

BILL ANALYSIS

Senate Research Center

C.S.S.B. 411
By: Nelson
Health & Human Services
2-7-97
Committee Report (Substituted)

DIGEST

Currently, the 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. Although the Texas statute has not been struck down in the courts, it must be read together with the holdings of the Supreme Court. Therefore, serious questions exist regarding the constitutionality and enforceability of the Texas law. This bill 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, C.S.S.B. 411 provides for the notification and consent of a parent, managing conservator, or guardian of a pregnant minor before a physician performs an abortion on that minor, with certain exceptions, including a judicial bypass mechanism, and provides a penalty for failure to notify and obtain the consent of the parent, managing conservator, or guardian.

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. 33.002. PARENTAL CONSENT. Prohibits a physician from performing an abortion on a pregnant minor unless certain criteria are met. Requires the Texas Department of Health to prepare a form to be used for making the certification required by Subsection (a)(4). Provides that a physician commits a Class A misdemeanor if the physician violates this section.

Sec. 33.003. JUDICIAL APPROVAL. Authorizes a pregnant minor who wishes to have an abortion without the consent of either of her parents, her managing conservator, or her guardian to file an application for a court order authorizing the minor to consent to the performance of an abortion without the consent of either of her parents or a managing conservator or guardian. Sets forth the procedure by which judicial approval may be obtained for an abortion without the consent of the minor's parents, managing conservator or guardian.

Sec. 33.004. APPEAL TO DISTRICT COURT. Authorizes a minor whose application under Section 33.003 is denied to appeal to the district court having jurisdiction over civil matters in the county in which the application was filed. Sets forth procedures for appeal of

a decision denying an application for an abortion without the consent of the minor's parents, managing conservator, or guardian.

Sec. 33.005. APPEAL TO APPELLATE COURT. Authorizes a minor whose application under Section 33.004 is denied to appeal to the court of appeals having jurisdiction over the cause. Sets forth procedures for appeal of a decision by a district court denying an application for an abortion without the consent of the minor's parents, managing conservator, or guardian.

SECTION 2. Effective date: September 1, 1997, except as provided by SECTION 4 of this Act.

SECTION 3. Makes application of Chapter 33, Family Code, as added by this Act, prospective to January 1, 1998.

SECTION 4. Provides that Section 33.002(e), Family Code, as added by this Act, takes effect January 1, 1998.

SECTION 5. Requires the Texas Board of Health to adopt the form to be used under Section 33.002(a)(4), Family Code, as added by this Act, not later than December 15, 1997.

SECTION 6. Requires the Texas Supreme Court to promptly issue rules necessary to ensure that the process established by Sections 33.003-33.005, Family Code, as added by this Act, will be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition.

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 33.003-33.005, Family Code, as added by this Act, not later than December 15, 1997.

SECTION 8. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1, Sections 33.002-33.005, Family Code, to delete reference to notification.