88R9985 JG-D

By:  Leo-Wilson H.B. No. 2538

A BILL TO BE ENTITLED

AN ACT

relating to the repeal of provisions related to notice and consent to an abortion on a minor.

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

SECTION 1.  Section 266.010(a), Family Code, is amended to read as follows:

(a)  A foster child who is at least 16 years of age may consent to the provision of medical care[~~, except as provided by Chapter 33,~~] if the court with continuing jurisdiction determines that the child has the capacity to consent to medical care.  If the child provides consent by signing a consent form, the form must be written in language the child can understand.

SECTION 2.  Section 171.006(a), Health and Safety Code, as added by Chapter 9, (H.B. 215), Acts of the 85th Legislature, 1st Called Session, 2017, is amended to read as follows:

(a)  For each abortion performed on a woman who is younger than 18 years of age, the physician who performed the abortion shall document in the woman's medical record and report to the commission in the report required under Section 245.011:

(1)  one of the following methods for obtaining authorization for the abortion:

(A)  the woman's parent, managing conservator, or legal guardian provided the written consent required by Section 164.052(a)(19), Occupations Code;

(B)  [~~the woman obtained judicial authorization under Section 33.003 or 33.004, Family Code;~~

[~~(C)~~]  the woman consented to the abortion if the woman has had the disabilities of minority removed and is authorized under law to have the abortion without the written consent required by Section 164.052(a)(19), Occupations Code[~~, or without judicial authorization under Section 33.003 or 33.004, Family Code~~]; or

(C) [~~(D)~~]  the physician concluded and documented in writing in the woman's medical record that on the basis of the physician's good faith clinical judgment:

(i)  a condition existed that complicated the medical condition of the woman and necessitated the immediate abortion of the woman's pregnancy to avert the woman's death or to avoid a serious risk of substantial impairment of a major bodily function; and

(ii)  there was insufficient time to obtain the consent of the woman's parent, managing conservator, or legal guardian; and

(2)  if the woman's parent, managing conservator, or legal guardian provided the written consent described by Subdivision (1)(A), whether the consent was given:

(A)  in person at the location where the abortion was performed; or

(B)  at a place other than the location where the abortion was performed[~~; and~~

[~~(3)  if the woman obtained the judicial authorization described by Subdivision (1)(B):~~

[~~(A)  if applicable, the process the physician or physician's agent used to inform the woman of the availability of petitioning for judicial authorization as an alternative to the written consent required by Section 164.052(a)(19), Occupations Code;~~

[~~(B)  whether the court forms were provided to the woman by the physician or the physician's agent;~~

[~~(C)  whether the physician or the physician's agent made arrangements for the woman's court appearance; and~~

[~~(D)  if known, whether the woman became pregnant while in foster care or in the managing conservatorship of the Department of Family and Protective Services~~].

SECTION 3.  Section 171.012(a), Health and Safety Code, is amended to read as follows:

(a)  Consent to an abortion is voluntary and informed only if:

(1)  the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A)  the physician's name;

(B)  the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i)  the risks of infection and hemorrhage;

(ii)  the potential danger to a subsequent pregnancy and of infertility; and

(iii)  the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C)  the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D)  the medical risks associated with carrying the child to term;

(2)  the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A)  medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B)  the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C)  public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3)  the physician who is to perform or induce the abortion or the physician's agent:

(A)  provides the pregnant woman with the printed materials described by Section 171.014; and

(B)  informs the pregnant woman that those materials:

(i)  have been provided by the commission;

(ii)  are accessible on an Internet website sponsored by the commission;

(iii)  describe the unborn child and list agencies that offer alternatives to abortion; and

(iv)  include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4)  before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A)  the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B)  the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C)  the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D)  the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5)  before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1)  THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2)  I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3)  TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4)  I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5)  I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6)  I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

\_\_\_ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

[~~\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.~~]

\_\_\_ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7)  I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8)  FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE                        DATE";

(6)  before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7)  the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

SECTION 4.  Section 171.0122(d), Health and Safety Code, is amended to read as follows:

(d)  A pregnant woman may choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(4)(C) if:

(1)  the woman's pregnancy is a result of a sexual assault, incest, or other violation of the Penal Code that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury; or

(2)  [~~the woman is a minor and obtaining an abortion in accordance with judicial bypass procedures under Chapter 33, Family Code; or~~

[~~(3)~~]  the fetus has an irreversible medical condition or abnormality, as previously identified by reliable diagnostic procedures and documented in the woman's medical file.

SECTION 5.  Section 245.006(a), Health and Safety Code, is amended to read as follows:

(a)  The department shall inspect an abortion facility at random, unannounced, and reasonable times as necessary to ensure compliance with this chapter and [~~,~~] Subchapter B, Chapter 171[~~, and Chapter 33, Family Code~~].

SECTION 6.  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, barters, 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 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;

(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~~], unless the abortion is necessary due to a medical emergency, as defined by Section 171.002, Health and Safety Code;

(20)  [~~otherwise performs an abortion on an unemancipated minor in violation of Chapter 33, Family Code;~~

[~~(21)~~]  performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, F, or G, Chapter 171, Health and Safety Code;

(21) [~~(22)~~]  in complying with the procedures outlined in Sections 166.045 and 166.046, Health and Safety Code, wilfully fails to make a reasonable effort to transfer a patient to a physician who is willing to comply with a directive; or

(22) [~~(23)~~]  performs or delegates to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code.

SECTION 7.  The following provisions are repealed:

(1)  Chapter 33, Family Code;

(2)  Section 171.006(c), Health and Safety Code, as added by Chapter 9 (H.B. 215), Acts of the 85th Legislature, 1st Called Session, 2017; and

(3)  Section 171.017, Health and Safety Code.

SECTION 8.  The change in law made by this Act applies only to an abortion performed on or after the effective date of this Act. An abortion performed before the effective date of this Act is governed by the law in effect on the date the abortion was performed, and the former law is continued in effect for that purpose.

SECTION 9.  The change in law made by this Act by the repeal of Section 33.006, Family Code, does not apply to a cause of action that accrued before the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect on the date the cause of action accrued, and the former law is continued in effect for that purpose.

SECTION 10.  This Act takes effect September 1, 2023.