

By: Morrison, Bonnen of Galveston,
King of Parker, Krause, Simmons, et al.

H.B. No. 3994

Substitute the following for H.B. No. 3994:

By: Farney

C.S.H.B. No. 3994

A BILL TO BE ENTITLED

AN ACT

relating to notice of and consent to an abortion for a minor;
amending provisions subject to a criminal penalty.

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

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

CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

SECTION 2. Section 33.002(h), Family Code, is amended to
read as follows:

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

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

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

4 SECTION 4. Section 33.003, Family Code, is amended by
5 amending Subsections (a), (b), (c), (e), (g), (h), (i), (j), and (k)
6 and adding Subsections (g-1), (i-1), (i-2), (i-3), (l-1), and (l-2)
7 to read as follows:

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

14 (b) The application may be filed in any county court at law,
15 court having probate jurisdiction, or district court, including a
16 family district court, in the minor's county of residence or in a
17 neighboring county if the minor's county of residence has a
18 population of less than 10,000 or in the county in which the
19 facility at which the minor intends to obtain an abortion is located
20 ~~[this state]~~.

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

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

23 (2) a statement that the minor is unmarried, is under
24 18 years of age, and has not had her disabilities removed under
25 Chapter 31;

26 (3) a statement that the minor wishes to have an
27 abortion without the notification to or consent of a parent,

1 ~~[either of her parents or a]~~ managing conservator, or guardian; and

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

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

12 (g) The court shall fix a time for a hearing on an
13 application filed under Subsection (a) and shall keep a record of
14 all testimony and other oral proceedings in the action. ~~[The court~~
15 ~~shall enter judgment on the application immediately after the~~
16 ~~hearing is concluded.]~~

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

20 (h) The court shall rule on an application submitted under
21 this section and shall issue written findings of fact and
22 conclusions of law not later than 5 p.m. on the fifth ~~[second]~~
23 business day after the date the application is filed with the court.
24 On request by the minor, the court shall grant an extension of the
25 period specified by this subsection. If a request for an extension
26 is made, the court shall rule on an application and shall issue
27 written findings of fact and conclusions of law not later than 5

1 p.m. on the fifth [~~second~~] business day after the date the minor
2 states she is ready to proceed to hearing. If the court fails to
3 rule on the application and issue written findings of fact and
4 conclusions of law within the period specified by this subsection,
5 the application is deemed to be granted, and the court clerk shall
6 issue to the physician a certificate showing that the court failed
7 to rule on the application. Upon receipt of the certificate, the
8 physician may perform the abortion as if the court had issued an
9 order authorizing the minor to consent to the performance of the
10 abortion without the notification under Section 33.002 and consent
11 under Section 33.0021. Proceedings under this section shall be
12 given precedence over other pending matters to the extent necessary
13 to assure that the court reaches a decision promptly, regardless of
14 whether the minor is granted an extension under this subsection.

15 (i) The court shall determine by clear and convincing [~~a~~
16 ~~preponderance of the~~] evidence, as described by Section 101.007,
17 whether the minor has overcome the presumption that notifying and
18 requesting consent from a parent, managing conservator, or guardian
19 is in the minor's best interest. In making a determination under
20 this subsection, the court shall consider:

21 (1) whether the minor is mature and sufficiently well
22 informed to make the decision to have an abortion performed without
23 notification to or consent of a parent, [~~either of her parents or a~~]
24 managing conservator, or guardian;

25 (2) [~~r~~] whether the abortion [~~notification~~]
26 [~~not~~] be in the best interest of the minor; and

27 (3) [~~r~~ ~~or~~] whether notification or the attempt to

1 obtain consent may lead to physical, sexual, or emotional abuse of
2 the minor, as described by Section 261.001.

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

7 (1) the minor's age;

8 (2) the minor's life experiences, such as working,
9 traveling independently, or managing her own financial affairs;

10 (3) steps taken by the minor to explore her options and
11 the consequences of those options; and

12 (4) the minor's decision not to notify and obtain
13 consent from a parent, managing conservator, or guardian.

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

16 (1) inquire as to the minor's reasons for seeking an
17 abortion;

18 (2) consider the degree to which the minor is informed
19 about the state-published informational materials described by
20 Chapter 171, Health and Safety Code; and

21 (3) require the minor to be evaluated by a licensed
22 mental health counselor, who shall return the evaluation to the
23 court for review within three business days.

24 (i-3) If the court finds that the minor is mature and
25 sufficiently well informed, that the abortion [~~notification~~] would
26 [~~not~~] be in the minor's best interest, or that notification or the
27 attempt to obtain consent may lead to physical, sexual, or

1 emotional abuse of the minor, the court shall enter an order
2 authorizing the minor to consent to the performance of the abortion
3 without notification to and consent of a parent, [~~either of her~~
4 ~~parents or a~~] managing conservator, or guardian and shall execute
5 the required forms.

