

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1150
By: Harris
State Affairs
5/11/05
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1150 requires physicians to obtain the consent of the parents before performing abortions on minors (17 years of age and younger). It provides a judicial bypass to the consent provisions in certain cases.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Sections 34.104 and 34.154, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 33, Family Code, by adding Section 33.0011, as follows:

Sec. 33.0011. ALTERNATIVE APPLICABILITY OF THIS CHAPTER AND CHAPTER 34. Provides that, notwithstanding the provisions of this chapter, a person who complies with the provisions of Chapter 34 satisfies the requirements and duties imposed under this chapter.

SECTION 2. Amends Subtitle A, Title 2, Family Code, by adding Chapter 34, as follows:

CHAPTER 34. CONSENT TO ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 34.001. DEFINITIONS. Defines "abortion," "fetus," "guardian," "physician," and "unemancipated minor."

Sec. 34.002. APPLICABILITY OF OTHER LAW. Provides that a person or physician who complies with this chapter satisfies the requirements and duties imposed under Chapter 33 (Notice of Abortion).

[Reserves Sections 34.003-34.050 for expansion.]

SUBCHAPTER B. CONSENT TO ABORTION

Sec. 34.051. CONSENT REQUIRED. (a) Prohibits a physician from performing an abortion on a pregnant, unemancipated minor unless certain decisions are made by the minor's parents, a judge, a court, or the physician performing the abortion.

(b) Requires a physician who performs an abortion to execute for inclusion in a minor's medical record an affidavit stating that, according to the best information and belief of the physician, consent has been provided as required by this section. Provides that execution of an affidavit under this subsection creates a presumption that the requirements of this section have been satisfied.

(c) Requires a physician who performs an abortion with the consent required by Subsection (a)(1) to retain certain documents in the physician's files.

(d) Requires the Department of State Health Services (DSHS) to prepare a form to be used for making the certification required by Subsection (a)(4).

Sec. 34.052. CONFIDENTIALITY OF CERTIFICATION. (a) Provides that a certification required by Section 34.051(a)(4) is confidential and privileged and is not subject to disclosure under Chapter 552 (Public Information), Government Code, or to discovery, subpoena, or other legal process.

(b) Prohibits personal or identifying information about a minor, including her name, address, or social security number, from being included in a certification under Section 34.051(a)(4).

Sec. 34.053. AFFIDAVIT OF PHYSICIAN. (a) Authorizes a physician to execute for inclusion in the minor's medical record an affidavit stating that, after reasonable inquiry, it is the belief of the physician that certain circumstances exist.

(b) Authorizes a physician who in good faith has executed an affidavit under Subsection (a) to rely on the affidavit and to perform the abortion as if the court had issued an order granting the application or appeal.

Sec. 34.054. RECORDS. Requires a physician to keep medical records on a minor to whom this chapter applies in compliance with the rules adopted by the Texas State Board of Medical Examiners under Section 153.003 (Rules Regarding Maintenance of Patient Records), Occupations Code.

Sec. 34.055. CRIMINAL PENALTY FOR RECKLESS VIOLATION OF SUBCHAPTER. (a) Defines "defense" and "intentionally."

(b) Provides that a physician who recklessly performs an abortion on a pregnant unemancipated minor in violation of this subchapter commits an offense. Provides that an offense under this subsection is punishable by a fine not to exceed \$10,000.

(c) Provides that 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.

(d) Provides that the defense provided by Subsection (c) 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.

Sec. 34.056. TRIAL OF OFFENSE. (a) Authorizes the defendant, in relation to the trial of an offense under Section 34.054 in which the conduct charged involves a conclusion made by the physician under Section 34.051(a)(4), to seek a hearing before the Texas State Board of Medical Examiners on whether the physician's conduct was necessary to avert the death of the minor or to avoid a serious risk of substantial and irreversible impairment of a major bodily function.

(b) Provides that the findings of the Texas State Board of Medical Examiners under this section are admissible on that issue in the trial of the defendant.

(c) Requires the court, notwithstanding any other reason for a continuance provided under the Code of Criminal Procedure or other law, on motion of the defendant, to delay the beginning of the trial for not more than 30 days to permit a hearing under Subsection (a) to take place.

[Reserves Sections 34.057-34.100 for expansion.]

