A BILL TO BE ENTITLED
AN ACT
relating to providing a sonogram before an abortion; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Health and Safety Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. PERFORMANCE OF SONOGRAM BEFORE ABORTION

Sec. 171.051. DEFINITIONS. In this subchapter:

(1) "Abortion provider" means a facility where an abortion is performed, including the office of a physician and a facility licensed under Chapter 241, 243, or 245.

(2) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(3) "Sonogram" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.

Sec. 171.052. INFORMATION REGARDING SONOGRAM PROVIDERS.

(a) Not more than 72 hours and not less than 24 hours before an abortion begins, the physician who is to perform the abortion shall in person and in a private, confidential setting:

(1) provide the pregnant woman on whom the abortion is
to be performed with the informational materials described by Section 171.014 and orally provide the woman the information required by Section 171.012(a)(1);

(2) orally inform the pregnant woman on whom the abortion is to be performed that the materials required by Section 171.014:

(A) are provided by the Department of State Health Services;

(B) are accessible on an Internet website sponsored by the department;

(C) describe the unborn child; and

(D) list agencies that offer alternatives to abortion; and

(3) provide the pregnant woman on whom the abortion is to be performed 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:

(A) perform abortions or provide abortion-related services;

(B) make referrals to any abortion provider; or

(C) affiliate or contract with any entity that performs abortions, provides abortion-related services, or makes referrals to any abortion provider.

(b) The department shall compile the list described by Subsection (a)(3) and shall make the list available at no cost. The department shall provide appropriate quantities of the list to an abortion provider and to any other person. The list must include
the name, address, hours of operation, and telephone number for each health care provider, facility, and clinic that satisfies the requirements of Subsection (a)(3) and be:

(1) arranged by county;
(2) printed in a typeface large enough to be clearly legible; and
(3) published in English and Spanish.

(c) The department is not required to republish the list described by Subsection (a)(3) because of a change in information described by Subsection (b) unless five percent or more of the information contained in the list changes.

Sec. 171.053. PERFORMANCE OF SONOGRAM. (a) 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, the physician who is to perform the abortion or a sonographer certified by a national registry of medical sonographers shall:

(1) perform a live, real-time obstetric sonogram on the pregnant woman on whom the abortion is to be performed;
(2) 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;
(3) 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
H.B. No. 15

(4) 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.

(b) During a visit made to a facility to fulfill the requirements of Subsection (a), the facility and any person at the facility may not accept any form of payment, deposit, or exchange or make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may not exceed the reimbursement rate established for the service by the Health and Human Services Commission for statewide medical reimbursement programs.

Sec. 171.054. CERTIFICATION OF SONOGRAM. (a) After the live, real-time sonogram and the live, real-time heart auscultation required under Section 171.053 and before any sedative or anesthesia is administered to the pregnant woman and before the abortion begins, the pregnant woman on whom the abortion is to be performed shall certify by her signature that not more than 72 hours and not less than 24 hours before the abortion begins:

(1) she was provided with a live, real-time sonogram as required under Section 171.053;

(2) she had the opportunity to view the live, real-time sonogram images as required under Section 171.053;

(3) she was provided, in a manner understandable to a layperson, a simultaneous verbal explanation of the results of the
sonogram images as required under Section 171.053; and

(4) she heard the live, real-time heart auscultation, when present, as required under Section 171.053.

(b) The department shall prepare the form to be used to make the certification required under Subsection (a). The form must include a space for the pregnant woman's signature and space for the woman to sign her initials beside each of the following statements:

(1) "Not more than 72 hours and not less than 24 hours before my abortion is to begin and at the facility where my abortion is to be performed, the doctor who is performing an abortion on me or a sonographer certified by a national registry of medical sonographers performed a sonogram on me and displayed the live, real-time sonogram images so that I could view them."

(2) "The doctor who is performing an abortion on me or a sonographer certified by a national registry of medical sonographers has given me, in an understandable manner, 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

(3) "The doctor performing an abortion on me or a sonographer certified by a national registry of medical sonographers has made audible the live, real-time heart activity, when present, for me to hear. The doctor or sonographer has also provided, in an understandable manner, a simultaneous verbal explanation of the live, real-time heart activity."
(c) Before the abortion begins, a copy of the form required under this section must be:

(1) given to the physician who is to perform the abortion; and

(2) placed in the pregnant woman's medical records.

(d) A copy of the form required under this section shall be retained by the abortion provider until:

(1) the seventh anniversary of the date it is signed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date it is signed; or

(B) the woman's 21st birthday.

