

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 27
By: Nelson
Human Services
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Committee Report (Substituted)

DIGEST

Currently, Texas Family Code requires parental consent prior to the performance of an abortion on a minor child. However, U.S. Supreme Court decisions have rendered similar requirements in other states unconstitutional because they lack a judicial bypass mechanism. C.S.S.B. 27 will require a physician to notify and obtain the consent of a parent, managing conservator, or guardian of a pregnant minor prior to performing an abortion on that minor, with certain exceptions, including a judicial bypass mechanism. This bill also provides a penalty for failure to notify and obtain the consent of a parent, managing conservator, or guardian of a pregnant minor.

PURPOSE

As proposed, S.B. 27 requires written parental consent before an abortion may be performed on a minor; provides a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Supreme Court in SECTION 6 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2A, Family Code, by adding Chapter 33, as follows:

CHAPTER 33. NOTICE OF ABORTION

Sec. 33.001. DEFINITIONS. Defines "abortion," "fetus," "guardian," "medical emergency," and "physician."

Sec. 32.002. PARENTAL CONSENT. Prohibits a physician from performing an abortion on a minor unless a parent, or guardian consents in writing, or a justice of the peace judge or court issues an order authorizing the minor to consent to the abortion. Provides that a physician can perform an abortion without consent if a medical emergency exists. Requires the Texas Department of Health (TDH) to prepare a form to be used for making the certification required by Subsection (a)(3). Establishes that a Class A misdemeanor is committed if a physician violates this subsection.

Sec. 33.003. JUDICIAL BYPASS. Authorizes a pregnant minor to file an application for a court order authorizing the minor to consent to the performance of an abortion without consent of her parent or guardian. Sets forth requirements and provisions regarding the application. Requires the justice of the peace to ensure that the minor is given assistance in preparing and filing the application. Authorizes the assistance to be provided by court personnel, volunteers, or other persons appointed by the justice of the peace. Requires the justice court proceedings to be conducted in a manner that protects the anonymity of the minor. Provides that the application and all court records pertaining to the proceedings are confidential and may not be made available to the public. Authorizes the minor to file the application using a pseudonym or using only her initials. Requires the justice of the peace to appoint a guardian ad litem for the minor. Sets forth requirements for the ad litem attorney. Requires the justice of the peace to set a time for a hearing on an application filed this section. Sets forth requirements for the hearing. Authorizes the minor to request an extension of the hearing. Requires the justice of the peace to enter judgement on the application immediately after the hearing is concluded. Requires the justice of the peace to determine whether the minor is mature and sufficiently well-informed to make a decision to have

an abortion performed without consent or whether requiring consent is in the best interest of the minor. Requires the justice of the peace to issue an order authorizing the abortions if it finds that the minor can have an abortion without consent. Prohibits the justice of the peace from authorizing the minor to consent to an abortion if the court finds in the negative under Subsection(h)(1) and (2). Requires the clerk of the supreme court to prescribe the application form to be used by the minor filing an application under this section. Prohibits that a filing fee is not required of and court costs may not be assessed against a minor filing an application under this section.

Sec. 33.004. DE NOVO APPEAL TO COURT OF RECORD. Authorizes a minor to appeal to the county court at law or district court, if the minor's application is denied, in the county in which the minor resides, a county that borders a county in which the minor resides, or the county in which a facility in which the abortion would be performed is located. Requires an appeal under this section to be de novo. Requires the notice of appeal to be filed in the justice court that denied the minor's application. Requires the justice of the peace, on receipt of a notice of appeal, to cause to be delivered a copy of the notice of appeal and a copy of all records pertaining to the application to the clerk of the court in which the de novo appeal is to be heard. Requires the clerk on receipt of the notice and record, to place the de novo appeal on the docket of the court. Requires the court hearing the de novo appeal to appoint a guardian ad litem for the minor. Requires the court to appoint an attorney, if the minor has not retained an attorney. Authorizes the court to appoint the guardian ad litem to serve as the minor's attorney. Requires the proceeding in the de novo appeal to be conducted in a manner that protects the anonymity of the minor. Provides that the application and all court records pertaining to the proceedings are confidential and may not be made available to the public. Authorizes the minor to file the notice of appeal using a pseudonym or only her initials. Requires the court to set a time for the de novo hearing on the application and keep a record of all testimony and other oral proceedings in the action. Requires the hearing to be conducted not later than 5 p.m. of the second business day after the date the notice of appeal is filed. Authorizes the minor to request an extension of the period. Requires the court of record to enter judgment on the application immediately after the hearing is concluded. Requires the court to determine by a preponderance of the evidence certain provisions. Requires the court to issue an order authorizing the minor to grant consent for the abortion, if the court of record finds in the affirmative under either Subsection (g)(1) and (2). Prohibits the court from authorizing the minor to consent to an abortion, if the court finds in the negative under both Subsections (g)(1) and (2). Requires the clerk of the supreme court to prescribe the notice of appeal form. Provides that a filing fee is not required of, and court costs may not be assessed against, a minor filing an appeal. Provides that the minor is not required to file an appeal bond.

