

By: Carter

H.B. No. 3819

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the judicial procedure required before an abortion may
3 be performed on a minor without notification to and consent of a
4 parent or guardian.

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

6 SECTION 1. Subtitle A, Title 2, Family Code, is amended by
7 amending Chapter 33 to read as follows:

8 CHAPTER 33. NOTICE OF ABORTION

9 Sec. 33.001. DEFINITIONS. In this chapter:

10 (1) "Abortion" means the use of any means to terminate
11 the pregnancy of a female known by the attending physician to be
12 pregnant, with the intention that the termination of the pregnancy
13 by those means will with reasonable likelihood cause the death of
14 the fetus. This definition, as applied in this chapter, applies
15 only to an unemancipated minor known by the attending physician to
16 be pregnant and may not be construed to limit a minor's access to
17 contraceptives.

18 (2) "Fetus" means an individual human organism from
19 fertilization until birth.

20 (3) "Guardian" means a court-appointed guardian of the
21 person of the minor.

22 (4) "Physician" means an individual licensed to
23 practice medicine in this state.

24 (5) "Unemancipated minor" includes a minor who:

1 (A) is unmarried; and

2 (B) has not had the disabilities of minority
3 removed under Chapter 31.

4 Sec. 33.002. PARENTAL NOTICE. (a) A physician may not
5 perform an abortion on a pregnant unemancipated minor unless:

6 (1) the physician performing the abortion gives at
7 least 48 hours actual notice, in person or by telephone, of the
8 physician's intent to perform the abortion to:

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

11 (B) a court-appointed managing conservator or
12 guardian;

13 (2) the judge of a court having probate jurisdiction,
14 the judge of a county court at law, the judge of a district court,
15 including a family district court, or a court of appellate
16 jurisdiction issues an order authorizing the minor to consent to
17 the abortion as provided by Section 33.003 or 33.004;

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

22 (4) the physician performing the abortion:

23 (A) concludes that on the basis of the
24 physician's good faith clinical judgment, a condition exists that
25 complicates the medical condition of the pregnant minor and
26 necessitates the immediate abortion of her pregnancy to avert her
27 death or to avoid a serious risk of substantial and irreversible

1 impairment of a major bodily function; and

2 (B) certifies in writing to the Texas Department
3 of Health and in the patient's medical record the medical
4 indications supporting the physician's judgment that the
5 circumstances described by Paragraph (A) exist.

6 (b) If a person to whom notice may be given under Subsection
7 (a)(1) cannot be notified after a reasonable effort, a physician
8 may perform an abortion if the physician gives 48 hours
9 constructive notice, by certified mail, restricted delivery, sent
10 to the last known address, to the person to whom notice may be given
11 under Subsection (a)(1). The period under this subsection begins
12 when the notice is mailed. If the person required to be notified is
13 not notified within the 48-hour period, the abortion may proceed
14 even if the notice by mail is not received.

15 (c) The requirement that 48 hours actual notice be provided
16 under this section may be waived by an affidavit of:

17 (1) a parent of the minor, if the minor has no managing
18 conservator or guardian; or

19 (2) a court-appointed managing conservator or
20 guardian. constructive notice has been provided as required by this
21 section. Execution of an affidavit under this subsection creates a
22 presumption that the requirements of this section have been
23 satisfied.

24 (d) A physician may execute for inclusion in the minor's
25 medical record an affidavit stating that, according to the best
26 information and belief of the physician, notice or constructive
27 notice has been provided as required by this section. Execution of

1 an affidavit under this subsection creates a presumption that the
2 requirements of this section have been satisfied.

3 (e) The Texas Department of Health shall prepare a form to
4 be used for making the certification required by Subsection (a)(4).

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

14 (g) A physician who intentionally performs an abortion on a
15 pregnant unemancipated minor in violation of this section commits
16 an offense. An offense under this subsection is punishable by a fine
17 not to exceed \$10,000. In this subsection, "intentionally" has the
18 meaning assigned by Section 6.03(a), Penal Code.

19 (h) It is a defense to prosecution under this section that
20 the minor falsely represented her age or identity to the physician
21 to be at least 18 years of age by displaying an apparently valid
22 governmental record of identification such that a reasonable person
23 under similar circumstances would have relied on the
24 representation. The defense does not apply if the physician is
25 shown to have had independent knowledge of the minor's actual age or
26 identity or failed to use due diligence in determining the minor's
27 age or identity. In this subsection, "defense" has the meaning and

1 application assigned by Section 2.03, Penal Code.

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

16 Sec. 33.003. JUDICIAL APPROVAL. (a) A pregnant minor who
17 wishes to have an abortion without [~~to the~~] notification to and the
18 consent of one of her parents, her managing conservator, or her
19 guardian may file an application for a court order authorizing the
20 minor to consent to the performance of an abortion without
21 notification to and the consent of either of her parents or a
22 managing conservator or guardian.

