ~~by Section 33.003 or 33.004]; or~~

27 (3) [~~a probate court, county court at law, district~~

1 ~~court, including a family district court, or court of appeals, by~~
2 ~~its inaction, constructively authorizes the minor to consent to the~~
3 ~~abortion as provided by Section 33.003 or 33.004, or~~

4 ~~(4)~~ the physician who is to perform ~~[performing]~~ the
5 abortion:

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

13 (B) certifies in writing to the ~~[Texas]~~
14 Department of State Health Services and in the patient's medical
15 record the medical indications supporting the physician's judgment
16 that a medical emergency exists; and

17 (C) provides the notice required under Section
18 33.0022 ~~[the circumstances described by Paragraph (A) exist].~~

19 (d) A physician shall ~~[may]~~ execute for inclusion in the
20 minor's medical record an affidavit stating that, according to the
21 best information and belief of the physician, notice ~~[or~~
22 ~~constructive notice]~~ has been provided and consent obtained as
23 required by this section. Execution of an affidavit under this
24 subsection creates a presumption that the requirements of this
25 section have been satisfied.

26 (e) The ~~[Texas]~~ Department of State Health Services shall
27 prepare a form to be used for making the certification required by

1 Subsection (a)(3)(B) [~~(a)(4)~~].

2 (f) A certification required by Subsection (a)(3)(B)
3 [~~(a)(4)~~] is confidential and privileged and is not subject to
4 disclosure under Chapter 552, Government Code, or to discovery,
5 subpoena, or other legal process. Personal or identifying
6 information about the minor, including her name, address, or social
7 security number, may not be included in a certification under
8 Subsection (a)(3)(B) [~~(a)(4)~~]. The physician must keep the medical
9 records on the minor in compliance with the rules adopted by the
10 Texas Medical [~~State~~] Board [~~of Medical Examiners~~] under Section
11 153.003, Occupations Code.

12 (g) A physician who intentionally, knowingly, recklessly,
13 or negligently performs an abortion or attempts to perform or
14 induce an abortion on a pregnant unemancipated minor in violation
15 of this section commits an offense. An offense under this
16 subsection is punishable by a fine not to exceed \$10,000. In this
17 subsection, "intentionally," "knowingly," "recklessly," and
18 "negligently" have [~~has~~] the meanings [~~meaning~~] assigned by Section
19 6.03 [~~6.03(a)~~], Penal Code.

20 SECTION 5. Chapter 33, Family Code, is amended by adding
21 Sections 33.0021 and 33.0022 to read as follows:

22 Sec. 33.0021. CERTIFIED CONSENT STATEMENT; REQUIRED
23 RECORDS. (a) The certified consent statement required under
24 Section 33.002(a) must be signed, dated, and notarized and be
25 substantially similar to the following: "I certify that I, (insert
26 name), am the parent, managing conservator, or guardian of (insert
27 name of pregnant minor) and have been notified that (insert name of

1 physician) intends to perform or induce an abortion on (insert name
2 of pregnant minor), and I consent to the abortion. I understand
3 that any person who intentionally, knowingly, recklessly, or
4 negligently makes a fraudulent statement in this regard commits a
5 felony."

6 (b) A physician shall keep in the medical file of the minor a
7 copy of the positive proof of identification of the parent,
8 managing conservator, or guardian required under Section 33.002(a)
9 and the certified consent statement required by Subsection (a)
10 until the later of:

11 (1) the minor's 23rd birthday; or

12 (2) the seventh anniversary of the date of the
13 statement.

14 (c) The physician who receives the certified consent
15 statement of the parent, managing conservator, or guardian required
16 under Section 33.002(a) shall execute for inclusion in the medical
17 record of the minor an affidavit stating: "I, (insert name of
18 physician), certify that according to my best information and
19 belief, a reasonable person under similar circumstances would rely
20 on the information presented by both the minor and her parent,
21 managing conservator, or guardian as sufficient evidence of
22 identity."

