

1-1 By: Morrison, et al. (Senate Sponsor - Perry) H.B. No. 3994
 1-2 (In the Senate - Received from the House May 15, 2015;
 1-3 May 15, 2015, read first time and referred to Committee on Health
 1-4 and Human Services; May 20, 2015, reported favorably by the
 1-5 following vote: Yeas 5, Nays 2; May 20, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13		X		
1-14	X			
1-15		X		
1-16			X	

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to notice of and consent to an abortion for a minor and
 1-20 associated requirements; amending provisions subject to a criminal
 1-21 penalty.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. The heading to Chapter 33, Family Code, is
 1-24 amended to read as follows:

1-25 CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

1-26 SECTION 2. Sections 33.002(a), (e), (f), (h), and (i),
 1-27 Family Code, are amended to read as follows:

1-28 (a) A physician may not perform an abortion on a pregnant
 1-29 unemancipated minor unless:

1-30 (1) the physician performing the abortion gives at
 1-31 least 48 hours actual notice, in person or by telephone, of the
 1-32 physician's intent to perform the abortion to:

1-33 (A) a parent of the minor, if the minor has no
 1-34 managing conservator or guardian; or

1-35 (B) a court-appointed managing conservator or
 1-36 guardian;

1-37 (2) the physician performing the abortion receives a
 1-38 certificate or order issued by a court under Section 33.003 or
 1-39 33.004 [~~judge of a court having probate jurisdiction, the judge of a~~
 1-40 ~~county court at law, the judge of a district court, including a~~
 1-41 ~~family district court, or a court of appellate jurisdiction issues~~
 1-42 ~~an order]~~ authorizing the minor to consent to the abortion as
 1-43 provided by Section 33.003 or 33.004; or

1-44 (3) [~~a probate court, county court at law, district~~
 1-45 ~~court, including a family district court, or court of appeals, by~~
 1-46 ~~its inaction, constructively authorizes the minor to consent to the~~
 1-47 ~~abortion as provided by Section 33.003 or 33.004, or~~
 1-48 [~~4~~] the physician performing the abortion:

1-49 (A) concludes that on the basis of the
 1-50 physician's good faith clinical judgment, a condition exists that
 1-51 complicates the medical condition of the pregnant minor and
 1-52 necessitates the immediate abortion of her pregnancy to avert her
 1-53 death or to avoid a serious risk of substantial and irreversible
 1-54 impairment of a major bodily function; and

1-55 (B) certifies in writing to the [~~Texas~~]
 1-56 Department of State Health Services and in the patient's medical
 1-57 record the medical indications supporting the physician's judgment
 1-58 that the circumstances described by Paragraph (A) exist.

1-59 (e) The [~~Texas~~] Department of State Health Services shall
 1-60 prepare a form to be used for making the certification required by
 1-61 Subsection (a)(3) [~~(a)(4)~~].

2-1 (f) A certification required by Subsection (a)(3) ~~[(a)(4)]~~
 2-2 is confidential and privileged and is not subject to disclosure
 2-3 under Chapter 552, Government Code, or to discovery, subpoena, or
 2-4 other legal process. Personal or identifying information about the
 2-5 minor, including her name, address, or social security number, may
 2-6 not be included in a certification under Subsection (a)(3)
 2-7 ~~[(a)(4)]~~. The physician must keep the medical records on the minor
 2-8 in compliance with the rules adopted by the Texas ~~[State Board of]~~
 2-9 ~~Medical Board [Examiners]~~ under Section 153.003, Occupations Code.

2-10 (h) A physician shall presume that a pregnant woman is a
 2-11 minor unless the woman presents a valid governmental record of
 2-12 identification showing that she has reached the age of majority. It
 2-13 is a defense to prosecution under this section that the minor
 2-14 falsely represented her age or identity to the physician to be at
 2-15 least 18 years of age by displaying an apparently valid
 2-16 governmental record of identification such that a reasonable person
 2-17 under similar circumstances would have relied on the
 2-18 representation. The defense does not apply if the physician is
 2-19 shown to have had independent knowledge of the minor's actual age or
 2-20 identity or failed to use due diligence in determining the minor's
 2-21 age or identity. In this subsection, "defense" has the meaning and
 2-22 application assigned by Section 2.03, Penal Code.