6 (j) If the court finds that the minor does not meet the
7 requirements of Subsection (i-3) [~~(i)~~], the court may not authorize
8 the minor to consent to an abortion without the notification
9 authorized under Section 33.002(a)(1) and consent under Section
10 33.0021.

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

21 (1-1) The clerk of the court, at intervals prescribed by the
22 Office of Court Administration of the Texas Judicial System, shall
23 submit a report to the office that includes, for each case filed
24 under this section:

- 25 (1) the case number and style;
26 (2) the applicant's county of residence;
27 (3) the court in which the proceeding occurred;

- 1 (4) the date of filing;
- 2 (5) the date of disposition; and
- 3 (6) the disposition of the case.

4 (1-2) The Office of Court Administration of the Texas
5 Judicial System shall annually compile and publish a report
6 aggregating the data received under Subsections (1-1)(2), (3), and
7 (6). A report under this subsection must protect the anonymity of
8 all minors that are the subject of the report.

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

12 (b) The court of appeals shall rule on an appeal under this
13 section not later than 5 p.m. on the fifth [~~second~~] business day
14 after the date the notice of appeal is filed with the court that
15 denied the application. On request by the minor, the court shall
16 grant an extension of the period specified by this subsection. If a
17 request for an extension is made, the court shall rule on the appeal
18 not later than 5 p.m. on the fifth [~~second~~] business day after the
19 date the minor states she is ready to proceed. If the court of
20 appeals fails to rule on the appeal within the period specified by
21 this subsection, the appeal is deemed to be granted and the court
22 clerk shall issue to the physician a certificate showing that the
23 court failed to rule on the application. On receipt of the
24 certificate, the physician may perform the abortion as if the court
25 had issued an order authorizing the minor to consent to the
26 performance of the abortion without the notification under Section
27 33.002 and consent under Section 33.0021. Proceedings under this

1 section shall be given precedence over other pending matters to the
2 extent necessary to assure that the court reaches a decision
3 promptly, regardless of whether the minor is granted an extension
4 under this subsection.

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

9 SECTION 6. Chapter 33, Family Code, is amended by adding
10 Section 33.0065 to read as follows:

11 Sec. 33.0065. RECORDS. The clerk of the court shall retain
12 the records for each case before the court under this chapter in
13 accordance with rules for civil cases and grant access to the
14 records to the minor who is the subject of the proceeding.

15 SECTION 7. Section 33.008, Family Code, is amended to read
16 as follows:

17 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;
18 INVESTIGATION [~~AND ASSISTANCE~~]. (a) A physician who has reason to
19 believe that a minor has been or may be physically or sexually
20 abused [~~by a person responsible for the minor's care, custody, or~~
21 ~~welfare, as that term is defined by Section 261.001,~~] shall
22 immediately report the suspected abuse to the Department of Family
23 and Protective Services and shall refer the minor to the department
24 for services or intervention that may be in the best interest of the
25 minor. A minor's claim that she is being physically or sexually
26 abused constitutes a reason to believe that abuse has occurred.

27 (b) A report made to the [~~The~~] Department of Family and

1 Protective Services under Subsection (a) shall be investigated as
2 provided by Chapter 261 [~~investigate suspected abuse reported under~~
3 ~~this section and, if appropriate, shall assist the minor in making~~
4 ~~an application with a court under Section 33.003~~].

5 SECTION 8. (a) Section 33.002, Family Code, as amended by
6 this Act, applies only to an offense committed on or after the
7 effective date of this Act. An offense committed before the
8 effective date of this Act is governed by the law in effect on the
9 date the offense was committed, and the former law is continued in
10 effect for that purpose. For purposes of this section, an offense
11 was committed before the effective date of this Act if any element
12 of the offense occurred before that date.

13 (b) Sections 33.003 and 33.004, Family Code, as amended by
14 this Act, apply only to a petition filed on or after the effective
15 date of this Act. A petition filed before the effective date of
16 this Act is governed by the law in effect on the date the petition
17 was filed, and the former law is continued in effect for that
18 purpose.

19 (c) The Office of Court Administration of the Texas Judicial
20 System is not required to publish the initial report under Section
21 33.003(1-2), Family Code, as added by this Act, before January 1,
22 2017.

23 SECTION 9. Every provision in this Act and every
24 application of the provisions in this Act are severable from each
25 other. If any application of any provision in this Act to any
26 person or group of persons or circumstances is found by a court to
27 be invalid, the remainder of this Act and the application of the

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

10 SECTION 10. This Act takes effect January 1, 2016.