23 (d) A person commits an offense if the person intentionally,
24 knowingly, recklessly, or negligently makes a fraudulent statement
25 in a certified consent statement under Subsection (a). An offense
26 under this section is a state jail felony. If conduct constituting
27 an offense under this subsection is also an offense under Section

1 37.10, Penal Code, the actor may be prosecuted under this section,
2 Section 37.10, Penal Code, or both.

3 Sec. 33.0022. MEDICAL EMERGENCY NOTIFICATION. (a) If the
4 attending physician concludes under Section 33.002(a)(3) that a
5 medical emergency exists and that there is insufficient time to
6 obtain consent in the certified consent statement described by
7 Section 33.0021, the physician shall verbally inform the parent,
8 managing conservator, or guardian of the unemancipated minor within
9 24 hours after the time a medical emergency abortion is performed on
10 the minor of:

11 (1) the performance of the abortion; and
12 (2) the basis for the physician's determination that a
13 medical emergency existed that required performance of a medical
14 emergency abortion without the notification and consent required
15 under Section 33.002.

16 (b) The attending physician or the agent of the attending
17 physician shall send a written notice of the medical emergency
18 abortion to the last known address of the parent, managing
19 conservator, or guardian by certified mail, restricted delivery,
20 return receipt requested. The physician may rely on address
21 information if a reasonable and prudent person, under similar
22 circumstances, would have relied on the information as sufficient
23 evidence that the parent, managing conservator, or guardian resides
24 at that address. The physician must keep for the period specified
25 by Section 33.0021(b) in the minor's medical record:

26 (1) the return receipt from the constructive notice;
27 and

1 (2) if the letter was returned as undeliverable, the
2 letter.

3 SECTION 6. Section 33.008, Family Code, is amended to read
4 as follows:

5 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
6 INVESTIGATION AND ASSISTANCE. (a) The notice and the certified
7 consent statement required under Section 33.002 are not required if
8 the minor declares that the person required to be notified under
9 Section 33.002 and to consent under Section 33.0021 has sexually
10 abused, neglected, or physically abused, as those terms are defined
11 by Chapter 21, Penal Code, the minor.

12 (b) If a minor claims to have been [~~A physician who has~~
13 ~~reason to believe that a minor has been or may be~~] physically or
14 sexually abused by a parent or the managing conservator or guardian
15 of the minor, the physician or physician's agent [~~person~~
16 ~~responsible for the minor's care, custody, or welfare, as that term~~
17 ~~is defined by Section 261.001,~~] shall immediately report the
18 suspected abuse and the name of the abuser to the Department of
19 Family and Protective [~~and Regulatory~~] Services and to a local law
20 enforcement agency and shall refer the minor to the department for
21 services or intervention that may be in the best interest of the
22 minor. The local law enforcement agency has a duty to respond and
23 shall write a report within 12 hours of being notified of the
24 alleged abuse. A report shall be made regardless of whether the
25 responder knows or suspects that a report about the abuse may have
26 previously been made.

27 (c) A law enforcement agency and the [~~(b) The~~] Department

1 of Family and Protective [~~and Regulatory~~] Services shall
2 investigate suspected abuse reported under this section and, if
3 warranted [~~appropriate~~], shall refer the case to the appropriate
4 prosecuting authority [~~assist the minor in making an application~~
5 ~~with a court under Section 33.003~~].

6 SECTION 7. Section 33.010, Family Code, is amended to read
7 as follows:

8 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other
9 law, information obtained by the Department of Family and
10 Protective Services or another entity under Section 33.008 [~~or~~
11 ~~33.009~~] is confidential except to the extent necessary to prove a
12 violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

13 SECTION 8. Chapter 33, Family Code, is amended by adding
14 Sections 33.012 and 33.013 to read as follows:

15 Sec. 33.012. INJUNCTION; CIVIL LIABILITY. (a) A cause of
16 action for injunctive relief may be brought against a person who
17 intentionally, knowingly, recklessly, or negligently violates
18 Section 33.002 or 33.008 to prevent the violation from continuing
19 or occurring. The action may be maintained by:

20 (1) the minor on whom an abortion was performed or on
21 whom the performance or induction of an abortion was attempted;

22 (2) a parent or the managing conservator or guardian
23 of the minor;

24 (3) a district attorney with appropriate
25 jurisdiction; or

26 (4) the attorney general.