2-23 (i) In relation to the trial of an offense under this
 2-24 section in which the conduct charged involves a conclusion made by
 2-25 the physician under Subsection (a)(3) ~~[(a)(4)]~~, the defendant may
 2-26 seek a hearing before the Texas ~~[State Board of]~~ Medical Board
 2-27 ~~[Examiners]~~ on whether the physician's conduct was necessary to
 2-28 avert the death of the minor or to avoid a serious risk of
 2-29 substantial and irreversible impairment of a major bodily function.
 2-30 The findings of the Texas ~~[State Board of]~~ Medical Board
 2-31 ~~[Examiners]~~ under this subsection are admissible on that issue in
 2-32 the trial of the defendant. Notwithstanding any other reason for a
 2-33 continuance provided under the Code of Criminal Procedure or other
 2-34 law, on motion of the defendant, the court shall delay the beginning
 2-35 of the trial for not more than 30 days to permit a hearing under this
 2-36 subsection to take place.

2-37 SECTION 3. Chapter 33, Family Code, is amended by adding
 2-38 Section 33.0021 to read as follows:

2-39 Sec. 33.0021. CONSENT REQUIRED. A physician may not
 2-40 perform an abortion in violation of Section 164.052(a)(19),
 2-41 Occupations Code.

2-42 SECTION 4. Section 33.003, Family Code, is amended by
 2-43 amending Subsections (a), (b), (c), (e), (g), (h), (i), (j), (k),
 2-44 and (l) and adding Subsections (g-1), (i-1), (i-2), (i-3), (l-1),
 2-45 (l-2), (o), (p), (q), and (r) to read as follows:

2-46 (a) A pregnant minor ~~[who wishes to have an abortion without~~
 2-47 ~~notification to one of her parents, her managing conservator, or~~
 2-48 ~~her guardian]~~ may file an application for a court order authorizing
 2-49 the minor to consent to the performance of an abortion without
 2-50 notification to and consent [either] of ~~[her parents or]~~ a parent,
 2-51 managing conservator, or guardian.

2-52 (b) The application must [may] be filed in:

2-53 (1) a [any] county court at law, court having probate
 2-54 jurisdiction, or district court, including a family district court,
 2-55 in the minor's county of residence;

2-56 (2) if the minor's county of residence has a population
 2-57 of less than 10,000:

2-58 (A) a court described by Subdivision (1);

2-59 (B) a county court at law, court having probate
 2-60 jurisdiction, or district court, including a family district court,
 2-61 in a neighboring county; or

2-62 (C) a county court at law, court having probate
 2-63 jurisdiction, or district court, including a family district court,
 2-64 in the county in which the facility at which the minor intends to
 2-65 obtain the abortion is located; or

2-66 (3) a county court at law, court having probate
 2-67 jurisdiction, or district court, including a family district court,
 2-68 in the county in which the facility at which the minor intends to
 2-69 obtain the abortion is located, if the minor is not a resident of

3-1 this state.

3-2 (c) The application must be made under oath and include:

3-3 (1) a statement that the minor is pregnant;

3-4 (2) a statement that the minor is unmarried, is under
3-5 18 years of age, and has not had her disabilities removed under
3-6 Chapter 31;

3-7 (3) a statement that the minor wishes to have an
3-8 abortion without the notification to and consent of ~~[either of her~~
3-9 ~~parents or]~~ a parent, managing conservator, or guardian; ~~[and]~~

3-10 (4) a statement as to whether the minor has retained an
3-11 attorney and, if she has retained an attorney, the name, address,
3-12 and telephone number of her attorney; and

3-13 (5) a statement about the minor's current residence,
3-14 including the minor's physical address, mailing address, and
3-15 telephone number.