SUBCHAPTER C. COURT ORDER AUTHORIZING ABORTION

Sec. 34.101. APPLICATION FOR COURT ORDER. (a) Authorizes a pregnant minor who wishes to have an abortion without the consent of one of her parents, her managing conservator, or her guardian to file an application for a court order authorizing a physician to perform an abortion without the consent of either of her parents or a managing conservator or guardian.

(b) Authorizes the application to be filed in any county court at law, court having probate jurisdiction, or district court, including a family district court, in this state.

(c) Requires the application to be made under oath and include certain information.

(d) Requires the clerk of the court to deliver a courtesy copy of the application made under this section to the judge who is to hear the application.

(e) Requires the clerk of the supreme court to prescribe the application form to be used by the minor filing an application under this section.

Sec. 34.102. GUARDIAN AD LITEM AND ATTORNEY APPOINTMENTS. (a) Requires the court to appoint a guardian ad litem for the applicant minor.

(b) Authorizes the court to appoint certain persons to serve as guardian ad litem.

(c) Requires the court to appoint an attorney to represent the minor if the minor has not retained an attorney.

(d) Authorizes the court to appoint the guardian ad litem to serve as the minor's attorney if the guardian ad litem is an attorney admitted to the practice of law in this state.

Sec. 34.103. COURT PROCEEDING. (a) Requires the court to fix a time for a hearing on an application filed under Section 34.101 and to keep a record of all testimony and other oral proceedings in the action.

(b) Requires the court to enter judgment on the application immediately after the hearing under Subsection (a) is concluded.

(c) Requires the court to rule on an application submitted under Section 34.101 and to issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the application is filed with the court.

(d) Requires the court, on request by the minor, to grant an extension of the period specified by Subsection (b). Requires the court, if a request for an extension is made, to rule on an application and to issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing.

(e) Requires proceedings under this section to be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

(f) Requires the court to make certain determinations upon examination of clear and convincing evidence.

(g) Requires the court, if the court finds that any of the requirements of Subsection (e) are met, to enter an order authorizing a physician to perform the abortion without the consent required under Section 34.051(a)(1). Requires the court to execute the required forms.

(h) Prohibits the court, if it finds that the requirements of Subsection (f) are not met, from authorizing a physician to perform an abortion without the consent required under Section 34.051(a)(1).

(i) Provides that, if the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by Subsection (c) or (d), the application is deemed to be granted and authorizes the physician to perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without the consent required under Section 34.051(a)(1).

Sec. 34.104. PROHIBITED NOTIFICATION; ANONYMITY. (a) Prohibits the court from notifying a parent, managing conservator, or guardian that the minor is pregnant or that the minor wants to have an abortion.

(b) Requires the court proceedings under this subchapter to be conducted in a manner that protects the anonymity of the minor. Provides that the application and all other court documents pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Authorizes the minor to file the application using a pseudonym or using only her initials. Authorizes the supreme court to adopt rules to allow confidential docketing of an application filed under this subchapter.

Sec. 34.105. CONFIDENTIALITY OF COURT ORDER. Provides that an order of the court issued under this subchapter is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. Prohibits the order from being released, except to certain persons.

Sec. 34.106. FEES AND COSTS. Provides that a filing fee is not required of and prohibits court costs from being assessed against a minor filing an application under this subchapter.

[Reserves Sections 34.107-34.150 for expansion.]

SUBCHAPTER D. APPEAL OF COURT ORDER

Sec. 34.151. APPEAL. (a) Authorizes a minor whose application under Subchapter C is denied to appeal to the court of appeals having jurisdiction over civil matters in the county in which the application was filed.

(b) Requires the clerk of the court that denied the application, on receipt of a notice of appeal under this section, to deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals.

(c) Requires the clerk of the court of appeals to place the appeal on the docket of the court on receipt of the notice and record.

(d) Requires the clerk of the supreme court to prescribe the notice of appeal form to be used by the minor appealing a judgment under this subchapter.

Sec. 34.152. TIME FOR APPEAL. (a) Requires the court of appeals to rule on an appeal under this subchapter not later than 5 p.m. on the second business day after the date the notice of appeal is filed with the court that denied the application.

(b) Requires the court to grant an extension of the period specified by this section, on request by the minor.

(c) Requires the court, if a request for an extension is made, to rule on the appeal not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed.

(d) Provides that, if the court of appeals fails to rule on the appeal within the period specified by this section, the appeal is deemed to be granted and authorizes the physician to perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without the consent required under Section 34.051(a)(1).

