

By: Callegari

H.B. No. 27

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.