3-16 (e) The court shall appoint a guardian ad litem for the
3-17 minor who shall represent the best interest of the minor. If the
3-18 minor has not retained an attorney, the court shall appoint an
3-19 attorney to represent the minor. The [If the] guardian ad litem may
3-20 not also [is an attorney admitted to the practice of law in this
3-21 state, the court may appoint the guardian ad litem to] serve as the
3-22 minor's attorney ad litem.

3-23 (g) The court shall fix a time for a hearing on an
3-24 application filed under Subsection (a) and shall keep a record of
3-25 all testimony and other oral proceedings in the action. ~~[The court~~
3-26 ~~shall enter judgment on the application immediately after the~~
3-27 ~~hearing is concluded.]~~

3-28 (g-1) The pregnant minor must appear before the court in
3-29 person and may not appear using videoconferencing, telephone
3-30 conferencing, or other remote electronic means.

3-31 (h) The court shall rule on an application submitted under
3-32 this section and shall issue written findings of fact and
3-33 conclusions of law not later than 5 p.m. on the fifth [second]
3-34 business day after the date the application is filed with the court.
3-35 On request by the minor, the court shall grant an extension of the
3-36 period specified by this subsection. If a request for an extension
3-37 is made, the court shall rule on an application and shall issue
3-38 written findings of fact and conclusions of law not later than 5
3-39 p.m. on the fifth [second] business day after the date the minor
3-40 states she is ready to proceed to hearing. If the court fails to
3-41 rule on the application and issue written findings of fact and
3-42 conclusions of law within the period specified by this subsection,
3-43 the application is deemed to be denied [granted and the physician
3-44 may perform the abortion as if the court had issued an order
3-45 authorizing the minor to consent to the performance of the abortion
3-46 without notification under Section 33.002]. If the court
3-47 authorizes the minor to consent to the abortion under this
3-48 subsection, the court clerk shall issue to the physician who is to
3-49 perform the abortion a certificate showing that the court granted
3-50 the application. Proceedings under this section shall be given
3-51 precedence over other pending matters to the extent necessary to
3-52 assure that the court reaches a decision promptly, regardless of
3-53 whether the minor is granted an extension under this subsection.

3-54 (i) The court shall determine by clear and convincing [a
3-55 preponderance of the] evidence, as described by Section 101.007,
3-56 whether the minor has overcome the presumption that notifying and
3-57 requesting consent from a parent, managing conservator, or guardian
3-58 is in the minor's best interest. In making a determination under
3-59 this subsection, the court shall consider:

3-60 (1) whether the minor is mature and sufficiently well
3-61 informed to make the decision to have an abortion performed without
3-62 notification to or consent of a parent, [either of her parents or a]
3-63 managing conservator, or guardian;

3-64 (2) [✓] whether the abortion [notification] would
3-65 [not] be in the best interest of the minor; and

3-66 (3) [✓ or] whether notification or the attempt to
3-67 obtain consent may lead to physical, sexual, or emotional abuse of
3-68 the minor, as described by Section 261.001.

3-69 (i-1) In determining whether the minor meets the

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

- 4-4 (1) the minor's age;
 4-5 (2) the minor's life experiences, such as working,
 4-6 traveling independently, or managing her own financial affairs;
 4-7 (3) steps taken by the minor to explore her options and
 4-8 the consequences of those options; and
 4-9 (4) the minor's decision not to notify and obtain
 4-10 consent from a parent, managing conservator, or guardian.

4-11 (i-2) In determining whether the abortion is in the best
 4-12 interest of the minor, the court may:

- 4-13 (1) inquire as to the minor's reasons for seeking an
 4-14 abortion;
 4-15 (2) consider the degree to which the minor is informed
 4-16 about the state-published informational materials described by
 4-17 Chapter 171, Health and Safety Code; and
 4-18 (3) require the minor to be evaluated by a licensed
 4-19 mental health counselor, who shall return the evaluation to the
 4-20 court for review within three business days.

