

By: Lavender

H.B. No. 2659

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting abortion except when medically necessary or when the pregnancy is the result of rape or incest.

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

SECTION 1. The heading to Chapter 170, Health and Safety Code, is amended to read as follows:

CHAPTER 170. ABORTION PROHIBITED [~~ACTS REGARDING ABORTION~~]

SECTION 2. Section 170.002, Health and Safety Code, is amended to read as follows:

Sec. 170.002. ABORTION PROHIBITED [~~ACTS~~]; EXEMPTION. (a) Except as provided by Subsection (b), a person may not intentionally or knowingly perform an abortion on a woman who is pregnant [~~with a viable unborn child during the third trimester of the pregnancy~~].

(b) Subsection (a) does not prohibit a person from performing an abortion if at the time of the abortion the person is a physician and concludes in good faith [~~according to the physician's best medical judgment~~] that:

(1) the pregnancy is the result of rape or incest based on a police report or other evidence the physician reasonably determines is reliable; or [~~fetus is not a viable fetus and the pregnancy is not in the third trimester,~~]

(2) the abortion, according to the physician's best medical judgment, is necessary to prevent the death or a

1 substantial risk of serious impairment to the physical [~~or mental~~]
2 health of the woman[~~, or~~

3 ~~[(3) the fetus has a severe and irreversible~~
4 ~~abnormality, identified by reliable diagnostic procedures].~~

5 (c) A physician who performs an abortion [~~that, according to~~
6 ~~the physician's best medical judgment at the time of the abortion,~~
7 ~~is to abort a viable unborn child during the third trimester of the~~
8 ~~pregnancy]~~ shall certify in writing to the department, on a form
9 prescribed by the department, the facts or medical indications
10 supporting the physician's judgment that the abortion was
11 authorized by Subsection (b) [~~(b)(2) or (3)~~]. The certification
12 must be made not later than the 30th day after the date the abortion
13 was performed.

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

16 Sec. 33.0011. PROHIBITED ABORTION NOT AUTHORIZED. This
17 chapter may not be construed to authorize the performance of an
18 abortion prohibited under Chapter 170, Health and Safety Code.

19 SECTION 4. Sections 33.002(a) and (d), Family Code, are
20 amended to read as follows:

21 (a) A physician may not perform an abortion on a pregnant
22 unemancipated minor unless the abortion is authorized under Section
23 170.002(b), Health and Safety Code, and:

24 (1) the physician performing the abortion gives at
25 least 48 hours actual notice, in person or by telephone, of the
26 physician's intent to perform the abortion to and, in accordance
27 with Section 164.052, Occupations Code, obtains written consent

1 from:

2 (A) a parent of the minor, if the minor has no
3 managing conservator or guardian; or

4 (B) a court-appointed managing conservator or
5 guardian;

6 (2) for a pregnancy the physician has reasonably
7 determined is the result of incest, the judge of a court having
8 probate jurisdiction, the judge of a county court at law, the judge
9 of a district court, including a family district court, or a court
10 of appellate jurisdiction issues an order authorizing the minor to
11 consent to the abortion as provided by Section 33.003 or 33.004;

12 (3) for a pregnancy the physician has reasonably
13 determined is the result of incest, a probate court, county court at
14 law, district court, including a family district court, or court of
15 appeals, by its inaction, constructively authorizes the minor to
16 consent to the abortion as provided by Section 33.003 or 33.004; or

17 (4) the physician performing the abortion:

18 (A) concludes that on the basis of the
19 physician's good faith clinical judgment, a condition exists that
20 complicates the medical condition of the pregnant minor and
21 necessitates the immediate abortion of her pregnancy to avert her
22 death or to avoid a serious risk of substantial and irreversible
23 impairment of a major bodily function and that there is
24 insufficient time to provide the notice and obtain the consent of
25 the minor's parent, managing conservator, or guardian; and

26 (B) certifies in writing to the [~~Texas~~]
27 Department of State Health Services and in the patient's medical

1 record the medical indications supporting the physician's judgment
2 that the circumstances described by Paragraph (A) exist.

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

9 SECTION 5. Sections 33.003(a) and (c), Family Code, are
10 amended to read as follows:

11 (a) A pregnant minor whose pregnancy is the result of incest
12 and who wishes to have an abortion without notification to one of
13 her parents, her managing conservator, or her guardian may file an
14 application for a court order authorizing the minor to consent to
15 the performance of an abortion without notification to either of
16 her parents or a managing conservator or guardian.

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

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

19 (2) a statement that the minor is unmarried, is under
20 18 years of age, and has not had her disabilities removed under
21 Chapter 31;

22 (3) a statement that the pregnancy is the result of
23 incest and the minor wishes to have an abortion without the
24 notification of either of her parents or a managing conservator or
25 guardian; and

26 (4) a statement as to whether the minor has retained an
27 attorney and, if she has retained an attorney, the name, address,

1 and telephone number of her attorney.

2 SECTION 6. Section 33.008(b), Family Code, is amended to
3 read as follows:

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

8 SECTION 7. Section 419.908(c), Government Code, as added by
9 Chapter 994 (H.B. 3866), Acts of the 81st Legislature, Regular
10 Session, 2009, is amended to read as follows:

11 (c) This section does not apply to state agency personnel
12 who conduct a life safety code survey of a building or facility in
13 connection with determining whether to issue or renew a license
14 under Chapter 142, 241, 242, 243, 244, [~~245,~~] 247, 248, 251, 252,
15 464, 466, or 577, Health and Safety Code, or Chapter 103, Human
16 Resources Code.