Sec. 171.055. RECEIVING INFORMATION DURING SONOGRAM. The physician and the pregnant woman are not subject to a penalty under this subchapter solely because the pregnant woman chooses not to receive the information required to be provided under Section 171.053.

Sec. 171.056. PATERNITY AND CHILD SUPPORT INFORMATION. If, after being provided with a sonogram and the information required under this subchapter, the pregnant woman chooses not to have an abortion, the physician or an agent of the physician shall provide the pregnant woman with a publication developed by the Title IV-D agency that provides information about paternity establishment and child support, including:

(1) the steps necessary for unmarried parents to establish legal paternity;
the benefits of paternity establishment for children; the steps necessary to obtain a child support order; the benefits of establishing a legal parenting order; and financial and legal responsibilities of parenting.

Sec. 171.057. EXCEPTION FOR MEDICAL EMERGENCY. (a) A physician may perform an abortion without providing the sonogram required under Section 171.053 only in a medical emergency. A physician who performs an abortion in a medical emergency shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the seventh day after the date the abortion is performed, certify to the Department of State Health Services the specific medical condition that constituted the emergency.

(b) The statement required under Subsection (a)(1) shall be placed in the patient's medical records and shall be kept by the abortion provider until:

(1) the seventh anniversary of the date the abortion is performed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date the abortion is performed; or
(B) the woman's 21st birthday.

Sec. 171.058. VIOLATION. (a) A physician who performs an abortion in violation of this subchapter engages in unprofessional conduct for which the physician's license shall be revoked under Chapter 164, Occupations Code.

(b) The department, in accordance with the procedures established under Chapter 241, 243, or 245, as applicable, shall revoke the license of an abortion provider that violates this subchapter.

SECTION 2. Subchapter A, Chapter 241, Health and Safety Code, is amended by adding Section 241.007 to read as follows:

Sec. 241.007. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A hospital shall comply with Subchapter C, Chapter 171.

SECTION 3. Subchapter A, Chapter 243, Health and Safety Code, is amended by adding Section 243.017 to read as follows:

Sec. 243.017. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An ambulatory surgical center shall comply with Subchapter C, Chapter 171.

SECTION 4. Section 245.006(a), Health and Safety Code, is amended to read as follows:

(a) The department shall inspect an abortion facility at reasonable times as necessary to ensure compliance with this chapter and Subchapter C, Chapter 171.

SECTION 5. Chapter 245, Health and Safety Code, is amended by adding Section 245.024 to read as follows:

Sec. 245.024. COMPLIANCE WITH CERTAIN REQUIREMENTS
REGARDING SONOGRAM BEFORE ABORTION. An abortion facility shall comply with Subchapter C, Chapter 171.

SECTION 6. Subchapter B, Chapter 164, Occupations Code, is amended by adding Section 164.0551 to read as follows:

Sec. 164.0551. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A physician shall comply with Subchapter C, Chapter 171, Health and Safety Code.

SECTION 7. The change in law made by this Act applies only to an abortion performed on or after the 60th day after the effective date of this Act. An abortion performed before the 60th day after the effective date of this Act is governed by the law in effect on the date the abortion was performed, and the former law is continued in effect for that purpose.

SECTION 8. The Department of State Health Services shall compile the list required by Section 171.052, Health and Safety Code, as added by this Act, not later than the 60th day after the effective date of this Act.

SECTION 9. The Title IV-D agency shall publish the information required by Section 171.056, Health and Safety Code, as added by this Act, not later than the 60th day after the effective date of this Act.

SECTION 10. (a) The legislature finds the following purposes and justifications for this law:

(1) States have "a substantial government interest justifying a requirement that a woman be apprised of the health risks of abortion and childbirth," including mental health considerations. Planned Parenthood of Southeastern Pennsylvania
v. Casey, 505 U.S. 833, 882 (1992). "It cannot be questioned that psychological well-being is a facet of health. Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible." Id.

(2) The consideration of an abortion's consequences to a fetus is not contingent on the consideration of the health of the mother. Rather, those considerations provide a stand-alone basis for informed consent legislation. There is "no reason why the State may not require doctors to inform a woman seeking an abortion of the availability of materials relating to the consequences to the fetus, even when those consequences have no direct relation to her health." Id.

(3) In addition to the state's substantial interest in promoting the health and well-being of a pregnant woman, the state also has a "profound interest in potential life" of the unborn fetus. Id. at 878; see also Gonzales v. Carhart, 550 U.S. 124, 125 (2007) (recognizing that the state has a legitimate interest "in protecting the life of the fetus that may become a child").