4-21 (i-3) If the court finds that the minor is mature and
 4-22 sufficiently well informed, that the abortion [~~notification~~]
 4-23 [~~not~~] be in the minor's best interest, or that notification or the
 4-24 attempt to obtain consent may lead to physical, sexual, or
 4-25 emotional abuse of the minor, the court shall enter an order
 4-26 authorizing the minor to consent to the performance of the abortion
 4-27 without notification to and consent of a parent, [~~either of her~~
 4-28 parents or a] managing conservator, or guardian and shall execute
 4-29 the required forms.

4-30 (j) If the court finds that the minor does not meet the
 4-31 requirements of Subsection (i-3) [~~(i)~~], the court may not authorize
 4-32 the minor to consent to an abortion without the notification
 4-33 authorized under Section 33.002(a)(1) and consent under Section
 4-34 33.0021.

4-35 (k) The court may not notify a parent, managing conservator,
 4-36 or guardian that the minor is pregnant or that the minor wants to
 4-37 have an abortion. The court proceedings shall be conducted in a
 4-38 manner that protects the anonymity of the minor. The application
 4-39 and all other court documents pertaining to the proceedings are
 4-40 confidential and privileged and are not subject to disclosure under
 4-41 Chapter 552, Government Code, or to discovery, subpoena, or other
 4-42 legal process. The minor may file the application using a pseudonym
 4-43 or using only her initials. Confidential records pertaining to a
 4-44 minor under this subsection may be disclosed to the minor.

4-45 (l) An order of the court issued under this section is
 4-46 confidential and privileged and is not subject to disclosure under
 4-47 Chapter 552, Government Code, or discovery, subpoena, or other
 4-48 legal process. The order may not be released to any person but the
 4-49 pregnant minor, the pregnant minor's guardian ad litem, the
 4-50 pregnant minor's attorney, the physician who is to perform the
 4-51 abortion, another person designated to receive the order by the
 4-52 minor, or a governmental agency or attorney in a criminal or
 4-53 administrative action seeking to assert or protect the interest of
 4-54 the minor. The supreme court may adopt rules to permit confidential
 4-55 docketing of an application under this section.

4-56 (l-1) The clerk of the court, at intervals prescribed by the
 4-57 Office of Court Administration of the Texas Judicial System, shall
 4-58 submit a report to the office that includes, for each case filed
 4-59 under this section:

- 4-60 (1) the case number and style;
 4-61 (2) the applicant's county of residence;
 4-62 (3) the court of appeals district in which the
 4-63 proceeding occurred;
 4-64 (4) the date of filing;
 4-65 (5) the date of disposition; and
 4-66 (6) the disposition of the case.

4-67 (l-2) The Office of Court Administration of the Texas
 4-68 Judicial System shall annually compile and publish a report
 4-69 aggregating the data received under Subsections (l-1)(2), (3), and

5-1 (6). A report under this subsection must protect the anonymity of
 5-2 all minors and judges that are the subject of the report.

5-3 (o) A minor who has filed an application under this section
 5-4 may not withdraw or otherwise non-suit her application without the
 5-5 permission of the court.

5-6 (p) Except as otherwise provided by Subsection (q), a minor
 5-7 who has filed an application and has obtained a determination by the
 5-8 court as described by Subsection (i) may not initiate a new
 5-9 application proceeding and the prior proceeding is res judicata of
 5-10 the issue relating to the determination of whether the minor may or
 5-11 may not be authorized to consent to the performance of an abortion
 5-12 without the consent of and notification to a parent, managing
 5-13 conservator, or guardian.

5-14 (q) A minor whose application is denied may subsequently
 5-15 submit an application to the court that denied the application if
 5-16 the minor shows that there has been a material change in
 5-17 circumstances since the time the court denied the application.