23 (b) The application may be filed in any county court at law,
24 court having probate jurisdiction, or district court, including a
25 family district court, in [~~this state~~] the minor's county of
26 residence or neighboring county if the minor's county of residence
27 has fewer than 10,000 residents.

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

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

3 (2) a statement that the minor is unmarried, is under
4 18 years of age, and has not had her disabilities removed under
5 Chapter 31;

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

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

12 (d) The clerk of the court shall deliver a courtesy copy of
13 the application made under this section to the judge who is to hear
14 the application.

15 (e) The court shall appoint a guardian ad litem for the
16 minor. If the minor has not retained an attorney, the court shall
17 appoint an attorney to represent the minor. ~~[If the guardian ad
18 litem is an attorney admitted to the practice of law in this state,
19 the court may appoint the guardian ad litem to serve as the minor's
20 attorney.]~~ The guardian ad litem, who shall be a different person
21 than the minor's attorney or attorney ad litem, shall represent
22 the best interests of the minor and presume that involving a
23 parent, a managing conservator, or guardian in the minor's
24 abortion decision is in the best interests of the minor.

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

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

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

3 (3) an appropriate employee of the Department of
4 Family and Protective Services;

5 (4) a member of the clergy; or

6 (5) another appropriate person selected by the court.

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

12 (h) The court shall rule on an application submitted under
13 this section and shall issue written findings of fact and
14 conclusions of law not later than 5 p.m. on the [~~second~~ fifth
15 business day after the date the application is filed with the court.
16 On request by the minor, the court shall grant an extension of the
17 period specified by this subsection. If a request for an extension
18 is made, the court shall rule on an application and shall issue
19 written findings of fact and conclusions of law not later than 5
20 p.m. on the [~~second~~ fifth business day after the date the minor
21 states she is ready to proceed to hearing.

22 (i) If the court fails to rule on the application and issue
23 written findings of fact and conclusions of law within the period
24 specified by this subsection, the application is deemed to be
25 granted and the physician may perform the abortion as if the court
26 had issued an order authorizing the minor to consent to the
27 performance of the abortion without the notification required under

1 Section 33.002(a)(1) and the consent required under
2 Section.164.052(a)(19), Occupations Code.

3 (j) Proceedings under this section shall be given
4 precedence over other pending matters to the extent necessary to
5 assure that the court reaches a decision promptly regardless of
6 whether the minor is granted an extension under this subsection.

7 (k) The court shall determine by [~~a preponderance of the~~
8 ~~evidence~~] clear and convincing evidence, as defined by Section
9 101.007, whether the minor [~~is~~] has overcome the presumption that
10 notifying and obtaining the consent of her parent or managing
11 conservator or guardian is in her best interest. In making its
12 decision, the court shall determine:

13 (1) whether the minor is mature and sufficiently well
14 informed to make the decision to have an abortion performed without
15 notification to and consent of either of her parents or a managing
16 conservator or guardian;

17 (2) whether [~~notification would not~~] the abortion
18 would be in the best interest of the minor; or

19 (3) whether notification to and obtaining the consent
20 of either of her parents or a managing conservator or guardian would
21 lead to abuse, as that term is defined by 261.001, of the minor.

22 (1) In determining whether the minor meets the requirements
23 of Subsection (k), the court shall consider the experience,
24 perspective, and judgement of the particular minor. The court may
25 consider all relevant factors, including:

26 (1) the minor's age;

27 (2) life experiences, such as working, traveling

1 independently, or managing her own financial affairs;

2 (3) steps taken to explore her options and the
3 consequences of those options; and

4 (4) her decision not to tell a parent, managing
5 conservator, or guardian.

6 (m) In determining whether the minor meets the requirements
7 of Subsection (j), the court may:

8 (1) inquire as to the minor's reasons for seeking an
9 abortion, and the court may consider the degree to which the minor
10 is informed about the state-published informational materials
11 described under Chapter 171, Health and Safety Code, and

12 (2) require the minor to be evaluated by a licensed
13 mental health counselor, who shall return the evaluation to the
14 court for review within three business days.

15 (n) If the court finds that ~~[the minor is mature and~~
16 ~~sufficiently well informed, that notification would not be in the~~
17 ~~minor's best interest, or that the notification may lead to~~
18 ~~physical, sexual, or emotional abuse of the minor]~~any of the
19 requirements of Subsection (k) are met, the court shall enter an
20 order authorizing the minor to consent to the performance of the
21 abortion without the notification ~~[to either of her parents or a~~
22 ~~managing conservator or guardian and shall execute the required~~
23 ~~forms]~~ required under Section 33.002(a)(1) and the consent required
24 under Section 164.052(a)(19), Occupations Code. The order shall be
25 valid for 30 days after it is entered.

