

## **BILL ANALYSIS**

Senate Research Center

H.B. 3994  
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Health and Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3994 amends the Family Code to require a physician, for purposes of parental notice and consent of an abortion performed on a minor, to 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. The bill prohibits a physician from performing an abortion in violation of Occupations Code provisions that prohibit a physician from performing an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order authorizing the minor to consent to the abortion, except under certain circumstances.

H.B. 3994 specifies that the authorization for a pregnant minor who wishes to have an abortion without notification to a minor's parent, managing conservator, or guardian to file an application for a court order authorizing the minor to consent to the performance of an abortion without such notification applies to a minor who wishes to have an abortion without consent of a parent, managing conservator, or guardian. The bill changes the location of the county court at law, court having probate jurisdiction, or district court, including a family district court, in which such an application may be filed from any such court in Texas to a court in the minor's county of residence or in a neighboring county if the minor's county of residence has a population of less than 10,000 or in the county in which the facility at which the minor intends to obtain an abortion is located. The bill specifies that a court-appointed guardian ad litem for the minor is required to represent the best interest of the minor. The bill prohibits the guardian ad litem from simultaneously serving as the minor's attorney and removes a provision authorizing 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 Texas.

H.B. 3994 removes a provision requiring the court to enter judgment on the application immediately after the hearing is concluded. The bill requires the pregnant minor to appear before the court in person and prohibits appearance using videoconferencing, telephone conferencing, or other remote electronic means. The bill extends the date and time by which a court is required to rule on an application and by which an appellate court is required to rule on an appeal of the original court's ruling regarding the application from not later than 5 p.m. on the second business day to not later than 5 p.m. on the fifth business day after the date the application or appeal is filed with the court or, if an extension is requested, after the date the minor states she is ready to proceed to hearing, as applicable. The bill requires the clerk of the court, if the court fails to rule on the application or appeal and issue written findings of fact and conclusions of law within the specified period, to issue to the physician a certificate showing that the court failed to rule on the application and authorizes the physician to perform the abortion on receipt of the certificate. The bill clarifies that the requirement for such proceedings be given precedence over other pending matters applies regardless of whether the minor is granted an extension. The bill authorizes the appellate court to publish an opinion relating to its ruling in such a case if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor.

H.B. 3994 replaces a requirement that the court determine by a preponderance of evidence that the minor is mature and sufficiently well informed to make the abortion decision without notification, whether notification would not be in the best interest of the minor, or could lead to physical, sexual, or emotional abuse of the minor, with the requirement that the court determine by clear and convincing evidence that notifying and requesting consent from a parent, managing conservator, or guardian is in the minor's best interest. The bill requires the court, in making

such a determination, to consider whether the minor is mature and sufficiently well informed to make the abortion decision without notification to or consent of a parent, managing conservator, or guardian; whether the abortion would be in the best interest of the minor; and whether notification or the attempt to obtain consent may lead to physical, sexual, or emotional abuse as that term is defined in the Family Code.

H.B. 3994 requires the court, in determining whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without parental notification and consent, to consider the experience, perspective, and judgment of the minor. The bill authorizes the court to consider all relevant factors, including the minor's age; the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; steps taken by the minor to explore her options and the consequences of those options; and the minor's decision not to notify and obtain consent from a parent, managing conservator, or guardian. The bill authorizes the court, in determining whether the abortion is in the best interest of the minor, to inquire as to the minor's reasons for seeking an abortion, to consider the degree to which the minor is informed about the relevant state-published informational materials, and to require the minor to be evaluated by a licensed mental health counselor, who is required to return the evaluation to the court for review within three business days.

H.B. 3994 authorizes the disclosure to a minor of confidential records pertaining to the minor relating to a court proceeding regarding an application for an order authorizing the performance of an abortion on the minor without parental notification and consent. The bill requires the clerk of the court, at intervals prescribed by the Office of Court Administration of the Texas Judicial System, to submit a report to the office that includes, for each case filed, the case number and style, the applicant's county of residence, the court in which the proceeding occurred, the date of filing, the date of disposition, and the disposition of the case. The bill requires the Office of Court Administration to annually compile and publish a report aggregating certain of that data received, aggregated to protect the anonymity of all minors that are the subject of the report. The Office of Court Administration is not required to publish the initial report before January 1, 2017.

