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H.B. No. 15

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

1 to be performed with the informational materials described by  
2 Section 171.014 and orally provide the woman the information  
3 required by Section 171.012(a)(1);

4 (2) orally inform the pregnant woman on whom the  
5 abortion is to be performed that the materials required by Section  
6 171.014:

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

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

11 (C) describe the unborn child; and

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

14 (3) provide the pregnant woman on whom the abortion is  
15 to be performed with a comprehensive list of health care providers,  
16 facilities, and clinics that offer obstetric sonogram services at  
17 no cost to the pregnant woman and that do not:

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

20 (B) make referrals to any abortion provider; or

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

24 (b) The department shall compile the list described by  
25 Subsection (a)(3) and shall make the list available at no cost. The  
26 department shall provide appropriate quantities of the list to an  
27 abortion provider and to any other person. The list must include

1 the name, address, hours of operation, and telephone number for  
2 each health care provider, facility, and clinic that satisfies the  
3 requirements of Subsection (a)(3) and be:

4 (1) arranged by county;

5 (2) printed in a typeface large enough to be clearly  
6 legible; and

7 (3) published in English and Spanish.

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

12 Sec. 171.053. PERFORMANCE OF SONOGRAM. (a) Not more than  
13 72 hours and not less than 24 hours before the abortion begins and  
14 before any sedative or anesthesia is administered to the pregnant  
15 woman, the physician who is to perform the abortion or a sonographer  
16 certified by a national registry of medical sonographers shall:

17 (1) perform a live, real-time obstetric sonogram on  
18 the pregnant woman on whom the abortion is to be performed;

19 (2) display the live, real-time obstetric sonogram  
20 images in a quality consistent with current medical practice in a  
21 manner that the pregnant woman may view them;

22 (3) provide, in a manner understandable to a  
23 layperson, a simultaneous verbal explanation of the results of the  
24 live, real-time sonogram images, including a medical description of  
25 the dimensions of the embryo or fetus, the presence of cardiac  
26 activity, and the presence of arms, legs, external members, and  
27 internal organs; and

1           (4) make audible the live, real-time heart  
2 auscultation, when present, for the pregnant woman to hear, in a  
3 quality consistent with current medical practice, and provide, in a  
4 manner understandable to a layperson, a simultaneous verbal  
5 explanation of the live, real-time heart auscultation.

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

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

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

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

26           (3) she was provided, in a manner understandable to a  
27 layperson, a simultaneous verbal explanation of the results of the

1 sonogram images as required under Section 171.053; and

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

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

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

14 (2) "The doctor who is performing an abortion on me or  
15 a sonographer certified by a national registry of medical  
16 sonographers has given me, in an understandable manner, a  
17 simultaneous verbal explanation of the results of the live,  
18 real-time sonogram images, including a medical description of the  
19 dimensions of the embryo or fetus, the presence of cardiac  
20 activity, and the presence of arms, legs, external members, and  
21 internal organs."; and

22 (3) "The doctor performing an abortion on me or a  
23 sonographer certified by a national registry of medical  
24 sonographers has made audible the live, real-time heart activity,  
25 when present, for me to hear. The doctor or sonographer has also  
26 provided, in an understandable manner, a simultaneous verbal  
27 explanation of the live, real-time heart activity."

1        (c) Before the abortion begins, a copy of the form required  
2 under this section must be:

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

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

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

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

9 or

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

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

13            (B) the woman's 21st birthday.

14        Sec. 171.055. RECEIVING INFORMATION DURING SONOGRAM. The  
15 physician and the pregnant woman are not subject to a penalty under  
16 this subchapter solely because the pregnant woman chooses not to  
17 receive the information required to be provided under Section  
18 171.053.

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

26            (1) the steps necessary for unmarried parents to  
27 establish legal paternity;

- 1           (2) the benefits of paternity establishment for  
2 children;
- 3           (3) the steps necessary to obtain a child support  
4 order;
- 5           (4) the benefits of establishing a legal parenting  
6 order; and
- 7           (5) financial and legal responsibilities of  
8 parenting.

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

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

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

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

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

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

26                   (A) the seventh anniversary of the date the  
27 abortion is performed; or

1                   (B) the woman's 21st birthday.

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

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

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

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

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

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

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

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

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

27           Sec. 245.024. COMPLIANCE WITH CERTAIN REQUIREMENTS



1 REGARDING SONOGRAM BEFORE ABORTION. An abortion facility shall  
2 comply with Subchapter C, Chapter 171.

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

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

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

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

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

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

24 (1) States have "a substantial government interest  
25 justifying a requirement that a woman be apprised of the health  
26 risks of abortion and childbirth," including mental health  
27 considerations. Planned Parenthood of Southeastern Pennsylvania

1 v. Casey, 505 U.S. 833, 882 (1992). "It cannot be questioned that  
2 psychological well-being is a facet of health. Nor can it be  
3 doubted that most women considering an abortion would deem the  
4 impact on the fetus relevant, if not dispositive, to the decision.  
5 In attempting to ensure that a woman apprehend the full  
6 consequences of her decision, the State furthers the legitimate  
7 purpose of reducing the risk that a woman may elect an abortion,  
8 only to discover later, with devastating psychological  
9 consequences, that her decision was not fully informed. If the  
10 information the State requires to be made available to the woman is  
11 truthful and not misleading, the requirement may be permissible."  
12 Id.

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

21 (3) In addition to the state's substantial interest in  
22 promoting the health and well-being of a pregnant woman, the state  
23 also has a "profound interest in potential life" of the unborn  
24 fetus. Id. at 878; see also Gonzales v. Carhart, 550 U.S. 124, 125  
25 (2007) (recognizing that the state has a legitimate interest "in  
26 protecting the life of the fetus that may become a child").

27 (4) A statute furthering a state's "legitimate goal of

1 protecting the life of the unborn" by "ensuring a decision that is  
2 mature and informed" is permitted "even when in so doing the State  
3 expresses a preference for childbirth over abortion." Planned  
4 Parenthood, 505 U.S. at 883.

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

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

25 (b) Therefore, it is the legislature's intent in enacting  
26 this Act to further the purposes stated in Subsection (a) of this  
27 section.

1 (c) Furthermore, with regard to the severability clause  
2 contained in this Act, the legislature finds:

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

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

26 (3) Severability must be considered not only with  
27 respect to certain clauses or provisions of a statute but also with

1 respect to applications of a statute or provision when some of the  
2 applications are unconstitutional. See Norman J. Singer, Statutes  
3 and Statutory Construction, Section 44.02 (4th ed. rev. 1986).

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

15 (5) Courts have treated severability of clauses and  
16 applications the same. See Robert L. Stern, Separability and  
17 Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76  
18 (1937).

19 SECTION 11. The purposes of this Act are to:

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

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

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

27 SECTION 12. Every provision in this Act and every

1 application of the provisions in this Act are severable from each  
2 other. If any application of any provision in this Act to any  
3 person or group of persons or circumstances is found by a court to  
4 be invalid, the remainder of this Act and the application of the  
5 Act's provisions to all other persons and circumstances may not be  
6 affected. All constitutionally valid applications of this Act  
7 shall be severed from any applications that a court finds to be  
8 invalid, leaving the valid applications in force, because it is the  
9 legislature's intent and priority that the valid applications be  
10 allowed to stand alone. Even if a reviewing court finds a provision  
11 of this Act invalid in a large or substantial fraction of relevant  
12 cases, the remaining valid applications shall be severed and  
13 allowed to remain in force.

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

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