26 ([j]o) If the court finds that the minor does not meet the
27 requirements of Subsection (k), the court may not authorize the

1 minor to consent to an abortion without the notification
2 [~~authorized under Section 33.002(a)(1)~~] required under Section
3 33.002(a)(1) and the consent required under Section
4 164.052(a)(19), Occupations Code.

5 (p) If the court fails to rule within the period specified
6 by this subsection, the appeal is deemed to be granted and 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 required under Section
10 33.002(a)(1) and the consent required under
11 Section.164.052(a)(19), Occupations Code.

12 ([*]q) The court may not notify a parent, managing
13 conservator, or guardian that the minor is pregnant or that the
14 minor wants to have an abortion. The court proceedings shall be
15 conducted in a manner that protects the anonymity of the minor. The
16 application and all other court documents pertaining to the
17 proceedings are confidential and privileged and are not subject to
18 disclosure under Chapter 552, Government Code, or to discovery,
19 subpoena, or other legal process. All reports shall protect the
20 anonymity of the minor. The minor may file the application using a
21 pseudonym or using only her initials. The minor shall have access to
22 the records of her case.

23 (r) The clerk of the court shall report to the Office of
24 Court Administration, which shall annually publish the information
25 reported under Subsections (2), (3), and (6):

26 (1) the case number and style;

27 (2) the applicant's county of residence;

- 1 (3) the identity of the court in which the proceeding
2 occurred;
3 (4) the date of filing;
4 (5) the date of the disposition; and
5 (6) the nature of the disposition, whether the order
6 was granted, denied, dismissed for want of prosecution, voluntarily
7 dismissed/mooted, deemed granted for failure to timely rule under
8 Subsection (1), or other reason.

9 (~~1~~s) An order of the court issued under this section is
10 confidential and privileged and is not subject to disclosure under
11 Chapter 552, Government Code, or discovery, subpoena, or other
12 legal process. The order may not be released to any person but the
13 pregnant minor, the pregnant minor's guardian ad litem, the
14 pregnant minor's attorney, another person designated to receive the
15 order by the minor, or a governmental agency or attorney in a
16 criminal or administrative action seeking to assert or protect the
17 interest of the minor. The supreme court may adopt rules to permit
18 confidential docketing of an application under this section.

19 (~~m~~t) The clerk of the supreme court shall prescribe the
20 application form to be used by the minor filing an application under
21 this section.

22 (~~n~~u) A filing fee is not required of and court costs may not
23 be assessed against a minor filing an application under this
24 section.

25 Sec. 33.004. APPEAL. (a) A minor whose application under
26 Section 33.003 is denied may appeal to the court of appeals having
27 jurisdiction over civil matters in the county in which the

1 application was filed. On receipt of a notice of appeal, the clerk
2 of the court that denied the application shall deliver a copy of the
3 notice of appeal and record on appeal to the clerk of the court of
4 appeals. On receipt of the notice and record, the clerk of the court
5 of appeals shall place the appeal on the docket of the court.

6 (b) The court of appeals shall rule on an appeal under this
7 section not later than 5 p.m. on the [~~second~~] fifth business day
8 after the date the notice of appeal is filed with the court that
9 denied the application. On request by the minor, the court shall
10 grant an extension of the period specified by this subsection. If a
11 request for an extension is made, the court shall rule on the appeal
12 not later than 5 p.m. on the [~~second~~] fifth business day after the
13 date the minor states she is ready to proceed.

14 (c) If the court of appeals fails to rule on the appeal
15 within the period specified by this subsection, the appeal is
16 deemed to be granted. The clerk of the court shall issue a
17 certificate to that effect to the minor, and the physician may
18 perform the abortion as if the court had issued an order authorizing
19 the minor to consent to the performance of the abortion without the
20 notification required under Section 33.002(a)(1) and the consent
21 required under Section 164.052(a)(19), Occupations Code.

22 (~~e~~) Proceedings under this section shall be given
23 precedence over other pending matters to the extent necessary to
24 assure that the court reaches a decision promptly.

25 (e) An [ruling] order of the court of appeals issued under
26 this section is confidential and privileged and is not subject to
27 disclosure under Chapter 552, Government Code, or discovery,

1 subpoena, or other legal process. The [~~ruling~~]order may not be
2 released to any person [~~but~~] except:

- 3 (1) the pregnant minor,
4 (2) the pregnant minor's guardian ad litem,
5 (3) the pregnant minor's attorney,
6 (4) another person designated to receive the ruling by
7 the minor, or

8 (5) a governmental agency or attorney in a criminal or
9 administrative action seeking to assert or protect the interest of
10 the minor. The supreme court may adopt rules to permit confidential
11 docketing of an appeal under this section.

