

BILL ANALYSIS

C.S.H.B. 3302
By: Krause
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During a previous legislative session the legislature enacted a law requiring a pregnant, unemancipated minor's parent or guardian to be notified of the minor's intent to seek an abortion and providing for a judicial bypass option under certain circumstances. Critics of these provisions contend that this bypass option is in need of revision because it does not require consideration of whether the minor's best interest includes the involvement of her parents.

The critics also contend that the judicial bypass provision is unparalleled in its weaknesses and loopholes. There are concerns that these loopholes have allowed abortion facilities to abuse the judicial bypass option by rushing minors through the court system and often appointing the facility's own attorneys to speak for minors in court. In such situations, critics maintain, pregnant minors are able to conceal the pregnancy and abortion from their parents because an abortion facility can go to multiple judges for the bypass option.

The critics concede that the judicial bypass system was well intended, but they assert that the provisions are written so poorly that many loving parents or guardians are prevented from being involved in such an irreversible and important decision. The critics contend that the legislature must revise the judicial bypass system to maximize parental involvement while it also respects the need to protect minors from potential harm.

C.S.H.B. 3302 seeks to revise provisions relating to the judicial bypass system.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3302 amends the Family Code to clarify that a pregnant unemancipated minor is authorized to file an application for a court order authorizing the minor to consent to the performance of an abortion without the consent of either of her parents or of her managing conservator or guardian. The bill revises the statutory provision authorizing the filing of such an application in any county court at law, court having probate jurisdiction, or district court, including a family district court, in Texas to instead require, if the minor resides in a county with a population of less than 50,000, the application to be filed in a county court at law, court having probate jurisdiction, or district court, including a family district court in the county in which the minor resides or in an adjacent county and requires, if the minor resides in a county with a population of 50,000 or more, the application to be filed in a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides. The bill changes the required statement in the application that the minor wishes to have an abortion without the notification of either of her parents or a managing conservator or guardian to specify that the minor wishes to do so without the notification or consent of her parents or a managing conservator or guardian. The bill requires the application to include a

statement about the minor's current residence, including the minor's physical address, mailing address, and telephone number.

C.S.H.B. 3302 removes the statutory provision authorizing the court, if the minor's guardian ad litem is an attorney admitted to the practice of law in Texas, to appoint the guardian ad litem to serve as the minor's attorney, and the bill prohibits a minor's guardian ad litem from also serving as the minor's attorney ad litem. The bill removes statutory provisions authorizing the court to appoint to serve as a minor's guardian ad litem a psychiatrist or an individual licensed or certified as a psychologist, a member of the clergy, or another appropriate person selected by the court. The bill removes the statutory provisions specifying that, if the court fails to rule on the application and issue written findings of fact and conclusions of law within a specified period, the application is deemed to be granted and authorizing the physician to perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without parental notification.

C.S.H.B. 3302 prohibits a court, if the court finds that the minor does not meet the requirements of the statutory provision requiring that the minor be mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian, that notification would not be in the best interest of the minor, or that notification may lead to physical, sexual, or emotional abuse of the minor, from authorizing the minor to consent to an abortion without the written consent required of the child's parent, managing conservator, or legal guardian as specified in the Occupations Code provision relating to prohibited practices by a physician or an applicant for a license to practice medicine. The bill removes the provision prohibiting such authorization without the notification authorized in the statutory provision prohibiting a physician from performing an abortion on a pregnant unemancipated minor unless the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician's intent to perform the abortion to a parent of the minor, if the minor has no managing conservator or guardian, or a court-appointed managing conservator or guardian.

C.S.H.B. 3302 removes the statutory provision specifying that, if a court of appeals fails to rule on the appeal for judicial approval within a specified period, the appeal is deemed to be granted and authorizing the physician to perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without parental notification.

C.S.H.B. 3302 revises provisions relating to a physician's duty to report abuse of a minor by removing provisions requiring a physician who has reason to believe that a minor has been or may be physically or sexually abused by a person responsible for the minor's care, custody, or welfare to immediately report the suspected abuse to the Department of Family and Protective Services (DFPS) and to refer the minor to DFPS for services or intervention and instead requires the physician or the physician's agent to immediately report the suspected abuse and the name of the abuser to DFPS and to a local law enforcement agency and to refer the minor to DFPS for services or intervention if a minor claims to have been physically or sexually abused by a parent, managing conservator, or guardian.

