

By: Callegari

H.B. No. 67

A BILL TO BE ENTITLED

AN ACT

relating to notice of and consent to an abortion for a minor.

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 33.002(h), Family Code, is amended to read as follows:

(h) A physician shall presume that a pregnant woman is a minor unless the woman presents a valid government record of identification showing that she has reached the age of majority. It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a reasonable person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity. In this subsection, "defense" has the meaning and application assigned by Section 2.03, Penal Code.

SECTION 3. Chapter 33, Family Code, is amended by adding Section 33.0021 to read as follows:

Sec. 33.0021. CONSENT REQUIRED. A physician may not

1 perform an abortion in violation of Section 164.052(a)(19),  
2 Occupations Code.

3 SECTION 4. Section 33.003, Family Code, is amended by  
4 amending Subsections (a), (b), (c), (e), (g), (h), (i), (j), and (k)  
5 and adding Subsections (g-1), (i-1), (i-2), (i-3), (l-1), and (l-2)  
6 to read as follows:

7 (a) A pregnant minor who wishes to have an abortion without  
8 notification to and consent ~~[one]~~ of a parent ~~[her parents]~~, ~~[her]~~  
9 managing conservator, or ~~[her]~~ guardian may file an application for  
10 a court order authorizing the minor to consent to the performance of  
11 an abortion without notification to and consent of a parent,  
12 ~~[either of her parents or a]~~ managing conservator, or guardian.

13 (b) The application may be filed in any county court at law,  
14 court having probate jurisdiction, or district court, including a  
15 family district court, in the minor's county of residence or in a  
16 neighboring county if the minor's county of residence has a  
17 population of less than 10,000 or in the county in which the  
18 facility at which the minor intends to obtain an abortion is located  
19 ~~[this state]~~.

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

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

22 (2) a statement that the minor is unmarried, is under  
23 18 years of age, and has not had her disabilities removed under  
24 Chapter 31;

25 (3) a statement that the minor wishes to have an  
26 abortion without the notification to or consent of a parent,  
27 ~~[either of her parents or a]~~ managing conservator, or guardian; and

1           (4) a statement as to whether the minor has retained an  
2 attorney and, if she has retained an attorney, the name, address,  
3 and telephone number of her attorney.

4           (e) The court shall appoint a guardian ad litem for the  
5 minor who shall represent the best interest of the minor. If the  
6 minor has not retained an attorney, the court shall appoint an  
7 attorney to represent the minor. The [~~If the~~] guardian ad litem may  
8 not also [~~is an attorney admitted to the practice of law in this~~  
9 ~~state, the court may appoint the guardian ad litem to~~] serve as the  
10 minor's attorney.

11           (g) The court shall fix a time for a hearing on an  
12 application filed under Subsection (a) and shall keep a record of  
13 all testimony and other oral proceedings in the action. [~~The court~~  
14 ~~shall enter judgment on the application immediately after the~~  
15 ~~hearing is concluded.~~]

16           (g-1) The pregnant minor must appear before the court in  
17 person and may not appear using videoconferencing, telephone  
18 conferencing, or other remote electronic means.

19           (h) The court shall rule on an application submitted under  
20 this section and shall issue written findings of fact and  
21 conclusions of law not later than 5 p.m. on the fifth [~~second~~]  
22 business day after the date the application is filed with the court.  
23 On request by the minor, the court shall grant an extension of the  
24 period specified by this subsection. If a request for an extension  
25 is made, the court shall rule on an application and shall issue  
26 written findings of fact and conclusions of law not later than 5  
27 p.m. on the fifth [~~second~~] business day after the date the minor

1 states she is ready to proceed to hearing. If the court fails to  
2 rule on the application and issue written findings of fact and  
3 conclusions of law within the period specified by this subsection,  
4 the application is deemed to be granted, and the court clerk shall  
5 issue to the physician a certificate showing that the court failed  
6 to rule on the application. On receipt of the certificate, the  
7 physician may perform the abortion as if the court had issued an  
8 order authorizing the minor to consent to the performance of the  
9 abortion without the notification under Section 33.002 and consent  
10 under Section 33.0021. Proceedings under this section shall be  
11 given precedence over other pending matters to the extent necessary  
12 to assure that the court reaches a decision promptly, regardless of  
13 whether the minor is granted an extension under this subsection.