(4) A statute furthering a state's "legitimate goal of
protecting the life of the unborn" by "ensuring a decision that is 
mature and informed" is permitted "even when in so doing the State 
expresses a preference for childbirth over abortion." Planned 
Parenthood, 505 U.S. at 883.

(5) In addition, the Supreme Court has held that 
"[r]egulations which do no more than create a structural mechanism 
by which the State, or the parent or guardian of a minor, may 
express profound respect for the life of the unborn are permitted, 
if they are not a substantial obstacle to the woman's exercise of 
the right to choose." Id. at 877. "Unless it has that effect on her 
right of choice, a state measure designed to persuade her to choose 
childbirth over abortion will be upheld if reasonably related to 
that goal." Id. at 878.

(6) "The State also has an interest in protecting the 
integrity and ethics of the medical profession." Washington v. 
Glucksberg, 521 U.S. 702, 731 (1997). An abortion performed 
without a medical professional's full disclosure to a pregnant 
woman of the impact on the fetus and the potential health 
consequences of an abortion could undermine the woman's trust in 
medical professionals. This Act is intended to protect the 
integrity and ethics of the medical profession by establishing 
clear requirements that are designed to ensure the health and 
informed consent of a pregnant woman who is contemplating an 
abortion.

(b) Therefore, it is the legislature's intent in enacting 
this Act to further the purposes stated in Subsection (a) of this 
section.
(c) Furthermore, with regard to the severability clause contained in this Act, the legislature finds:

(1) As the United States Supreme Court has explained, when reviewing an abortion statute, "the proper means to consider exceptions is by as-applied challenge." Gonzales, 550 U.S. at 167. Moreover, when reviewing abortion statutes, "[t]he latitude given facial challenges in the First Amendment context is inapplicable." Id. See also U.S. v. Salerno, 481 U.S. 739, 745 (1987) ("The fact that [a legislative Act] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment.").

(2) The United States Supreme Court has made the role of the court clear when reviewing statutes: "It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop." Gonzales, 550 U.S. at 168. "[I]t would indeed be undesirable for this Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation." Id. (quoting U. S. v. Raines, 362 U.S. 17, 21 (1960) (internal quotation marks omitted)). "For this reason, '[a]s-applied challenges are the basic building blocks of constitutional adjudication.'" Gonzales, 550 U.S. at 168 (quoting Richard Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321, 128 (2000)).

(3) Severability must be considered not only with respect to certain clauses or provisions of a statute but also with
respect to applications of a statute or provision when some of the applications are unconstitutional. See Norman J. Singer, Statutes and Statutory Construction, Section 44.02 (4th ed. rev. 1986).

(4) Severability clauses in federal statutes treat severability of clauses and applications the same. See, e.g., 2 U.S.C. Section 1438 ("If any provision of this chapter or the application of such provision to any person or circumstance is held to be invalid, the remainder of this chapter and the application of the provisions of the remainder to any person or circumstance shall not be affected thereby."); Section 1103 of the Social Security Act (42 U.S.C. Section 1303); Section 15 of the National Labor Relations Act (29 U.S.C. Section 165); Section 11 of the Railway Labor Act (45 U.S.C. Section 161); Section 14 of the Agricultural Adjustment Act (7 U.S.C. Section 614).

(5) Courts have treated severability of clauses and applications the same. See Robert L. Stern, Separability and Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76 (1937).

SECTION 11. The purposes of this Act are to:

(1) protect the physical and psychological health and well-being of pregnant women;

(2) provide pregnant women access to information that would allow a pregnant woman to consider the impact an abortion would have on the pregnant woman's fetus; and

(3) protect the integrity and ethical standards of the medical profession.

SECTION 12. Every provision in this Act and every
application of the provisions in this Act are severable from each
other. 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. All constitutionally valid applications of this Act
shall 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. Even if a reviewing court finds a provision
of this Act invalid in a large or substantial fraction of relevant
cases, the remaining valid applications shall be severed and
allowed to remain in force.

SECTION 13. Each provision of this Act and every
application of this Act's provisions to any person or circumstance
shall be construed as severable as a matter of state law. If any
application of this Act to any person or circumstance is held
invalid by any court, the valid applications shall be severed and
remain in force.

SECTION 14. This Act takes effect immediately if it
receives a vote of two-thirds of all the members elected to each
house, as provided by Section 39, Article III, Texas Constitution.
If this Act does not receive the vote necessary for immediate
effect, this Act takes effect September 1, 2011.