C.S.H.B. 3302 imposes on the local law enforcement agency the duty to respond and requires the agency to write a report within 12 hours of being notified of the alleged abuse. The bill requires such a report to be made regardless of whether the responder knows or suspects that a report about the abuse may have previously been made. The bill requires the appropriate local law enforcement agency, in addition to DFPS, to investigate the suspected abuse so reported and, if warranted, to refer the case to the appropriate prosecuting authority. The bill removes a provision requiring DFPS, if appropriate, to assist the minor in making an application for judicial approval to have an abortion without parental notification. The bill authorizes a local law enforcement officer or appropriate agent from DFPS that responds to the report of physical or sexual abuse to take emergency possession of the minor without a court order to protect the health and safety of the minor.

C.S.H.B. 3302 establishes that if any court enjoins, suspends, or delays the implementation of the changes in law made by the bill's provisions, the former law, as the law existed immediately before the bill's effective date, becomes or remains in effect and continues in effect. The bill specifies that at the time a temporary or permanent restraining order or injunction under the bill's provisions is stayed or dissolved, or otherwise ceases to have effect, the changes in law made by the bill become immediately effective. The bill specifies that if any of its provisions or if its application to any person or circumstance is finally held to be unconstitutional, the entire bill is invalid, and to that end the bill's provisions are declared to be nonseverable.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3302 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 33.001, Family Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (3-a), (3-b), (4-a), (4-b), (4-c), and (4-d) to read as follows:

(1) "Abortion" has the meaning assigned by Section 171.002, Health and Safety Code ~~[means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant, with the intention 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 contraceptives].~~

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

(3-a) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, in reasonable medical judgment, places the pregnant woman in danger of death or at serious risk of substantial impairment of a

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

major bodily function unless the abortion is performed immediately. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(3-b) "Perform" with respect to an abortion includes to induce the abortion.

(4-a) "Positive proof of age" means a government-issued document, including a birth certificate or driver's license or similar state-issued or federal government-issued identification card, that indicates a person's age.

(4-b) "Positive proof of identification" means a government-issued photo identification card, including a driver's license or similar state-issued or federal government-issued identification card, that a reasonable person would believe is the identification card of the person presenting the card.

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

(4-d) "Unborn child" means an individual human organism from fertilization until live birth.

SECTION 2. Chapter 33, Family Code, is amended by adding Section 33.0011 to read as follows:

Sec. 33.0011. POSITIVE PROOF OF AGE. (a) Except in the case of a medical emergency or as provided by this chapter, a physician may not perform or attempt to perform an abortion on any pregnant woman unless the physician has obtained:

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

(2) a certified copy of the court order proving that the pregnant woman is an emancipated minor.

(b) A copy of the positive proof of age submitted under Subsection (a) must be kept in the woman's medical record until the later of:

(1) the woman's 25th birthday; or

No equivalent provision.

(2) the seventh anniversary of the date of the certification.

SECTION 3. Section 33.002, Family Code, is amended by amending Subsections (a), (d), (e), and (g) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (g-1) to read as follows:

(a) Subject to Sections 33.003 and 33.004, a [A] physician may not perform an abortion or attempt to perform an abortion on a pregnant unemancipated minor unless written consent of the minor's parent, managing conservator, or legal guardian is obtained under Section 164.052(a)(19), Occupations Code, and:

(1) a parent of the minor or the managing conservator or guardian of the minor provides, in person, positive proof of identification and the certified statement described by Section 33.0021(a) to the physician who is to perform the abortion;

(2) 48 hours have elapsed since the time written notice of the pending abortion was personally delivered by the physician who is to perform or attempt to perform the abortion, or an agent of the physician, to the usual place of residence of a parent of the minor or the managing conservator or guardian of the minor and the parent, managing conservator, or guardian provided positive proof of identification to the delivering physician or agent;

(3) 48 hours have elapsed since the attending physician who is to perform the abortion sent a written notice of the physician's intent to perform an abortion on a pregnant unemancipated minor to the last known address of the minor's parent, managing conservator, or guardian by certified mail, restricted delivery, return receipt requested [the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician's intent to perform the abortion to:
[(A) a parent of the minor, if the minor has no managing conservator or guardian; or
[(B) a court appointed managing conservator or guardian;

[(2) the judge of a court having probate jurisdiction, the judge of a county court at law, the judge of a district court, including a family district court, or a court of appellate jurisdiction issues an order authorizing the

No equivalent provision.

