

BILL ANALYSIS

C.S.H.B. 15
By: Miller, Sid
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current Texas law allows an abortion to be performed with the voluntary and informed consent of the woman on whom the abortion is to be performed. C.S.H.B. 15 requires a physician performing an abortion to also perform a sonogram on the expectant woman 72 to 24 hours before the procedure, except in cases where the mother's life is endangered. Under the bill's provisions, the physician is also required to make the sonogram images and heart auscultation accessible to the patient and to describe the results in easy-to-understand language. C.S.H.B. 15 also requires the doctor to provide a list of agencies offering ultrasounds at no cost to the pregnant woman and that do not perform certain other services. By providing a minimum 24-hour waiting period, the bill provides an expectant mother adequate time to review the sonogram and carefully weigh the impact of her decision.

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.H.B. 15 amends the Health and Safety Code to require a physician who is to perform an abortion, not more than 72 hours and not less than 24 hours before the abortion begins, to provide the pregnant woman on whom the abortion is to be performed with the informational materials required to be published by the Department of State Health Services (DSHS) under provisions of law relating to informed consent of abortion and to inform the woman that such materials are provided by DSHS, accessible on an Internet website sponsored by DSHS, describe the unborn child, and list agencies that offer alternatives to abortion. The bill requires the physician who is to perform the abortion to provide the pregnant woman with a comprehensive list of health care providers, facilities, and clinics that offer obstetric sonogram services at no cost to the pregnant woman and that do not perform abortions or provide abortion-related services; make referrals to any abortion provider; or affiliate or contract with any entity that performs abortions, provides abortion-related services, or makes referrals to any abortion provider. The bill requires DSHS to compile the list of obstetric sonogram providers who meet those requirements not later than the 60th day after the effective date of the bill and to make the list available at no cost. The bill requires DSHS to provide appropriate quantities of the list to an abortion provider and to any other person. The bill requires the list to include the name, address, hours of operation, and telephone number for each health care provider, facility, and clinic included on the list and to be arranged by county, printed in a typeface large enough to be clearly legible, and published in English and Spanish. The bill specifies that DSHS is not required to republish the list of obstetric sonogram providers because of a change in the name, address, hours of operation, or telephone number of an entity on the list unless five percent or more of the information contained in the list changes.

C.S.H.B. 15 requires a physician who is to perform an abortion or a sonographer certified by a national registry of medical sonographers, not more than 72 hours and not less than 24 hours before the abortion begins and before any sedative or anesthesia is administered to the pregnant

woman, to perform a live, real-time obstetric sonogram on the pregnant woman on whom the abortion is to be performed; display the live, real-time obstetric sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them; provide, in a manner understandable to a layperson, a simultaneous verbal explanation of the results of the live, real-time sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of arms, legs, external members, and internal organs; and make audible the live, real-time heart auscultation, when present, for the pregnant woman to hear, in a quality consistent with current medical practice, and provide, in a manner understandable to a layperson, a simultaneous verbal explanation of the live, real-time heart auscultation. The bill prohibits a facility providing obstetric sonogram services and any person at the facility, for the duration of a visit made to the facility to fulfill the obstetric sonogram requirements described in this bill, from accepting any form of payment, deposit, or exchange or making any financial agreement for an abortion or abortion-related service other than for payment of an obstetric sonogram service required by the bill's provisions. The bill prohibits the amount charged for a required obstetric sonogram service from exceeding the reimbursement rate established for the service by the Health and Human Services Commission for statewide medical reimbursement programs.

C.S.H.B. 15 requires the pregnant woman on whom the abortion is to be performed, after the live, real-time sonogram and the live, real-time heart auscultation and before any sedative or anesthesia is administered to the pregnant woman and before the abortion begins, to certify by her signature that not more than 72 hours and not less than 24 hours before the abortion begins she was provided with a live, real-time sonogram; she had the opportunity to view the live, real-time sonogram images; she was provided, in a manner understandable to a layperson, a simultaneous verbal explanation of the results of the sonogram images; and she heard the live, real-time heart auscultation, when present. The bill requires DSHS to prepare the form to be used for such certification and requires the form to include a space for the pregnant woman's signature and space for the woman to sign her initials beside each of three specified statements relating to the provision of required obstetric sonogram services. The bill requires the copy of the form to be given to the physician who is to perform the abortion and placed in the pregnant woman's medical records before the abortion begins. The bill requires a copy of the form to be retained by the abortion provider until the seventh anniversary of the date it is signed or, if the pregnant woman is a minor, until the later of the seventh anniversary of the date it is signed or the woman's 21st birthday.

C.S.H.B. 15 exempts a physician and pregnant woman from a penalty that is based solely on the pregnant woman's choice not to receive the information required to be provided during the performance of the sonogram. The bill creates an exception to the sonogram requirements for a physician performing an abortion in a medical emergency. The bill requires a physician who provides 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 DSHS, not later than the seventh day after the date the abortion is performed, the specific medical condition that constituted the emergency. The bill requires the statement certifying the nature of the medical emergency to be placed in the patient's medical records and kept by the abortion provider until the seventh anniversary of the date the abortion is performed or, if the pregnant woman is a minor, kept until the later of the seventh anniversary of the date the abortion is performed or the woman's 21st birthday.

C.S.H.B. 15 specifies that a physician who performs an abortion in violation of the bill's provisions engages in unprofessional conduct for which the physician's license is required to be revoked. The bill requires DSHS to revoke the license of an abortion provider that violates the bill's provisions in accordance with established procedures. The bill defines "abortion provider," "medical emergency," and "sonogram." The bill makes conforming changes requiring compliance with the bill's provisions by a hospital, an ambulatory surgical center, and an abortion facility.

C.S.H.B. 15 makes a conforming change to the Occupations Code requiring a physician to comply with the bill's provisions.

C.S.H.B. 15 makes its provisions applicable only to an abortion performed on or after the 60th day after the effective date of the bill. The bill provides for severability of its provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 15 differs from the original by revising the definition of "medical emergency" for purposes of its provisions to include a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The substitute differs from the original by specifying that the copy of a pregnant woman's signed certification form is required to be placed in the pregnant woman's medical records, rather than placed in the woman's medical file, as in the original. The substitute differs from the original, in the bill provision establishing the retention period for a copy of the signed certification form of a pregnant woman who is a minor, by changing one of the possible end dates for that retention period from the woman's 23rd birthday to the woman's 21st birthday. The substitute differs from the original, in the bill provision establishing the retention period for a copy of the statement of medical emergency for a pregnant woman who is a minor, by changing one of the possible end dates for that retention period from the woman's 23rd birthday to the woman's 21st birthday.

C.S.H.B. 15 omits a provision included in the original authorizing civil action for actual and punitive damages to be brought against a physician, a physician's agent, an abortion provider, or an abortion provider's agent who knowingly or recklessly violates the bill's provisions. The substitute omits a provision included in the original authorizing injunctive relief to be brought against those same persons if such a person knowingly violates or threatens to violate the bill's provisions. The substitute omits provisions included in the original relating to venue for those actions and issuance of an order by the court for injunctive relief. The substitute omits a provision included in the original making a person who knowingly violates such an injunctive order subject to specified fines as exclusive remedy for a violation of the order. The bill omits a provision included in the original making each abortion or attempted abortion performed in violation of the terms of the injunction a separate violation and omits a provision included in the original prohibiting a fine from being assessed against a woman on whom an abortion is performed or attempted. The substitute adds a severability provision not included in the original.