14 (i) The court shall determine by clear and convincing [~~a~~  
15 ~~preponderance of the~~] evidence, as described by Section 101.007,  
16 whether the minor has overcome the presumption that notifying and  
17 requesting consent from a parent, managing conservator, or guardian  
18 is in the minor's best interest. In making a determination under  
19 this subsection, the court shall consider:

20 (1) whether the minor is mature and sufficiently well  
21 informed to make the decision to have an abortion performed without  
22 notification to or consent of a parent, [~~either of her parents or a~~  
23 managing conservator,] or guardian;

24 (2) [~~7~~] whether the abortion [~~notification~~] would  
25 [~~not~~] be in the best interest of the minor; and

26 (3) [~~7 or~~] whether notification or the attempt to  
27 obtain consent may lead to physical, sexual, or emotional abuse of

1 the minor, as described by Section 261.001.

2 (i-1) In determining whether the minor meets the  
3 requirements of Subsection (i)(1), the court shall consider the  
4 experience, perspective, and judgment of the minor. The court may  
5 consider all relevant factors, including:

6 (1) the minor's age;

7 (2) the minor's life experiences, such as working,  
8 traveling independently, or managing her own financial affairs;

9 (3) steps taken by the minor to explore her options and  
10 the consequences of those options; and

11 (4) the minor's decision not to notify and obtain  
12 consent from a parent, managing conservator, or guardian.

13 (i-2) In determining whether the abortion is in the best  
14 interest of the minor, the court may:

15 (1) inquire as to the minor's reasons for seeking an  
16 abortion;

17 (2) consider the degree to which the minor is informed  
18 about the state-published informational materials described by  
19 Chapter 171, Health and Safety Code; and

20 (3) require the minor to be evaluated by a licensed  
21 mental health counselor, who shall return the evaluation to the  
22 court for review within three business days.

23 (i-3) If the court finds that the minor is mature and  
24 sufficiently well informed, that the abortion [~~notification~~] would  
25 [~~not~~] be in the minor's best interest, or that notification or the  
26 attempt to obtain consent may lead to physical, sexual, or  
27 emotional abuse of the minor, the court shall enter an order

1 authorizing the minor to consent to the performance of the abortion  
2 without notification to and consent of a parent, [~~either of her~~  
3 ~~parents or a~~] managing conservator, or guardian and shall execute  
4 the required forms.

5 (j) If the court finds that the minor does not meet the  
6 requirements of Subsection (i-3) [~~(i)~~], the court may not authorize  
7 the minor to consent to an abortion without the notification  
8 authorized under Section 33.002(a)(1) and consent under Section  
9 33.0021.

10 (k) The court may not notify a parent, managing conservator,  
11 or guardian that the minor is pregnant or that the minor wants to  
12 have an abortion. The court proceedings shall be conducted in a  
13 manner that protects the anonymity of the minor. The application  
14 and all other court documents pertaining to the proceedings are  
15 confidential and privileged and are not subject to disclosure under  
16 Chapter 552, Government Code, or to discovery, subpoena, or other  
17 legal process. The minor may file the application using a pseudonym  
18 or using only her initials. Confidential records pertaining to a  
19 minor under this subsection may be disclosed to the minor.

20 (l-1) The clerk of the court, at intervals prescribed by the  
21 Office of Court Administration of the Texas Judicial System, shall  
22 submit a report to the office that includes, for each case filed  
23 under this section:

- 24 (1) the case number and style;  
25 (2) the applicant's county of residence;  
26 (3) the court in which the proceeding occurred;  
27 (4) the date of filing;

1           (5) the date of disposition; and

2           (6) the disposition of the case.

3           (1-2) The Office of Court Administration of the Texas  
4 Judicial System shall annually compile and publish a report  
5 aggregating the data received under Subsections (1-1)(2), (3), and  
6 (6). A report under this subsection must protect the anonymity of  
7 all minors that are the subject of the report.