~~minor to consent to the abortion as provided by Section 33.003 or 33.004;~~

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

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

(A) concludes that a medical emergency exists as described by Section 33.001(3-a) ~~[on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function]; [and]~~

(B) certifies in writing to the [Texas] Department of State Health Services and in the patient's medical record the medical indications supporting the physician's judgment that a medical emergency exists as required by Subsection (e) and Section 33.0022(c); and

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

(a-1) A physician, an agent of the physician, the facility, or any agent of or person at the facility may not accept any form of payment, deposit, or exchange during a minor's initial visit to the physician's office or facility to provide the positive proof of identification and certified statement required under Subsection (a)(1).

(a-2) The physician who performs the abortion on the minor must certify in writing that the notice required by Subsection (a)(2) was delivered to the parent of the minor or the managing conservator or guardian of the minor. The written certification must be kept in the minor's medical record for the period specified by Subsection (a-4).

(a-3) A physician may rely on the last known address information described by Subsection (a)(3) if a reasonable and prudent person, under similar circumstances, would rely on the information as sufficient evidence that the parent, managing conservator, or guardian resides at that address. The physician must keep for the period specified by Subsection

(a-4) in the minor's medical record:

(1) the return receipt from the written notice; or

(2) if the notice was returned as undeliverable, the notice.

(a-4) The documentation required under Subsections (a-2) and (a-3) must be kept in the minor's medical record until the later of:

(1) the minor's 25th birthday; or

(2) the seventh anniversary of the date of the certification.

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

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

(1) the following statement: "Under penalty of perjury as defined by Section 37.02, Penal Code, I, (insert name of physician performing abortion due to medical emergency), swear that a medical emergency as defined by Section 33.001(3-a), Family Code, existed at the time the unemancipated minor presented for an abortion.";

(2) a section for an explanation of the specific life-threatening physical condition of the minor that necessitated the immediate abortion; and

(3) a section for the physician who is to perform the abortion to indicate whether the medical emergency that necessitated the abortion placed the pregnant minor:

(A) in danger of imminent death; or

(B) at serious risk of substantial impairment of a major bodily function.

(g) A physician who with criminal negligence ~~[intentionally]~~ performs or attempts to perform an abortion on a pregnant unemancipated minor in violation of this section commits an offense. An offense under this subsection is punishable by a fine not to exceed \$10,000. In this subsection, "criminal negligence" ~~["intentionally"]~~ has the meaning assigned

by Section 6.03(d) [~~6.03(a)~~], Penal Code.

(g-1) A physician performing an abortion and a pregnant unemancipated minor seeking an abortion under this section are subject to the requirements established under Chapter 171, Health and Safety Code. The physician is also subject to the requirements under Section 164.052(a)(19), Occupations Code.

SECTION 4. Chapter 33, Family Code, is amended by adding Sections 33.0021 and 33.0022 to read as follows:

Sec. 33.0021. CERTIFIED STATEMENT; REQUIRED RECORDS. (a) The certified statement required under Section 33.002(a) must be signed and dated and be substantially similar to the following: "I certify that I, (insert name), am the parent, managing conservator, or guardian of (insert name of pregnant minor) and have been notified that (insert name of physician) intends to perform an abortion on (insert name of pregnant minor). I understand that any person who with criminal negligence makes a fraudulent statement in this regard commits a felony."

(b) The physician who receives the certified statement of the parent, managing conservator, or guardian required under Section 33.002(a) shall execute an affidavit for inclusion in the medical record of the minor stating: "I, (insert name of physician), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the positive proof of identification presented by both the minor and her parent, managing conservator, or guardian as belonging to the person represented on the identification and as sufficient evidence of the person's identity."

(c) A physician shall keep in the medical record of the minor a copy of the positive proof of identification of the parent, managing conservator, or guardian required under Section 33.002(a), the certified statement required under Section 33.002(a), and the affidavit required under Subsection (b) until the later of:

(1) the minor's 25th birthday; or

(2) the seventh anniversary of the date of the certified statement.

(d) A person commits an offense if the person with criminal negligence makes a

No equivalent provision.

fraudulent statement in a certified statement under Subsection (a). An offense under this section is a state jail felony. If conduct constituting an offense under this subsection is also an offense under Section 37.10, Penal Code, the actor may be prosecuted under either provision or both provisions.

Sec. 33.0022. MEDICAL EMERGENCY NOTIFICATION. (a) If the attending physician concludes under Section 33.002(a)(4) that a medical emergency exists and that there is insufficient time to provide the notice required by Section 33.002, the physician shall verbally inform the parent, managing conservator, or guardian of the unemancipated minor within two hours after the time a medical emergency abortion is performed on the minor of:

(1) the performance of the abortion; and
(2) the basis for the physician's determination that a medical emergency existed, as defined by Section 33.001(3-a), that required the performance of a medical emergency abortion without fulfilling the requirements of Section 33.002.

