

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;

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

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

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

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

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

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

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

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

27 [~~(3) if the woman obtained the judicial authorization~~

1 ~~described by Subdivision (1)(B):~~

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

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

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

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

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

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

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

21 (A) the physician's name;

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

25 (i) the risks of infection and hemorrhage;

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

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

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

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

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

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

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

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

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

22 (A) provides the pregnant woman with the printed
23 materials described by Section [171.014](#); and

24 (B) informs the pregnant woman that those
25 materials:

26 (i) have been provided by the commission;

27 (ii) are accessible on an Internet website

1 sponsored by the commission;

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

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

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

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

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

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

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

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

13 "ABORTION AND SONOGRAM ELECTION

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

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

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

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

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

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

1 of the signed, written certification required by Subdivision (5);
2 and

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

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

8 (d) A pregnant woman may choose not to receive the verbal
9 explanation of the results of the sonogram images under Section
10 171.012(a)(4)(C) if:

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

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

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

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

25 (a) The department shall inspect an abortion facility at
26 random, unannounced, and reasonable times as necessary to ensure
27 compliance with this chapter and [7] Subchapter B, Chapter 171[7]

1 ~~and Chapter 33, Family Code].~~

2 SECTION 6. Section 164.052(a), Occupations Code, is amended
3 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

7 (A) fraudulently purchased or issued;

8 (B) counterfeited; or

9 (C) materially altered;

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

12 (12) engages in conduct that subverts or attempts to
13 subvert an examination process required by this subtitle for a
14 medical license;

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

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

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

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

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

27 (16) performs or procures a criminal abortion, aids or

1 abets in the procuring of a criminal abortion, attempts to perform
2 or procure a criminal abortion, or attempts to aid or abet the
3 performance or procurement of a criminal abortion;

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

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

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

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

14 (C) the woman is diagnosed with a significant
15 likelihood of suffering imminent severe, irreversible brain damage
16 or imminent severe, irreversible paralysis;

17 (19) performs an abortion on an unemancipated minor
18 without the written consent of the child's parent, managing
19 conservator, or legal guardian [~~or without a court order, as~~
20 ~~provided by Section 33.003 or 33.004, Family Code~~], unless the
21 abortion is necessary due to a medical emergency, as defined by
22 Section 171.002, Health and Safety Code;

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

25 [~~(21)~~] performs or induces or attempts to perform or
26 induce an abortion in violation of Subchapter C, F, or G, Chapter
27 171, Health and Safety Code;

1 (21) [~~(22)~~] in complying with the procedures outlined
2 in Sections [166.045](#) and [166.046](#), Health and Safety Code, wilfully
3 fails to make a reasonable effort to transfer a patient to a
4 physician who is willing to comply with a directive; or

5 (22) [~~(23)~~] performs or delegates to another
6 individual the performance of a pelvic examination on an
7 anesthetized or unconscious patient in violation of Section
8 [167A.002](#), Health and Safety Code.

9 SECTION 7. The following provisions are repealed:

10 (1) Chapter [33](#), Family Code;

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

14 (3) Section [171.017](#), Health and Safety Code.

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

21 SECTION 9. The change in law made by this Act by the repeal
22 of Section [33.006](#), Family Code, does not apply to a cause of action
23 that accrued before the effective date of this Act. A cause of
24 action that accrued before the effective date of this Act is
25 governed by the law in effect on the date the cause of action
26 accrued, and the former law is continued in effect for that purpose.

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