H.B. 3994 requires the clerk of the court to retain the records for each case regarding the performance of an abortion on a minor without required parental notice and consent before the court in accordance with rules for civil cases and to grant access to the records to the minor who is the subject of the proceeding.

H.B. 3994 removes from the requirement that a physician who has reason to believe that a minor has been or may be physically or sexually abused immediately report the suspected abuse to the Department of Family and Protective Services (DFPS) the condition that a person responsible for the minor's care, custody, or welfare is the person who may have been or may be responsible for the abuse. The bill establishes that a minor's claim that she is being physically or sexually abused constitutes a reason to believe that abuse has occurred and requires a report of suspected abuse made to DFPS to be investigated as provided by statutory provisions relevant to investigations of reports of child abuse or neglect.

H.B. 3994 establishes that every provision in the bill and every application of the provisions in the bill are severable from each other. The bill establishes that if any application of any provision in the bill to any person or group of persons or circumstances is found by a court to be invalid, the remainder of the bill and the application of the bill's provisions to all other persons and circumstances may not be affected. The bill requires all constitutionally valid applications of the bill to be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. H.B. 3994 establishes that even if a reviewing court finds a provision of the bill invalid in a large or substantial fraction of relevant cases, the remaining valid applications are required to be severed and allowed to remain in force.

H.B. 3994 amends current law relating to notice of and consent to an abortion for a minor and associated requirements and amends provisions subject to a criminal penalty.

## **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Supreme Court is modified in SECTION 4 (Section 33.003, Family Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Chapter 33, Family Code, to read as follows:

### CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

SECTION 2. Amends Sections 33.002(a), (e), (f), (h), and (i), Family Code, as follows:

(a) Prohibits a physician from performing an abortion on a pregnant unemancipated minor unless:

(1) Makes no change to this subdivision;

(2) the physician performing the abortion receives a certificate or order issued by a court under Section 33.003 (Judicial Approval) or 33.004 (Appeal) authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004; or

(3) the physician performing the abortion certifies in writing to the Department of State Health Services (DSHS), rather than the Texas Department of Health (TDH), and in the patient's medical record the medical indications supporting the physician's judgment that the circumstances described by Paragraph (A) exist.

Deletes existing text prohibiting a physician from performing an abortion on a pregnant unemancipated minor unless the judge of a court having probate jurisdiction, the judge of a county court at law, the judge of a district court, including a family district court, or a court of appellate jurisdiction issues an order authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004 or a probate court, county court at law, district court, including a family district court, or court of appeals, by its inaction, constructively authorizes the minor to consent to the abortion as provided by Section 33.003 or 33.004.

(e) Requires DSHS, rather than TDH, to prepare a form to be used for making the certification required by Subsection (a)(3), rather than Subsection (a)(4).

(f) Changes reference to Subsection (a)(4) to Subsection (a)(3) and changes a reference to Texas State Board of Medical Examiners to Texas Medical Board.

(h) Requires a physician to 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. Makes no further change to this subsection.

(i) Makes conforming changes.

SECTION 3. Amends Chapter 33, Family Code, by adding Section 33.0021, as follows:

Sec. 33.0021. CONSENT REQUIRED. Prohibits a physician from performing an abortion in violation of Section 164.052(a)(19) (relating to certain abortions on unemancipated minors), Occupations Code.

SECTION 4. Amends Section 33.003, Family Code, by amending Subsections (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) and adding Subsections (g-1), (i-1), (i-2), (i-3), (l-1), (l-2), (o), (p), (q), and (r), as follows:

(a) Authorizes a pregnant minor to file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

Deletes existing text authorizing a pregnant minor who wishes to have an abortion without notification to one 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 notification to either of her parents or a managing conservator or guardian.

(b) Requires, rather than authorizes, that the application be filed in:

(1) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence;

(2) if the minor's county of residence has a population of less than 10,000:

(A) a court described by Subdivision (1);

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a neighboring county; or

(C) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located; or

(3) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located, if the minor is not a resident of this state.

(c) Requires that the application be made under oath and include:

(1) and (2) Makes no change to these subdivisions;

(3) a statement that the minor wishes to have an abortion without the notification to and consent of a parent, managing conservator, or guardian. Makes nonsubstantive changes;

(4) Makes a nonsubstantive change; and

(5) a statement about the minor's current residence, including the minor's physical address, mailing address, and telephone number.