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

(1) the return receipt from the written notice; or
(2) if the notice was returned as undeliverable, the notice.

(c) The physician who performs the abortion on the minor shall execute for inclusion in the medical record of the minor an affidavit that:

(1) includes the following statement: "I, (insert name of physician), certify that a life-threatening physical condition aggravated by, caused by, or arising from the minor's pregnancy placed the minor in danger of death or at serious risk of substantial impairment of a major bodily

function unless the abortion was performed.";

(2) explains the specific life-threatening condition of the minor that necessitated the immediate abortion; and

(3) indicates whether the medical emergency that necessitated the abortion placed the pregnant minor:

(A) in danger of imminent death; or

(B) at serious risk of substantial impairment of a major bodily function.

SECTION 5. Sections 33.003(a), (b), (c), (e), (f), (h), (i), and (j), Family Code, are amended to read as follows:

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

(b) If the minor resides in a county with a population of less than 50,000, the [The] application must [may] be filed in a [any] county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides or an adjacent county [this state]. If the minor resides in a county with a population of 50,000 or more, the application must be filed in a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides.

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

(1) a statement that the minor is pregnant;

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

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

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

(5) a statement about the minor's current residence, including the minor's physical

SECTION 1. Sections 33.003(a), (b), (c), (e), (f), (h), and (j), Family Code, are amended to read as follows:

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(b) If the minor resides in a county with a population of less than 50,000, the [The] application must [may] be filed in a [any] county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides or an adjacent county [this state]. If the minor resides in a county with a population of 50,000 or more, the application must be filed in a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides.

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

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

(5) a statement about the minor's current residence, including the minor's physical

address, mailing address, and telephone number.

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

(f) The court may appoint to serve as guardian ad litem:

(1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3); or

(2) ~~[a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code;~~

~~[(3)]~~ an appropriate employee of the Department of Family and Protective Services[;

~~[(4) a member of the clergy; or~~

~~[(5) another appropriate person selected by the court].~~

(h) The court shall rule on an application submitted under this section and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the application is filed with the court. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing. ~~[If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002.]~~ Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

(i) The court shall determine by clear and convincing ~~[a preponderance of the]~~ evidence whether the minor is mature and

address, mailing address, and telephone number.

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

(f) The court may appoint to serve as guardian ad litem:

(1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3); or

(2) ~~[a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code;~~

~~[(3)]~~ an appropriate employee of the Department of Family and Protective Services[;

~~[(4) a member of the clergy; or~~

~~[(5) another appropriate person selected by the court].~~

(h) The court shall rule on an application submitted under this section and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the application is filed with the court. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing. ~~[If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002.]~~ Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

sufficiently well informed to make the decision to have an abortion performed without the consent of or notification to either of her parents or a managing conservator or guardian or [;] whether consent or notification would not be in the best interest of the minor. The court shall determine by a preponderance of the evidence[~~—or~~] whether consent or notification may lead to physical or [;] sexual[~~—or emotional~~] abuse of the minor. If the court finds that the minor is mature and sufficiently well informed, that consent or notification would not be in the minor's best interest, or that consent or notification may lead to physical or [;] sexual[~~—or emotional~~] abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without the consent of or notification to either of her parents or a managing conservator or guardian and shall execute the required forms.

(j) If the court finds that the minor does not meet the requirements of Subsection (i), the court may not authorize the minor to consent to an abortion without the consent required under Section 164.052(a)(19), Occupations Code, or notification authorized under Section 33.002(a)(1).

SECTION 6. Sections 33.004(b) and (f), Family Code, are amended.

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

Sec. 33.007. COSTS NOT PAID BY STATE. [~~(a)~~] A court acting under Section 33.003 or 33.004 may not issue an order requiring the state to pay:

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

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

(3) any court reporter's fees incurred.

[~~(b) An order issued under Subsection (a) must be directed to the comptroller, who shall pay the amount ordered from funds appropriated to the Texas Department of Health.~~]

SECTION 8. Section 33.008, Family Code, is amended.

(j) If the court finds that the minor does not meet the requirements of Subsection (i), the court may not authorize the minor to consent to an abortion without the consent required under Section 164.052(a)(19), Occupations Code [~~notification authorized under Section 33.002(a)(1)].~~

SECTION 2. Same as introduced version.

No equivalent provision.

SECTION 3. Same as introduced version.

SECTION 9. Section 33.010, Family Code, is amended to read as follows:

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

No equivalent provision.