Sec. 34.153. PRECEDENCE. Requires proceedings under this subchapter to be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

Sec. 34.154. NOTIFICATION PROHIBITED; ANONYMITY. (a) Prohibits the court of appeals from notifying a parent, managing conservator, or guardian that the minor is pregnant or that the minor wants to have an abortion. Requires the court of appeals proceeding to be conducted in a manner that protects the anonymity of the minor.

(b) Requires the application and all other court documents and reports to protect the anonymity of the minor.

(c) Authorizes the supreme court to adopt rules to allow confidential docketing of an appeal under this subchapter.

Sec. 34.155. CONFIDENTIALITY OF APPEAL. Provides that an order of the court of appeals issued under this subchapter is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. Prohibits the court order from being released, except to certain persons.

Sec. 34.156. FEES AND COSTS. Provides that a filing fee is not required of and prohibits court costs from being assessed against a minor filing an appeal under this subchapter.

Sec. 34.157. EXPEDITED APPEAL. Requires an expedited confidential appeal to be available to any pregnant minor to whom a court of appeals denies an order authorizing the minor to consent to the performance of an abortion without the consent required under Section 34.051(a)(1).

[Reserves Sections 34.158-34.200 for expansion.]

SUBCHAPTER E. IMMUNITY; COSTS; DUTIES

Sec. 34.201. GUARDIAN AD LITEM IMMUNITY. (a) Provides that a guardian ad litem appointed under this chapter and acting in the course and scope of the appointment is not liable for damages arising from an act or omission of the guardian ad litem committed in good faith.

(b) Provides that the immunity granted by this section does not apply if the conduct of the guardian ad litem is committed in a manner described by Section 107.009(b) (relating to the immunity of a guardian ad litem).

Sec. 34.202. COSTS PAID BY STATE. (a) Authorizes a court acting under Subchapter C or D to issue an order requiring the state to pay certain costs.

(b) Requires an order issued under Subsection (a) to be directed to the comptroller of public accounts, who is required to pay the amount ordered from funds appropriated to DSHS.

Sec. 34.203. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR; INVESTIGATION AND ASSISTANCE. (a) Requires a physician who has reason to believe that a minor has been or may be physically or sexually abused by a person responsible for the minor's care, custody, or welfare, as that term is defined by Section 261.001, to immediately report the suspected abuse to the Department of Family and

Protective Services (DFPS) and to refer the minor to DFPS for services or intervention that may be in the best interest of the minor.

(b) Requires DFPS to investigate suspected abuse reported under this section and, if appropriate, to assist the minor in making an application with a court under Subchapter C.

Sec. 34.204. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. Requires a court or the guardian ad litem or attorney ad litem for the minor to report conduct reasonably believed to violate Section 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 25.02 (Prohibited Sexual Conduct), Penal Code, based on information obtained during a confidential court proceeding held under this chapter to certain entities.

Sec. 34.205. CONFIDENTIALITY. Provides that, notwithstanding any other law, information obtained by DFPS or another entity under Section 34.203 or 34.204 is confidential except to the extent necessary to prove a violation of Section 22.011, 22.021, or 25.02, Penal Code.

Sec. 34.206. INFORMATION RELATING TO JUDICIAL BYPASS. (a) Requires DSHS to produce and distribute informational materials that explain the rights of a minor under this chapter.

(b) Sets forth requirements for the materials provided by DSHS.

SECTION 3. (a) Requires the Supreme Court of Texas, as soon as practical after the effective date of this Act, to adopt the rules necessary to ensure the proceedings under Subchapters C and D, Chapter 34, Family Code, as added by this Act, are conducted in a manner that protects the anonymity of the minor and have sufficient precedence over all other pending matters to ensure promptness of disposition.

(b) Requires the clerk of Supreme Court of Texas to adopt the application form and notice of appeal form required under Sections 34.101 and 34.151, Family Code, as added by this Act, not later than December 15, 2005.

(c) Requires the executive commissioner of the Health and Human Services Commission to adopt the form required for making a certification under Section 34.051, Family Code, as added by this Act, not later than December 1, 2005.

SECTION 4. Makes application of Chapter 34, Family Code, as added by this Act, prospective to January 1, 2006.

SECTION 5. Makes application of Chapter 34, Family Code, as added by this Act, prospective to January 1, 2006.

SECTION 6. (a) Effective date: September 1, 2005, except as provided by Subsection (b).

(b) Provides that Section 34.055, Family Code, as added by this Act, takes effect January 1, 2006.