12 (~~[a]~~f) The clerk of the supreme court shall prescribe the
13 notice of appeal form to be used by the minor appealing a judgment
14 under this section.

15 (~~[e]~~g) A filing fee is not required of and court costs may not
16 be assessed against a minor filing an appeal under this section.

17 (~~[f]~~h) An expedited confidential appeal shall be available to
18 any pregnant minor to whom a court of appeals denies an order
19 authorizing the minor to consent to the performance of an abortion
20 without notification to either of her parents or a managing
21 conservator or guardian.

22 Sec. 33.005. RECORDS. The clerk of the court shall retain
23 the records for each case before the court under this subchapter
24 in accordance with rules for civil cases. The minor shall be granted
25 access to the records of her case.

26 Sec. [~~33.005~~]33.006. AFFIDAVIT OF PHYSICIAN. (a) A physician
27 may execute for inclusion in the minor's medical record an

1 affidavit stating that, after reasonable inquiry, it is the belief
2 of the physician that:

3 (1) the minor has made an application or filed a notice
4 of an appeal with a court under this chapter;

5 (2) the deadline for court action imposed by this
6 chapter has passed; and

7 (3) the physician has been notified that the court has
8 not denied the application or appeal.

9 (b) A physician who in good faith has executed an affidavit
10 under Subsection (a) may rely on the affidavit and may perform the
11 abortion as if the court had issued an order granting the
12 application or appeal.

13 Sec. [~~33.006~~] 33.007. GUARDIAN AD LITEM IMMUNITY. A guardian
14 ad litem appointed under this chapter and acting in the course and
15 scope of the appointment is not liable for damages arising from an
16 act or omission of the guardian ad litem committed in good faith.
17 The immunity granted by this section does not apply if the conduct
18 of the guardian ad litem is committed in a manner described by
19 Sections 107.003(b)(1)-(4).

20 Sec. [~~33.007~~] 33.008. COSTS PAID BY STATE. (a) A court acting
21 under Section 33.003 or 33.004 may issue an order requiring the
22 state to pay:

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

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

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

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

4 Sec. ~~[33.008]~~ 33.009. PHYSICIAN'S DUTY TO REPORT ABUSE OF A
5 MINOR; INVESTIGATION AND ASSISTANCE. (a) A physician who has
6 reason to believe that a minor has been or may be physically or
7 sexually abused [~~by a person responsible for the minor's care,~~
8 ~~custody, or welfare,~~] as that term is defined by Section 261.001,
9 shall immediately report the suspected abuse to the Department of
10 Family and Protective Services and shall refer the minor to the
11 department for services or intervention that may be in the best
12 interest of the minor.

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

17 Sec. ~~[33.009]~~ 33.010. OTHER REPORTS OF SEXUAL ABUSE OF A
18 MINOR. A court or the guardian ad litem or attorney ad litem for the
19 minor shall report conduct reasonably believed to violate Section
20 21.02, 22.011, 22.021, or 25.02, Penal Code, based on information
21 obtained during a confidential court proceeding held under this
22 chapter to:

23 (1) any local or state law enforcement agency;

24 (2) the Department of Family and Protective Services,
25 if the alleged conduct involves a person responsible for the care,
26 custody, or welfare of the child;

27 (3) the state agency that operates, licenses,

1 certifies, or registers the facility in which the alleged conduct
2 occurred, if the alleged conduct occurred in a facility operated,
3 licensed, certified, or registered by a state agency; or

4 (4) an appropriate agency designated by the court.

5 Sec. [~~33.010~~]33.011. CONFIDENTIALITY. Notwithstanding any
6 other law, information obtained by the Department of Family and
7 Protective Services or another entity under Section 33.008 or
8 33.009 is confidential except to the extent necessary to prove a
9 violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

10 SECTION 2. The Supreme Court of Texas shall promptly issue
11 rules necessary in order that proceedings under Sections 33.003,
12 33.004, and 33.005, Family Code, as added by this Act, are
13 conducted in a manner that will ensure anonymity of the minor and
14 have sufficient precedence over all other pending matters to
15 ensure promptness of disposition. The Supreme Court shall adopt
16 the application form and notice of appeal form to be used under
17 Sections 33.014 and 33.015, Family Code, as added by this Act, not
18 later than December 15, 2013.

19 SECTION 3. Except as provided by SECTION 4 of this Act, this
20 Act takes effect December 15, 2013.

21 SECTION 4. Chapter 33, Family Code, as amended by this Act,
22 applies only to an abortion performed on or after January 1, 2014.
23 An abortion performed before January 1, 2014, is governed by the
24 law as it existed immediately before the effective date of this
25 Act, and that law is continued in effect for that purpose.