5-18 (r) An attorney retained by the minor to assist her in
 5-19 filing an application under this section shall fully inform himself
 5-20 or herself of the minor's prior application history, including the
 5-21 representations made by the minor in the application regarding her
 5-22 address, proper venue in the county in which the application is
 5-23 filed, and whether a prior application has been filed and
 5-24 initiated. If an attorney assists the minor in the application
 5-25 process in any way, with or without payment, the attorney
 5-26 representing the minor must attest to the truth of the minor's
 5-27 claims regarding the venue and prior applications in a sworn
 5-28 statement.

5-29 SECTION 5. Section 33.004, Family Code, is amended by
 5-30 amending Subsection (b) and adding Subsection (c-1) to read as
 5-31 follows:

5-32 (b) The court of appeals shall rule on an appeal under this
 5-33 section not later than 5 p.m. on the fifth ~~second~~ business day
 5-34 after the date the notice of appeal is filed with the court that
 5-35 denied the application. On request by the minor, the court shall
 5-36 grant an extension of the period specified by this subsection. If a
 5-37 request for an extension is made, the court shall rule on the appeal
 5-38 not later than 5 p.m. on the fifth ~~second~~ business day after the
 5-39 date the minor states she is ready to proceed. If the court of
 5-40 appeals fails to rule on the appeal within the period specified by
 5-41 this subsection, the appeal is deemed to be denied ~~granted and the~~
 5-42 ~~physician may perform the abortion as if the court had issued an~~
 5-43 ~~order authorizing the minor to consent to the performance of the~~
 5-44 ~~abortion without notification under Section 33.002]. If the court~~
 5-45 ~~authorizes the minor to consent to the abortion under this~~
 5-46 ~~subsection, the court clerk shall issue to the physician who is to~~
 5-47 ~~perform the abortion a certificate showing that the court granted~~
 5-48 ~~the application. Proceedings under this section shall be given~~
 5-49 ~~precedence over other pending matters to the extent necessary to~~
 5-50 ~~assure that the court reaches a decision promptly, regardless of~~
 5-51 ~~whether the minor is granted an extension under this subsection.~~

5-52 (c-1) Notwithstanding Subsection (c), the court of appeals
 5-53 may publish an opinion relating to a ruling under this section if
 5-54 the opinion is written in a way to preserve the confidentiality of
 5-55 the identity of the pregnant minor.

5-56 SECTION 6. Chapter 33, Family Code, is amended by adding
 5-57 Section 33.0065 to read as follows:

5-58 Sec. 33.0065. RECORDS. The clerk of the court shall retain
 5-59 the records for each case before the court under this chapter in
 5-60 accordance with rules for civil cases and grant access to the
 5-61 records to the minor who is the subject of the proceeding.

5-62 SECTION 7. Section 33.008, Family Code, is amended to read
 5-63 as follows:

5-64 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
 5-65 INVESTIGATION AND ASSISTANCE. (a) If a minor claims to have been
 5-66 physically or sexually abused or a [A] physician or physician's
 5-67 agent [who] has reason to believe that a minor has been [or may be]
 5-68 physically or sexually abused [by a person responsible for the
 5-69 minor's care, custody, or welfare, as that term is defined by

6-1 ~~Section 261.001~~], the physician or physician's agent shall
 6-2 immediately report the suspected abuse and the name of the abuser to
 6-3 the Department of Family and Protective Services and to a local law
 6-4 enforcement agency and shall refer the minor to the department for
 6-5 services or intervention that may be in the best interest of the
 6-6 minor. The local law enforcement agency shall respond and shall
 6-7 write a report within 24 hours of being notified of the alleged
 6-8 abuse. A report shall be made regardless of whether the local law
 6-9 enforcement agency knows or suspects that a report about the abuse
 6-10 may have previously been made.

