

By: Miller of Erath

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 caused by or arising from a pregnancy itself that, as certified by a physician, places the woman in danger of death 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:

(1) provide the pregnant woman on whom the abortion is to be performed with the informational materials described by

1 Section 171.014;

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

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

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

8 (C) describe the unborn child; and

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

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

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

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

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

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

1 (1) arranged by county;

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

4 (3) published in English and Spanish.

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

9 Sec. 171.053. PERFORMANCE OF SONOGRAM. (a) Not more than
10 72 hours and not less than 24 hours before the abortion begins and
11 before any sedative or anesthesia is administered to the pregnant
12 woman, the physician who is to perform the abortion or a sonographer
13 certified by a national registry of medical sonographers shall:

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

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

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

25 (4) make audible the live, real-time heart
26 auscultation, when present, for the pregnant woman to hear, in a
27 quality consistent with current medical practice, and provide, in a

1 manner understandable to a layperson, a simultaneous verbal
2 explanation of the live, real-time heart auscultation.

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

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

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

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

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

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

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

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

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

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

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

27 (1) given to the physician who is to perform the

1 abortion; and

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

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

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

6 or

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

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

10 (B) the woman's 23rd birthday.

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

16 Sec. 171.056. EXCEPTION FOR MEDICAL EMERGENCY. (a) A
17 physician may perform an abortion without providing the sonogram
18 required under Section 171.053 only in a medical emergency. A
19 physician who performs an abortion in a medical emergency shall:

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

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

27 (b) The statement required under Subsection (a)(1) shall be

1 placed in the patient's medical records and shall be kept by the
2 abortion provider until:

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

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

6 (A) the seventh anniversary of the date the
7 abortion is performed; or

8 (B) the woman's 23rd birthday.

9 Sec. 171.057. VIOLATION. (a) A civil action for actual
10 damages and punitive damages may be brought against a physician, a
11 physician's agent, an abortion provider, or an abortion provider's
12 agent who knowingly or recklessly violates this subchapter by:

13 (1) a woman on whom an abortion was performed in
14 violation of this subchapter; or

15 (2) the parent or legal guardian of a woman on whom an
16 abortion was performed if the woman is an unemancipated minor.

17 (b) A civil action for injunctive relief may be brought
18 against a physician, a physician's agent, an abortion provider, or
19 an abortion provider's agent who knowingly violates or threatens to
20 violate this subchapter by:

21 (1) a woman on whom an abortion was performed or
22 threatened to be performed in violation of this subchapter;

23 (2) a spouse, parent, legal guardian, or sibling of
24 the woman;

25 (3) the woman's licensed health care provider or
26 former licensed health care provider;

27 (4) the appropriate district or county attorney; or

1 (5) the attorney general.

2 (c) An action for damages or injunctive relief may be
3 brought in a district court in the county in which the defendant
4 resides or in which the violation or threat of violation occurs.

5 (d) The district court, on a finding that the physician, the
6 physician's agent, the abortion provider, or the abortion
7 provider's agent knowingly violated or threatened to violate this
8 subchapter, shall grant injunctive relief by issuing an order
9 prohibiting the physician, the physician's agent, the abortion
10 provider, or the abortion provider's agent from performing further
11 abortions in violation of this subchapter.

12 (e) A person who knowingly violates an order issued under
13 Subsection (d) is subject to the following sentence for contempt:

14 (1) a fine of \$10,000 for a first violation;

15 (2) a fine of \$50,000 for a second violation;

16 (3) a fine of \$100,000 for a third violation; and

17 (4) for each subsequent violation, a fine in an amount
18 exceeding \$100,000 determined by the court as appropriate to deter
19 any further violations.

20 (f) A fine assessed under Subsection (e) is the exclusive
21 remedy for a violation of an injunction issued under Subsection
22 (d).

23 (g) Each abortion or attempted abortion performed in
24 violation of the terms of an injunction issued under Subsection (d)
25 is a separate violation.

26 (h) A fine may not be assessed against a woman on whom an
27 abortion is performed or attempted.

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

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

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

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

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

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

19 SECTION 4. Chapter 245, Health and Safety Code, is amended
20 by adding Section 245.024 to read as follows:

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

24 SECTION 5. Subchapter B, Chapter 164, Occupations Code, is
25 amended by adding Section 164.0551 to read as follows:

26 Sec. 164.0551. COMPLIANCE WITH CERTAIN REQUIREMENTS
27 REGARDING SONOGRAM BEFORE ABORTION. A physician shall comply with

1 Subchapter C, Chapter 171, Health and Safety Code.

2 SECTION 6. The change in law made by this Act applies only
3 to an abortion performed on or after the 60th day after the
4 effective date of this Act. An abortion performed before the 60th
5 day after the effective date of this Act is governed by the law in
6 effect on the date the abortion was performed, and the former law is
7 continued in effect for that purpose.

8 SECTION 7. The Department of State Health Services shall
9 compile the list required by Section 171.052, Health and Safety
10 Code, as added by this Act, not later than the 60th day after the
11 effective date of this Act.

12 SECTION 8. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2011.