

By: Parker

H.B. No. 2988

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting abortion except when medically necessary.

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 fetus is not a viable fetus and the pregnancy is not in the third trimester,~~

[~~(2)~~] the abortion is necessary to prevent the death or a substantial risk of serious impairment to the physical [~~or mental~~] health of the woman[~~, or~~

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

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

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

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

14 SECTION 4. Sections 33.002(a), (d), (e), (f), and (i),
15 Family Code, are amended to read as follows:

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

18 (1) the physician performing the abortion gives at
19 least 48 hours actual notice, in person or by telephone, of the
20 physician's intent to perform the abortion to and, in accordance
21 with Section 164.052, Occupations Code, obtains written consent
22 from:

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

25 (B) a court-appointed managing conservator or
26 guardian; or

27 (2) [~~the judge of a court having probate jurisdiction,~~

1 ~~the judge of a county court at law, the judge of a district court,~~
2 ~~including a family district court, or a court of appellate~~
3 ~~jurisdiction issues an order authorizing the minor to consent to~~
4 ~~the abortion as provided by Section 33.003 or 33.004;~~

5 ~~[(3) a probate court, county court at law, district~~
6 ~~court, including a family district court, or court of appeals, by~~
7 ~~its inaction, constructively authorizes the minor to consent to the~~
8 ~~abortion as provided by Section 33.003 or 33.004; or~~

9 [(4)] the physician performing the abortion:

10 (A) concludes that on the basis of the
11 physician's good faith clinical judgment, a condition exists that
12 complicates the medical condition of the pregnant minor and
13 necessitates the immediate abortion of her pregnancy to avert her
14 death or to avoid a serious risk of substantial and irreversible
15 impairment of a major bodily function and that there is
16 insufficient time to provide the notice and obtain the consent of
17 the minor's parent, managing conservator, or guardian; and

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

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

1 (e) The [~~Texas~~] Department of State Health Services shall
2 prepare a form to be used for making the certification required by
3 Subsection (a)(2) [~~(a)(4)~~].

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

13 (i) In relation to the trial of an offense under this
14 section in which the conduct charged involves a conclusion made by
15 the physician under Subsection (a)(2) [~~(a)(4)~~], the defendant may
16 seek a hearing before the Texas [~~State Board of~~] Medical Board
17 [~~Examiners~~] on whether the physician's conduct was necessary to
18 avert the death of the minor or to avoid a serious risk of
19 substantial and irreversible impairment of a major bodily function.
20 The findings of the Texas [~~State Board of~~] Medical Board
21 [~~Examiners~~] under this subsection are admissible on that issue in
22 the trial of the defendant. Notwithstanding any other reason for a
23 continuance provided under the Code of Criminal Procedure or other
24 law, on motion of the defendant, the court shall delay the beginning
25 of the trial for not more than 30 days to permit a hearing under this
26 subsection to take place.

27 SECTION 5. Section 33.008(b), Family Code, is amended to

1 read as follows:

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

6 SECTION 6. 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 7. Section 419.908(c), Government Code, as added by
14 Chapter 994 (H.B. 3866), Acts of the 81st Legislature, Regular
15 Session, 2009, is amended to read as follows:

16 (c) This section does not apply to state agency personnel
17 who conduct a life safety code survey of a building or facility in
18 connection with determining whether to issue or renew a license
19 under Chapter 142, 241, 242, 243, 244, [~~245~~] 247, 248, 251, 252,
20 464, 466, or 577, Health and Safety Code, or Chapter 103, Human
21 Resources Code.

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

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

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

27 (2) a person required to be licensed under Chapter 241

1 (Texas Hospital Licensing Law);

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

4 (4) an ambulatory surgical center required to be
5 licensed under Chapter 243 (Texas Ambulatory Surgical Center
6 Licensing Act);

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

9 (6) [~~a facility required to be licensed under Chapter~~
10 ~~245 (Texas Abortion Facility Reporting and Licensing Act);~~

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

16 (7) [~~(8)~~] a person providing medical or nursing care
17 or services under a license or permit issued under other state law.

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

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

22 (1) submits to the board a false or misleading
23 statement, document, or certificate in an application for a
24 license;

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

27 (3) commits fraud or deception in taking or passing an

1 examination;

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

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

7 (6) uses an advertising statement that is false,
8 misleading, or deceptive;

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

12 (8) purchases, sells, barter, or uses, or offers to
13 purchase, sell, barter, or use, a medical degree, license,
14 certificate, or diploma, or a transcript of a license, certificate,
15 or diploma in or incident to an application to the board for a
16 license to practice medicine;

17 (9) alters, with fraudulent intent, a medical license,
18 certificate, or diploma, or a transcript of a medical license,
19 certificate, or diploma;

20 (10) uses a medical license, certificate, or diploma,
21 or a transcript of a medical license, certificate, or diploma that
22 has been:

23 (A) fraudulently purchased or issued;

24 (B) counterfeited; or

25 (C) materially altered;

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

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

4 (13) impersonates a physician or permits another to
5 use the person's license or certificate to practice medicine in
6 this state;

7 (14) directly or indirectly employs a person whose
8 license to practice medicine has been suspended, canceled, or
9 revoked;

10 (15) associates in the practice of medicine with a
11 person:

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

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

16 (16) performs or procures a criminal abortion, aids or
17 abets in the procuring of a criminal abortion, attempts to perform
18 or procure a criminal abortion, or attempts to aid or abet the
19 performance or procurement of a criminal abortion;

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

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

26 ~~[(A)]~~ the abortion is authorized under Section
27 170.002(b), Health and Safety Code ~~[necessary to prevent the death~~

1 ~~of the woman,~~

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

4 ~~[(C) the woman is diagnosed with a significant~~
5 ~~likelihood of suffering imminent severe, irreversible brain damage~~
6 ~~or imminent severe, irreversible paralysis]; or~~

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

19 SECTION 10. The following provisions are repealed:

20 (1) Section 33.002(b), Family Code;

21 (2) Sections 33.003, 33.004, 33.005, 33.006, 33.007,
22 33.009, and 33.011, Family Code;

23 (3) Section 170.001(3), Health and Safety Code;

24 (4) Chapter 171, Health and Safety Code; and

25 (5) Chapter 245, Health and Safety Code.

26 SECTION 11. If any provision of this Act or its application
27 to any person or circumstance is held invalid, the entire Act is

1 invalid, and to this end the provisions of this Act are declared to
2 be nonseverable.

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

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

18 SECTION 14. The repeal by this Act of Section 33.006, Family
19 Code, does not apply to a cause of action that accrues before the
20 effective date of this Act. A cause of action that accrues before
21 the effective date of this Act is governed by the law as it existed
22 immediately before that date, and that law is continued in effect
23 for that purpose.

24 SECTION 15. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2011.