6-11 (b) The appropriate local law enforcement agency and the
 6-12 Department of Family and Protective Services shall investigate
 6-13 suspected abuse reported under this section and, if warranted
 6-14 [appropriate], shall refer the case to the appropriate prosecuting
 6-15 authority [assist the minor in making an application with a court
 6-16 under Section 33.003].

6-17 (c) When the local law enforcement agency responds to the
 6-18 report of physical or sexual abuse as required by Subsection (a), a
 6-19 law enforcement officer or appropriate agent from the Department of
 6-20 Family and Protective Services may take emergency possession of the
 6-21 minor without a court order to protect the health and safety of the
 6-22 minor as described by Chapter 262.

6-23 SECTION 8. Chapter 33, Family Code, is amended by adding
 6-24 Section 33.0085 to read as follows:

6-25 Sec. 33.0085. DUTY OF JUDGE OR JUSTICE TO REPORT ABUSE OF
 6-26 MINOR. (a) Notwithstanding any other law, a judge or justice who,
 6-27 as a result of court proceedings conducted under Section 33.003 or
 6-28 33.004, has reason to believe that a minor has been or may be
 6-29 physically or sexually abused shall:

6-30 (1) immediately report the suspected abuse and the
 6-31 name of the abuser to the Department of Family and Protective
 6-32 Services and to a local law enforcement agency; and

6-33 (2) refer the minor to the department for services or
 6-34 intervention that may be in the best interest of the minor.

6-35 (b) The appropriate local law enforcement agency and the
 6-36 Department of Family and Protective Services shall investigate
 6-37 suspected abuse reported under this section and, if warranted,
 6-38 shall refer the case to the appropriate prosecuting authority.

6-39 SECTION 9. Section 33.010, Family Code, is amended to read
 6-40 as follows:

6-41 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other
 6-42 law, information obtained by the Department of Family and
 6-43 Protective Services or another entity under Section 33.008,
 6-44 33.0085, or 33.009 is confidential except to the extent necessary
 6-45 to prove a violation of Section 21.02, 22.011, 22.021, or 25.02,
 6-46 Penal Code.

6-47 SECTION 10. (a) Section 33.002, Family Code, as amended by
 6-48 this Act, applies only to an offense committed on or after the
 6-49 effective date of this Act. An offense committed before the
 6-50 effective date of this Act is governed by the law in effect on the
 6-51 date the offense was committed, and the former law is continued in
 6-52 effect for that purpose. For purposes of this section, an offense
 6-53 was committed before the effective date of this Act if any element
 6-54 of the offense occurred before that date.

6-55 (b) Sections 33.003 and 33.004, Family Code, as amended by
 6-56 this Act, apply only to a petition filed on or after the effective
 6-57 date of this Act. A petition filed before the effective date of
 6-58 this Act is governed by the law in effect on the date the petition
 6-59 was filed, and the former law is continued in effect for that
 6-60 purpose.

6-61 (c) The Office of Court Administration of the Texas Judicial
 6-62 System is not required to publish the initial report under Section
 6-63 33.003(1-2), Family Code, as added by this Act, before January 1,
 6-64 2017.

6-65 SECTION 11. Every provision in this Act and every
 6-66 application of the provisions in this Act are severable from each
 6-67 other. If any application of any provision in this Act to any
 6-68 person or group of persons or circumstances is found by a court to
 6-69 be invalid, the remainder of this Act and the application of the

7-1 Act's provisions to all other persons and circumstances may not be
7-2 affected. All constitutionally valid applications of this Act
7-3 shall be severed from any applications that a court finds to be
7-4 invalid, leaving the valid applications in force, because it is the
7-5 legislature's intent and priority that the valid applications be
7-6 allowed to stand alone. Even if a reviewing court finds a provision
7-7 of this Act invalid in a large or substantial fraction of relevant
7-8 cases, the remaining valid applications shall be severed and
7-9 allowed to remain in force.

7-10 SECTION 12. This Act takes effect January 1, 2016.

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