SECTION 10. Chapter 33, Family Code, is amended by adding Sections 33.012 and 33.013 to read as follows:

Sec. 33.012. INJUNCTION; CIVIL LIABILITY. (a) A cause of action for injunctive relief may be brought against a person who intentionally, knowingly, recklessly, or negligently violates Section 33.0011, 33.002, or 33.008 to prevent the violation from continuing or occurring. The action may be maintained by:

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

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

(3) a district attorney with appropriate jurisdiction; or

(4) the attorney general.

(b) A physician or abortion provider who intentionally, knowingly, recklessly, or negligently violates this chapter is liable for damages in a civil action brought under this section. A minor on whom an abortion has been performed or on whom the performance of an abortion has been attempted in violation of this chapter, or a parent or the managing conservator or guardian of an unemancipated minor, may seek actual and exemplary damages from the physician or abortion provider for any intentional, knowing, reckless, or negligent violation of this chapter.

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

(1) \$10,000 for the first violation;

(2) \$50,000 for the second violation;

(3) \$100,000 for the third violation; and

(4) an amount greater than \$100,000 that is sufficient to deter future violations for each

No equivalent provision.

succeeding violation.

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

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

(f) A physician who is found guilty of a violation of this chapter by a court or who loses the physician's license to practice medicine for unprofessional conduct described by Section 164.052(a)(19) or (20), Occupations Code, is liable for the legal fees of the minor or the person suing on the minor's behalf.

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

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

SECTION 11. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.018 to read as follows:

Sec. 22.018. PUBLIC INFORMATION REGARDING CERTAIN PETITIONS AND MOTIONS. (a) The supreme court shall adopt rules governing the collection of statistical information relating to applications and appeals granted under Sections 33.003(h) and 33.004(b), Family Code. The information collected by the supreme court must include:

(1) the number of judicial bypass cases;

(2) the number of judicial bypass cases in which the court appointed a guardian ad litem;

(3) the number of judicial bypass cases in which the court appointed an attorney;

(4) the number of judicial bypass cases in which the judge issued an order authorizing an abortion without consent or notification; and

(5) the number of judicial bypass cases in which the judge denied an order, the number of appeals filed as a result of a denial, the number of denials that were affirmed, and the number of denials that were reversed.

(b) The information collected under this section must be available to the public in aggregate form by county.

No equivalent provision.

(c) Identifying information about a minor collected under this section is confidential and is not subject to disclosure under Chapter 552.

SECTION 12. Section 164.052(a), Occupations Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

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

(12) engages in conduct that subverts or attempts to subvert an examination process

No equivalent provision.

required by this subtitle for a medical license;

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

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

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

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

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

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

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

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

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

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

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

(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code; or

(20) otherwise performs an abortion on an unemancipated minor in violation of Chapter 33, Family Code ~~[, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a~~

~~major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian].~~

SECTION 13. Section 164.055(b), Occupations Code, is amended to read as follows:

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

SECTION 14. The following provisions of the Family Code are repealed:

- (1) Sections 33.002(b), (c), (f), (h), and (i);
- (2) Section 33.003(k);
- (3) Section 33.004(c); and
- (4) Section 33.009.

SECTION 15. If any court enjoins, suspends, or delays the implementation of the changes in law made by this Act to Chapter 33, Family Code, **and Section 164.052, Occupations Code**, the former law, as the law existed immediately before the effective date of this Act, becomes or remains in effect and continues in effect. At the time a temporary or permanent restraining order or injunction described by this section is stayed or dissolved, or otherwise ceases to have effect, the changes in law made by this Act become immediately effective.

SECTION 16. If any provision of this Act or its application to any person or circumstance is finally held to be unconstitutional, the entire Act is invalid, and to this end the provisions of this Act are declared to be nonseverable.

SECTION 17. The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act. An offense committed or conduct that occurs before the effective date of this Act is governed by the law in effect when the offense was

No equivalent provision.

No equivalent provision.

SECTION 4. If any court enjoins, suspends, or delays the implementation of the changes in law made by this Act to Chapter 33, Family Code, the former law, as the law existed immediately before the effective date of this Act, becomes or remains in effect and continues in effect. At the time a temporary or permanent restraining order or injunction described by this section is stayed or dissolved, or otherwise ceases to have effect, the changes in law made by this Act become immediately effective.

SECTION 5. Same as introduced version.

No equivalent provision.

committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed or conduct occurs before the effective date of this Act if any element of the offense or conduct occurs before the effective date.

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

SECTION 19. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

No equivalent provision.

SECTION 6. This Act takes effect January 1, 2014.