Sec. 33.005. APPEAL TO APPELLATE COURT. Authorizes a minor to appeal to the court of appeals that has jurisdiction over the cause if the minor's application was denied. Sets forth provisions regarding the notice of appeal. Requires the court to rule on an appeal no later than 5 p.m. on the second business day after the date the notice of appeal is filed. Authorizes the minor to request an extension of that period. Requires the clerk of the supreme court to prescribe the notice of the appeal form. Prohibits a minor from being required to post an appeal bond.

SECTION 2. Effective date: September 1, 1999, except as provided by SECTION 4 of this Act.

SECTION 3. Makes application of this Act prospective to January 1, 2000.

SECTION 4. Effective date for Section 33.002(c), Family Code: January 1, 2000.

SECTION 5. Requires the Texas Board of Health to adopt the form to be used under Section 33.002 (a)(4), Family Code, no later than December 15, 1999.

SECTION 6. Requires the Texas Supreme Court to promptly issue rules.

SECTION 7. Requires the clerk of the Texas Supreme Court to adopt the application form and notice of appeal form to be used under Sections 33.003, 33.004, and 33.005, Family Code, no later than December 15, 1999.

SECTION 8. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 33.002, Family Code, to prohibit a physician from performing an abortion on a minor without consent from a parent, guardian in writing, or a justice of the peace or court. Deletes provisions regarding a probate court, county court at law, district court, or court of appeals, by its inaction, constructively authorizes the minor to consent to the abortion as provided by Section 33.003, 33.004, or 33.005. Makes conforming changes.

Amends Section. 33.003, Family Code, to add new heading: JUDICIAL BYPASS. Requires the justice of the peace to ensure that the minor is given assistance in preparing and filing the application. Authorizes the assistance to be provided by court personnel, volunteers, or other persons appointed by the justice of the peace. Requires the justice court to be conducted in a manner that protects the anonymity of the minor. Provides that the application and all court records pertaining to the proceedings are confidential and may not be made available to the public. Deletes provisions requiring a court to rule on an application. Authorizes the minor to file the application using a pseudonym or her initials. Makes conforming and nonsubstantive changes.

Amends Section 33.004, Family Code, to add new heading: DE NOVO APPEAL TO COURT RECORD. Authorizes a minor to appeal to the county court at law or district court if the minor's application is denied in the county in which the minor resides, a county that borders a county in which the minor resides, or the county in which the facility in which the abortion would be performed is located. Requires an appeal under this section to be de novo. Requires the notice of appeal to be filed in the justice court that denied the minors application. Requires the justice of the peace, on receipt of a notice of appeal, to cause to be delivered a copy of the notice of appeal and a copy of all records pertaining to the application to the clerk of the court in which the de novo appeal is to be heard. Requires the clerk of the court, on receipt of the notice and record, to place the de novo appeal on the docket of the court. Requires the court hearing the de novo appeal to appoint a guardian ad litem for the minor. Requires the court to appoint an attorney, if the minor has not retained an attorney. Authorizes the court to appoint the guardian ad litem to serve as the minor's attorney. Requires the proceeding in the de novo appeal to be conducted in a manner that protects the anonymity of the minor. Provides that the application and all court records pertaining to the proceedings are confidential and may not be made available to the public. Authorizes the minor to file the notice of appeal using a pseudonym or only her initials. Requires the court to set a time for the de novo hearing on the application and keep a record of all testimony and other oral proceedings in the action. Requires the hearing to be conducted not later than 5 p.m. of the second business day after the date the notice of appeal is filed. Requires the court of record to enter judgment on the application immediately after the hearing is concluded. Requires the court to determine by preponderance of the evidence certain provisions. Requires the court to issue an order authorizing the minor to grant consent for the abortion, if the court of record finds in the affirmative under either Subsection (g)(1) or (2). Prohibits the court from authorizing the minor to consent to an abortion, if the court finds in the negative under both Subsections (g)(1) and (2). Deletes text requiring the court to rule on an appeal by a certain date which can be extended. Deletes text providing that if the court does not rule on an appeal within the specified amount of time, the appeal is granted. Deletes text requiring the court to give proceedings under this section precedence over other pending matters.

Amends Section 33.005, Family Code, to delete text providing that if the court does not rule on the appeal during the specified time, the appeal is granted. Requires the court of appeals to give proceedings under this section precedence over other pending matters.