

BILL ANALYSIS

C.S.S.B. 182
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the law requires a physician performing an abortion to provide the probable gestation age of the unborn child. Requiring an ultrasound examination allows the physician to determine a more accurate age of the unborn child, which will allow for the safest method for performing the procedure. Under the Woman's Right to Know Act (H.B. 15), 78th Legislature, Regular Session, 2003, physicians performing an abortion are required to provide certain information and materials, including the health risks involved, and other options that may be available.

C.S.S.B. 182 amends the Woman's Right to Know Act to revise and add to the conditions that are prerequisite for consent to an abortion to be voluntary and informed. The bill, among other provisions, adds as one of these prerequisites a requirement that a pregnant woman undergo an obstetric ultrasound before the abortion, and includes provisions under which the woman elects whether to see the ultrasound, hear the ultrasound, or receive an explanation of the results of the ultrasound. The bill allows a physician to perform an abortion without obtaining informed consent in a "medical emergency" and defines that term. The bill requires a physician who performs an abortion in a medical emergency to include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency and to certify to the Department of State Health Services (DSHS) the specific medical condition that constituted the emergency. The bill amends provisions relating to DSHS informational materials concerning abortions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 182 amends the Woman's Right to Know Act, within the Health and Safety Code, to authorize a physician to perform an abortion without obtaining informed consent in a medical emergency, and to add to the conditions that are prerequisites, in other cases, for consent to an abortion to be voluntary and informed. The bill defines "medical emergency" to mean that a condition exists that, in a physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function. The bill requires a physician who performs an abortion in a medical emergency to include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency, and, not later than the seventh day after the date the abortion is performed, to certify to the Department of State Health Services (DSHS) the specific medical condition that constituted the emergency.

C.S.S.B. 182, with respect to existing statutory provisions establishing the prerequisites for consent to an abortion to be voluntary and informed, prohibits certain requisite information from being provided to a pregnant woman by audio or video recording, including information

regarding the name of the physician who will perform the abortion; the particular medical risks associated with the particular abortion procedure to be employed, the probable gestational age of the unborn child at the time the abortion is to be performed, and the medical risks associated with carrying the child to term; that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care; that the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and that public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest.

C.S.S.B. 182, with respect to the prerequisite that the pregnant woman have access to certain printed materials for consent to an abortion to be voluntary and informed, requires that she be provided the printed materials rather than, as under existing law, having the right to review such materials. The bill requires, for consent to an abortion to be voluntary and informed, that the physician who is to perform the abortion or the physician's agent inform the woman that she is not required to review those materials and also provide her with an ultrasound election form stating that Texas law requires her to undergo an ultrasound prior to receiving an abortion and giving her the options, to indicate on the form, to see or not see the ultrasound, hear or not hear the ultrasound, and receive or not receive a verbal explanation of the ultrasound results.

C.S.S.B. 182 requires, as a prerequisite for consent to an abortion to be voluntary and informed, that the pregnant woman undergo an obstetric ultrasound performed by the physician or the physician's agent. The bill requires as a further prerequisite that she view the ultrasound, hear the heart auscultation in a quality consistent with current medical practice and a simultaneous verbal explanation of the heart auscultation, and receive a simultaneous verbal explanation of the results of the ultrasound images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs, unless she has opted on the ultrasound election form not to see the ultrasound, hear the ultrasound, or receive a verbal explanation of the ultrasound results, as applicable.

C.S.S.B. 182 modifies other prerequisites for consent to an abortion to be voluntary and informed to require that the written statement the pregnant woman makes before the abortion be signed, certify that she has been provided not only the prerequisite information but also the printed materials as required by the bill, and certify that she not only has been provided the information and materials but has had them explained to her. The bill includes, as a new prerequisite for consent to an abortion to be voluntary and informed, that the pregnant woman be provided the name of each person who provides or explains any of the required information. The bill specifies that the physician and the pregnant woman are not subject to a penalty under the Woman's Right to Know Act solely because the pregnant woman chooses not to view the printed materials or ultrasound images or requests not to hear the heart auscultation.

C.S.S.B. 182 amends provisions relating to certain informational materials that existing law requires DSHS to publish concerning abortion. The bill requires the physician or the physician's agent to furnish copies of the DSHS informational materials to the pregnant woman at least 24 hours before the abortion is to be performed, removing language that requires furnishing such materials only if the woman chooses to view them, and makes a conforming change in provisions relating to the signed written statement completed by the pregnant woman. The bill requires the physician or the physician's agent to direct the pregnant woman to the Internet website maintained by DSHS that displays the published information. The bill requires the DSHS informational materials to include both, rather than either, of the following: geographically indexed materials designed to inform the pregnant woman of relevant public and private agencies and services and a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies that are located near the caller and of the services the agencies offer. The bill adds to the required materials a comprehensive list of agencies and organizations that offer obstetric ultrasound services at no cost to the pregnant woman.

C.S.S.B. 182 amends the Occupations Code to authorize the Texas Medical Board to take appropriate disciplinary action against a physician who violates the Woman's Right to Know Act. The bill authorizes the board to refuse to admit to examination or refuse to issue a license or renewal license to a person who violates the Woman's Right to Know Act.

C.S.S.B. 182 states that its purpose is to protect the health and safety of women.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 182 removes a provision in the original that requires a physician or the physician's agent, as a prerequisite for consent to an abortion to be voluntary and informed, to inform a pregnant woman that abortion informational materials of the Department of State Health Services (DSHS) include a list of agencies that offer obstetric ultrasound services at no cost to the pregnant woman.

C.S.S.B. 182 differs from the original by requiring, as a prerequisite for consent to an abortion to be voluntary and informed, that a pregnant woman undergo an obstetric ultrasound before the abortion, rather than requiring, as in the original, that the pregnant woman be offered an obstetric ultrasound before the abortion. The substitute differs from the original by making conforming changes in provisions relating to the ultrasound election form and making conforming changes in provisions relating to the viewing of the ultrasound, the hearing of the heart auscultation, and the receipt of an explanation of the results of the ultrasound. The substitute removes provisions in the original requiring that a verbal explanation of the heart auscultation, if opted for, be provided by the physician and be provided in a manner understandable to a layperson. The substitute removes a requirement in the original that the pregnant woman, in her signed written statement, certify that she has been offered and has had the opportunity to review the ultrasound images and the heart auscultation.

C.S.S.B. 182 differs from the original by specifying that a physician and the pregnant woman are not subject to penalty under the Women's Right to Know Act solely because the pregnant woman requests not to hear the heart auscultation.

C.S.S.B. 182 adds a provision not in the original that requires a physician who performs an abortion in a medical emergency to include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency and, not later than the seventh day after the date the abortion is performed, to certify to DSHS the specific medical condition that constituted the emergency.