(e) Requires the court to appoint a guardian ad litem for the minor who shall represent the best interest of the minor. Requires the court to appoint an attorney to represent the minor if the minor has not retained an attorney. Prohibits the guardian ad litem from also serving as the minor's attorney ad litem.

Deletes existing text authorizing 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.

(g) Requires the court to fix a time for a hearing on an application filed under Subsection (a) and to keep a record of all testimony and other oral proceedings in the action. Deletes existing text requiring the court to enter judgment on the application immediately after the hearing is concluded.

(g-1) Requires the pregnant minor to appear before the court in person and prohibits the minor from appearing using videoconferencing, telephone conferencing, or other remote electronic means.

(h) Requires the court to rule on an application submitted under this section and to issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth, rather than second, business day after the date the application is filed with the court. Requires the court, on request by the minor, to grant an extension of the period specified by this subsection. 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 fifth, rather than second, business day after the date the minor states she is ready to proceed to hearing. 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 this subsection, the application is deemed to be denied. Requires the court clerk to issue to the physician who is to perform the abortion a certificate showing that the court granted the application if the court authorizes the minor to consent to the abortion under this subsection. Requires that proceedings under this section be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly, regardless of whether the minor is granted an extension under this subsection.

Deletes existing text providing 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 this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002 (Parental Notice), Family Code.

(i) Requires the court to determine by clear and convincing evidence, rather than by a preponderance of the evidence, as described by Section 101.007 (Clear and Convincing Evidence), Family Code, whether the minor has overcome the presumption that notifying and requesting consent from a parent, managing conservator, or guardian is in the minor's best interest. Requires the court, in making a determination under this subsection, to consider:

- (1) whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian;
- (2) whether the abortion would be in the best interest of the minor; and
- (3) whether notification or the attempt to obtain consent may lead to physical, sexual, or emotional abuse of the minor, as described by Section 261.001 (Definitions), Family Code.

Deletes existing text requiring the court to determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian whether notification would not be in the best interest of the minor, or whether notification may lead to physical, sexual, or emotional abuse of the minor.

(i-1) Requires the court, in determining whether the minor meets the requirements of Subsection (i)(1), to consider the experience, perspective, and judgment of the minor. Authorizes the court to consider all relevant factors, including certain factors as set forth in this subsection.

(i-2) Authorizes the court, in determining whether the abortion is in the best interest of the minor, to:

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

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

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

(i-3) Creates this subsection from existing text. Requires the court to enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian and to execute the required forms if the court finds that the minor is mature and sufficiently well informed, that the abortion would be in the minor's best interest, or that notification or the attempt to obtain consent may lead to physical, sexual, or emotional abuse of the minor.

Deletes existing text requiring the court, if the court finds that the minor is mature and sufficiently well informed, that notification, would not be in the minor's best interest, or that notification may lead to physical, sexual, or emotional abuse of the minor, to enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents or a managing conservator or guardian and to execute the required forms.

(j) Prohibits the court from authorizing the minor, if the court finds that the minor does not meet the requirements of Subsection (i-3), rather than Subsection (i), to consent to an abortion without the notification authorized under Section 33.002(a)(1) and consent under Section 33.0021.

(k) 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. Requires that the court proceedings 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 (Public Information), 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. Provides that confidential records pertaining to a minor under this subsection may be disclosed to the minor.

(l) Provides that an order of the court issued under this section 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 to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, the physician who is to perform the abortion, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. Authorizes the supreme court to adopt rules to permit confidential docketing of an application under this section.

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

- (1) the case number and style;
- (2) the applicant's county of residence;
- (3) the court of appeals district in which the proceeding occurred;
- (4) the date of the filing;
- (5) the date of disposition; and

(6) the disposition of the case.

(l-2) Requires the office to annually compile and publish a report aggregating the data received under Subsections (l-1)(2), (3), and (6). Requires that a report under this subsection protect the anonymity of all minors and judges that are the subject of the report.

(o) Prohibits a minor who has filed an application under this section from withdrawing or otherwise non-suiting her application without the permission of the court.

(p) Provides that a minor who has filed an application and has obtained a determination by the court as described by Subsection (i), except as otherwise provided by Subsection (q), may not initiate a new application proceeding and the prior proceeding is res judicata of the issue relating to the determination of whether the minor may or may not be authorized to consent to the performance of an abortion without the consent of and notification to a parent, managing conservator, or guardian.