27 (b) A physician or abortion provider who intentionally,

1 knowingly, recklessly, or negligently violates this chapter is
2 liable for damages in a civil action brought under this section. A
3 pregnant minor on whom an abortion has been performed or on whom the
4 performance or induction of an abortion has been attempted in
5 violation of this chapter, or a parent or the managing conservator
6 or guardian of an unemancipated minor, may seek actual and punitive
7 damages from the physician or abortion provider for any
8 intentional, knowing, reckless, or negligent violation of this
9 chapter.

10 (c) A person who intentionally, knowingly, recklessly, or
11 negligently violates the terms of an injunction issued in
12 accordance with this section is liable to this state for a civil
13 penalty of:

- 14 (1) \$10,000 for the first violation;
15 (2) \$50,000 for the second violation;
16 (3) \$100,000 for the third violation; and
17 (4) an amount greater than \$100,000 that is sufficient
18 to deter future violations for each succeeding violation.

19 (d) Each performance or attempted provision of an abortion
20 in violation of the terms of an injunction is a separate violation.

21 (e) A civil penalty may not be assessed against a minor on
22 whom an abortion is performed or attempted.

23 (f) A physician who is found guilty of a violation of this
24 chapter by a court or who loses the physician's license to practice
25 medicine for unprofessional conduct described by Section
26 164.052(a)(19), Occupations Code, is liable for the legal fees of
27 the minor or the person suing on her behalf.

1 (g) It is not a defense to a claim brought under this section
2 that the minor gave informed and voluntary consent.

3 Sec. 33.013. CAPACITY TO CONSENT. An unemancipated minor
4 does not have the capacity to consent to any action that violates
5 this chapter.

6 SECTION 9. Section 164.052(a), Occupations Code, is amended
7 to read as follows:

8 (a) A physician or an applicant for a license to practice
9 medicine commits a prohibited practice if that person:

10 (1) submits to the board a false or misleading
11 statement, document, or certificate in an application for a
12 license;

13 (2) presents to the board a license, certificate, or
14 diploma that was illegally or fraudulently obtained;

15 (3) commits fraud or deception in taking or passing an
16 examination;

17 (4) uses alcohol or drugs in an intemperate manner
18 that, in the board's opinion, could endanger a patient's life;

19 (5) commits unprofessional or dishonorable conduct
20 that is likely to deceive or defraud the public, as provided by
21 Section 164.053, or injure the public;

22 (6) uses an advertising statement that is false,
23 misleading, or deceptive;

24 (7) advertises professional superiority or the
25 performance of professional service in a superior manner if that
26 advertising is not readily subject to verification;

27 (8) purchases, sells, barter, or uses, or offers to

1 purchase, sell, barter, or use, a medical degree, license,
2 certificate, or diploma, or a transcript of a license, certificate,
3 or diploma in or incident to an application to the board for a
4 license to practice medicine;

5 (9) alters, with fraudulent intent, a medical license,
6 certificate, or diploma, or a transcript of a medical license,
7 certificate, or diploma;

8 (10) uses a medical license, certificate, or diploma,
9 or a transcript of a medical license, certificate, or diploma that
10 has been:

11 (A) fraudulently purchased or issued;

12 (B) counterfeited; or

13 (C) materially altered;

14 (11) impersonates or acts as proxy for another person
15 in an examination required by this subtitle for a medical license;

16 (12) engages in conduct that subverts or attempts to
17 subvert an examination process required by this subtitle for a
18 medical license;

19 (13) impersonates a physician or permits another to
20 use the person's license or certificate to practice medicine in
21 this state;

22 (14) directly or indirectly employs a person whose
23 license to practice medicine has been suspended, canceled, or
24 revoked;

25 (15) associates in the practice of medicine with a
26 person:

27 (A) whose license to practice medicine has been

1 suspended, canceled, or revoked; or

2 (B) who has been convicted of the unlawful
3 practice of medicine in this state or elsewhere;