17 SECTION 8. Section 248.003, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

20 (1) a home and community support services agency
21 required to be licensed under Chapter 142;

22 (2) a person required to be licensed under Chapter 241
23 (Texas Hospital Licensing Law);

24 (3) an institution required to be licensed under
25 Chapter 242;

26 (4) an ambulatory surgical center required to be
27 licensed under Chapter 243 (Texas Ambulatory Surgical Center

1 Licensing Act);

2 (5) a birthing center required to be licensed under
3 Chapter 244 (Texas Birthing Center Licensing Act);

4 (6) [~~a facility required to be licensed under Chapter~~
5 ~~245 (Texas Abortion Facility Reporting and Licensing Act),~~

6 [~~(7)~~] a child care institution, foster group home,
7 foster family home, and child-placing agency, for children in
8 foster care or other residential care who are under the
9 conservatorship of the Department of Family and Protective [~~and~~
10 ~~Regulatory~~] Services; or

11 (7) [~~(8)~~] a person providing medical or nursing care
12 or services under a license or permit issued under other state law.

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

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

17 (1) submits to the board a false or misleading
18 statement, document, or certificate in an application for a
19 license;

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

22 (3) commits fraud or deception in taking or passing an
23 examination;

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

26 (5) commits unprofessional or dishonorable conduct
27 that is likely to deceive or defraud the public, as provided by

1 Section 164.053, or injure the public;

2 (6) uses an advertising statement that is false,
3 misleading, or deceptive;

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

7 (8) purchases, sells, barter, or uses, or offers to
8 purchase, sell, barter, or use, a medical degree, license,
9 certificate, or diploma, or a transcript of a license, certificate,
10 or diploma in or incident to an application to the board for a
11 license to practice medicine;

12 (9) alters, with fraudulent intent, a medical license,
13 certificate, or diploma, or a transcript of a medical license,
14 certificate, or diploma;

15 (10) uses a medical license, certificate, or diploma,
16 or a transcript of a medical license, certificate, or diploma that
17 has been:

18 (A) fraudulently purchased or issued;

19 (B) counterfeited; or

20 (C) materially altered;

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

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

26 (13) impersonates a physician or permits another to
27 use the person's license or certificate to practice medicine in

1 this state;

2 (14) directly or indirectly employs a person whose
3 license to practice medicine has been suspended, canceled, or
4 revoked;

5 (15) associates in the practice of medicine with a
6 person:

7 (A) whose license to practice medicine has been
8 suspended, canceled, or revoked; or

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

11 (16) performs or procures a criminal abortion, aids or
12 abets in the procuring of a criminal abortion, attempts to perform
13 or procure a criminal abortion, or attempts to aid or abet the
14 performance or procurement of a criminal abortion;

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

18 (18) performs an abortion on a woman who is pregnant,
19 ~~[with a viable unborn child during the third trimester of the~~
20 ~~pregnancy]~~ unless[+]

21 [~~(A)~~] the abortion is authorized under Section
22 170.002(b), Health and Safety Code [~~necessary to prevent the death~~
23 ~~of the woman,~~

24 [~~(B)~~ ~~the viable unborn child has a severe,~~
25 ~~irreversible brain impairment, or~~

26 [~~(C)~~ ~~the woman is diagnosed with a significant~~
27 ~~likelihood of suffering imminent severe, irreversible brain damage~~

1 ~~or imminent severe, irreversible paralysis]; or~~

2 (19) performs an abortion on an unemancipated minor
3 without the written consent of the child's parent, managing
4 conservator, or legal guardian [~~or without a court order, as~~
5 ~~provided by Section 33.003 or 33.004, Family Code, authorizing the~~
6 ~~minor to consent to the abortion], unless the abortion is
7 authorized under Section 170.002(b), Health and Safety Code, and
8 performed in accordance with Chapter 33, Family Code [~~physician~~
9 ~~concludes that on the basis of the physician's good faith clinical~~
10 ~~judgment, a condition exists that complicates the medical condition~~
11 ~~of the pregnant minor and necessitates the immediate abortion of~~
12 ~~her pregnancy to avert her death or to avoid a serious risk of~~
13 ~~substantial impairment of a major bodily function and that there is~~
14 ~~insufficient time to obtain the consent of the child's parent,~~
15 ~~managing conservator, or legal guardian].~~~~

16 SECTION 10. The following provisions are repealed:

- 17 (1) Section 33.002(b), Family Code;
18 (2) Section 170.001(3), Health and Safety Code;
19 (3) Chapter 171, Health and Safety Code; and
20 (4) Chapter 245, Health and Safety Code.

21 SECTION 11. If any provision of this Act or its application
22 to any person or circumstance is held invalid, the entire Act is
23 invalid, and to this end the provisions of this Act are declared to
24 be nonseverable.

25 SECTION 12. The changes in law made by this Act apply only
26 to an offense committed or conduct that occurs on or after the
27 effective date of this Act. An offense committed or conduct that

1 occurs before the effective date of this Act is governed by the law
2 in effect when the offense was committed or the conduct occurred,
3 and the former law is continued in effect for that purpose. For
4 purposes of this section, an offense is committed or conduct occurs
5 before the effective date of this Act if any element of the offense
6 or conduct occurs before the effective date.

7 SECTION 13. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2011.