(q) Authorizes a minor whose application is denied to subsequently submit an application to the court that denied the application if the minor shows that there has been a material change in circumstances since the time the court denied the application.

(r) Requires an attorney retained by the minor to assist her in filing an application under this section to fully inform himself or herself of the minor's prior application history, including the representations made by the minor in the application regarding her address, proper venue in the county in which the application is filed, and whether a prior application has been filed and initiated. Requires the attorney representing the minor to attest to the truth of the minor's claims regarding the venue and prior applications in a sworn statement if an attorney assists the minor in the application process in any way, with or without payment.

SECTION 5. Amends Section 33.004, Family Code, by amending Subsection (b) and adding Subsection (c-1), as follows:

(b) Changes references to second business day to fifth business. Provides that, if the court of appeals fails to rule on the appeal within the period specified by this subsection, the appeal is deemed to be denied. Requires the court clerk to issue to the physician who is to perform the abortion a certificate showing that the court granted the application, if the court authorizes the minor to consent to the abortion under this subsection. 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, regardless of whether the minor is granted an extension under this subsection.

Deletes existing text providing that, if the court of appeals fails to rule on the appeal within the period specified by this subsection, the appeal is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002.

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

SECTION 6. Amends Chapter 33, Family Code, by adding Section 33.0065, as follows:

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

SECTION 7. Amends Section 33.008, Family Code, as follows:

Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR; INVESTIGATION AND ASSISTANCE. (a) Requires the physician or physician's agent to immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services (DFPS) and to a local law enforcement agency and to refer the minor to DFPS for services or intervention that may be in the best interest of the minor if a minor claims to have been physically or sexually abused or a physician or physician's agent has reason to believe that a minor has been physically or sexually abused. Requires the local law enforcement agency to respond and to write a report within 24 hours of being notified of the alleged abuse. Requires that a report be made regardless of whether the local law enforcement agency knows or suspects that a report about the abuse may have previously been made.

(b) Requires the appropriate local law enforcement agency and DFPS to investigate suspected abuse reported under this section and, if warranted, to refer the case to the appropriate prosecuting authority.

(c) Authorizes a law enforcement officer or appropriate agent from DFPS to take emergency possession of the minor without a court order to protect the health and safety of the minor as described by Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child), Family Code, when the local law enforcement agency responds to the report of physical or sexual abuse as required by Subsection (a).

Deletes existing text requiring 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 (Definitions), to immediately report the suspected abuse to DFPS and to refer the minor to DFPS for services or intervention that may be in the best interest of the minor. Deletes existing text requiring DFPS to investigate suspected abuse reported under this section and, if appropriate, to assist the minor in making an application with a court under Section 33.003.

SECTION 8. Amends Chapter 33, Family Code, by adding Section 33.0085, as follows:

Sec. 33.0085. DUTY OF JUDGE OR JUSTICE TO REPORT ABUSE OF MINOR. (a) Requires a judge or justice who, as a result of court proceedings conducted under Section 33.003 or 33.004, has reason to believe that a minor has been or may be physically or sexually abused, notwithstanding any other law, to:

(1) immediately report the suspected abuse and the name of the abuser to DFPS and to a local law enforcement agency; and

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

(b) Requires the appropriate local law enforcement agency and DFPS to investigate suspected abuse reported under this section and, if warranted, to refer the case to the appropriate prosecuting authority.

SECTION 9. Amends Section 33.010, Family Code, as follows:

Sec. 33.010. CONFIDENTIALITY. Provides that, notwithstanding any other law, information obtained by DFPS or another entity under Section 33.008 (Physician's Duty to Report Abuse of a Minor; Investigation and Assistance), 33.0085, or 33.009 (Other Reports of Sexual Abuse of a Minor) is confidential except to the extent necessary to prove a violation of Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 25.02 (Prohibited Sexual Conduct), Penal Code.



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

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

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

SECTION 11. Provides that every provision in this Act and every application of the provisions in this Act are severable from each other. Provides that, if any application of any provision in this Act to any person or group of persons or circumstances is found by a court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances may not be affected. Requires that all constitutionally valid applications of this Act be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Requires that the remaining valid applications be severed and allowed to remain in force even if a reviewing court finds a provision of this Act invalid in a large or substantial fraction of relevant cases.

SECTION 12. Effective date: January 1, 2016.