4 (16) performs or procures a criminal abortion, aids or
5 abets in the procuring of a criminal abortion, attempts to perform
6 or procure a criminal abortion, or attempts to aid or abet the
7 performance or procurement of a criminal abortion;

8 (17) directly or indirectly aids or abets the practice
9 of medicine by a person, partnership, association, or corporation
10 that is not licensed to practice medicine by the board;

11 (18) performs an abortion on a woman who is pregnant
12 with a viable unborn child during the third trimester of the
13 pregnancy unless:

14 (A) the abortion is necessary to prevent the
15 death of the woman;

16 (B) the viable unborn child has a severe,
17 irreversible brain impairment; or

18 (C) the woman is diagnosed with a significant
19 likelihood of suffering imminent severe, irreversible brain damage
20 or imminent severe, irreversible paralysis; or

21 (19) performs an abortion on an unemancipated minor in
22 violation of Chapter 33 [~~without the written consent of the child's~~
23 ~~parent, managing conservator, or legal guardian or without a court~~
24 ~~order, as provided by Section 33.003 or 33.004~~], Family Code[~~7~~
25 ~~authorizing the minor to consent to the abortion, unless the~~
26 ~~physician concludes that on the basis of the physician's good faith~~
27 ~~clinical judgment, a condition exists that complicates the medical~~

1 ~~condition of the pregnant minor and necessitates the immediate~~
2 ~~abortion of her pregnancy to avert her death or to avoid a serious~~
3 ~~risk of substantial impairment of a major bodily function and that~~
4 ~~there is insufficient time to obtain the consent of the child's~~
5 ~~parent, managing conservator, or legal guardian].~~

6 SECTION 10. Section 164.055(b), Occupations Code, is
7 amended to read as follows:

8 (b) The sanctions provided by Subsection (a) are in addition
9 to any other grounds for refusal to admit persons to examination
10 under this subtitle or to issue a license or renew a license to
11 practice medicine under this subtitle. ~~[The criminal penalties~~
12 ~~provided by Section 165.152 do not apply to a violation of Section~~
13 ~~170.002, Health and Safety Code.]~~

14 SECTION 11. The following sections of the Family Code are
15 repealed:

- 16 (1) Sections 33.002(b), (c), (h), and (i);
- 17 (2) Section 33.003;
- 18 (3) Section 33.004;
- 19 (4) Section 33.005;
- 20 (5) Section 33.006;
- 21 (6) Section 33.007;
- 22 (7) Section 33.009; and
- 23 (8) Section 33.011.

24 SECTION 12. The changes in law made by this Act remain in
25 effect during the determination by a court of a suit to enjoin,
26 suspend, or delay implementation of this Act.

27 SECTION 13. If any provision of this Act or its application

1 to any person or circumstance is finally held to be
2 unconstitutional, the entire Act is invalid, and to this end the
3 provisions of this Act are declared to be nonseverable.

4 SECTION 14. The changes in law made by this Act apply only
5 to an offense committed or conduct that occurs on or after the
6 effective date of this Act. An offense committed or conduct that
7 occurs before the effective date of this Act is governed by the law
8 in effect when the offense was committed or the conduct occurred,
9 and the former law is continued in effect for that purpose. For
10 purposes of this section, an offense is committed or conduct occurs
11 before the effective date of this Act if any element of the offense
12 or conduct occurs before the effective date.

13 SECTION 15. Information obtained before the effective date
14 of this Act by the Department of Family and Protective Services or
15 another entity under Section 33.009, Family Code, as it existed
16 before the effective date of this Act, remains confidential to the
17 extent provided by Section 33.010, Family Code, as it existed
18 before the effective date of this Act.

19 SECTION 16. The repeal by this Act of Section 33.006, Family
20 Code, does not apply to a cause of action that accrues before the
21 effective date of this Act. A cause of action that accrues before
22 the effective date of this Act is governed by the law as it existed
23 immediately before that date, and that law is continued in effect
24 for that purpose.

25 SECTION 17. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

H.B. No. 2555

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2011.