8           SECTION 5. Section 33.004, Family Code, is amended by  
9 amending Subsection (b) and adding Subsection (c-1) to read as  
10 follows:

11           (b) The court of appeals shall rule on an appeal under this  
12 section not later than 5 p.m. on the fifth [~~second~~] business day  
13 after the date the notice of appeal is filed with the court that  
14 denied the application. On request by the minor, the court shall  
15 grant an extension of the period specified by this subsection. If a  
16 request for an extension is made, the court shall rule on the appeal  
17 not later than 5 p.m. on the fifth [~~second~~] business day after the  
18 date the minor states she is ready to proceed. If the court of  
19 appeals fails to rule on the appeal within the period specified by  
20 this subsection, the appeal is deemed to be granted and the court  
21 clerk shall issue to the physician a certificate showing that the  
22 court failed to rule on the application. On receipt of the  
23 certificate, the physician may perform the abortion as if the court  
24 had issued an order authorizing the minor to consent to the  
25 performance of the abortion without the notification under Section  
26 33.002 and consent under Section 33.0021. Proceedings under this  
27 section shall be given precedence over other pending matters to the

1 extent necessary to assure that the court reaches a decision  
2 promptly, regardless of whether the minor is granted an extension  
3 under this subsection.

4 (c-1) Notwithstanding Subsection (c), the court of appeals  
5 may publish an opinion relating to a ruling under this section if  
6 the opinion is written in a way to preserve the confidentiality of  
7 the identity of the pregnant minor.

8 SECTION 6. Chapter 33, Family Code, is amended by adding  
9 Section 33.0065 to read as follows:

10 Sec. 33.0065. RECORDS. The clerk of the court shall retain  
11 the records for each case before the court under this chapter in  
12 accordance with rules for civil cases and grant access to the  
13 records to the minor who is the subject of the proceeding.

14 SECTION 7. Section 33.007, Family Code, is amended to read  
15 as follows:

16 Sec. 33.007. COSTS NOT PAID BY STATE. [~~(a)~~] A court acting  
17 under Section 33.003 or 33.004 may not require [~~issue an order~~  
18 ~~requiring~~] the state to pay any costs associated with the  
19 proceeding under this chapter, including:

20 (1) the cost of any attorney ad litem and any guardian  
21 ad litem appointed for the minor;

22 (2) [~~notwithstanding Sections 33.003(n) and~~  
23 ~~33.004(e),~~] the costs of court associated with the application or  
24 appeal; or [~~and~~]

25 (3) any court reporter's fees incurred.

26 [~~(b) An order issued under Subsection (a) must be directed~~  
27 ~~to the comptroller, who shall pay the amount ordered from funds~~



1 ~~appropriated to the Texas Department of Health.]~~

2 SECTION 8. Section 33.008, Family Code, is amended to read  
3 as follows:

4 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;  
5 INVESTIGATION [~~AND ASSISTANCE~~]. (a) A physician who has reason to  
6 believe that a minor has been or may be physically or sexually  
7 abused [~~by a person responsible for the minor's care, custody, or~~  
8 ~~welfare, as that term is defined by Section 261.001,~~] shall  
9 immediately report the suspected abuse to the Department of Family  
10 and Protective Services and shall refer the minor to the department  
11 for services or intervention that may be in the best interest of the  
12 minor. A minor's claim that she is being physically or sexually  
13 abused constitutes a reason to believe that abuse has occurred.

14 (b) A report made to the [~~The~~] Department of Family and  
15 Protective Services under Subsection (a) shall be investigated as  
16 provided by Chapter 261 [~~investigate suspected abuse reported under~~  
17 ~~this section and, if appropriate, shall assist the minor in making~~  
18 ~~an application with a court under Section 33.003]~~.

19 SECTION 9. (a) Sections 33.003 and 33.004, Family Code, as  
20 amended by this Act, apply only to a petition filed on or after the  
21 effective date of this Act. A petition filed before the effective  
22 date of this Act is governed by the law in effect on the date the  
23 petition was filed, and the former law is continued in effect for  
24 that purpose.

25 (b) The Office of Court Administration of the Texas Judicial  
26 System is not required to publish the initial report under Section  
27 33.003(1-2), Family Code, as added by this Act, before January 1,

1 2015.

2           SECTION 10. Every provision in this Act and every  
3 application of the provisions in this Act are severable from each  
4 other. If any application of any provision in this Act to any  
5 person or group of persons or circumstances is found by a court to  
6 be invalid, the remainder of this Act and the application of the  
7 Act's provisions to all other persons and circumstances may not be  
8 affected. All constitutionally valid applications of this Act  
9 shall be severed from any applications that a court finds to be  
10 invalid, leaving the valid applications in force, because it is the  
11 legislature's intent and priority that the valid applications be  
12 allowed to stand alone. Even if a reviewing court finds a provision  
13 of this Act invalid in a large or substantial fraction of relevant  
14 cases, the remaining valid applications shall be severed and  
15 allowed to remain in force.

16           SECTION 11. This Act takes effect January 1, 2014.