

By: Smith of Tarrant

H.B. No. 325

A BILL TO BE ENTITLED

AN ACT

relating to providing access to an ultrasound before an abortion.

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

SECTION 1. Chapter 171, Health and Safety Code, is amended by adding Sections 171.019 through Sections 171.026 to read as follows:

Sec. 171.019. LEGISLATIVE FINDINGS. (a) The Texas Legislature finds that:

(1) all abortions, whether surgically or chemically induced, terminate the life of a whole, separate, unique, living human being;

(2) the existing standard of care for screening and counseling before an abortion is not adequate to protect the health needs of women; and

(3) The State of Texas has imposed a standard of practice in the health care profession that, except in exceptional circumstances, requires physicians and other health care practitioners to provide patients with such facts about the nature of any proposed course of treatment, the risks of the proposed course of treatment, the alternatives to the proposed course, including any risks that would be applicable to any alternatives, as a reasonable patient would consider significant to the decision of whether to undergo the proposed course of treatment.

(b) Therefore it is the intent of the Texas Legislature in

1 enacting Sections 171.020 through Sections 171.026 to further the
2 important and compelling state interests to:

3 (1) protect the life and health of the woman seeking or
4 undergoing an abortion and, to the extent constitutionally
5 permissible, the life of her unborn child;

6 (2) foster the development of high standards of
7 professional conduct in the practice of abortion; and

8 (3) ensure that prior to the provision of an abortion,
9 the woman considering an abortion receives personal counseling by
10 the physician and be given a full range of information regarding her
11 pregnancy, her unborn child, the abortion, the medical and
12 psychological risks of abortion and available alternatives to the
13 abortion.

14 Sec. 171.020. DEFINITIONS. In this chapter:

15 (1) "Ultrasound" means the use of ultrasonic waves for
16 diagnostic or therapeutic purposes, specifically to monitor an
17 unborn child.

18 (2) "Medical emergency" means the case when a life-
19 endangering physical condition caused by or arising from the
20 pregnancy itself, that would, as certified by a physician, place
21 the woman in danger of death unless an abortion is provided.

22 Sec. 171.021. ULTRASOUND PROVISION AND DISPLAY BEFORE
23 ABORTION. (a) No less than one (1) hour before the abortion
24 procedure, the physician who is to provide the abortion or the
25 physician's agent must provide the woman undergoing an abortion:

26 (1) a comprehensive list, compiled by the department,
27 of health care providers, facilities, and clinics that offer

1 obstetric ultrasound services at no cost to the pregnant woman and
2 that do not provide abortion or abortion-related services or make
3 referrals to abortion providers or affiliate or contract with
4 entities that provide abortions or abortion-related services or
5 make referrals to abortion providers. The list shall be arranged
6 geographically and shall include the name, address, hours of
7 operation, and telephone number of each entity;

8 (2) the website address to a state-sponsored website
9 that maintains the information described in Subsection (1).

10 (b) On the same calendar day but not less than one (1) hour
11 before the abortion procedure is to be commenced and before any
12 sedative or anesthesia is given or administered to the pregnant
13 woman, either the physician who is to perform the abortion or a
14 sonographer certified by the American Registry of Diagnostic
15 Medical Sonographers, must:

16 (1) perform an obstetric ultrasound on the pregnant
17 woman on whom the abortion is to be provided;

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

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

27 (4) make audible the live, real-time heart

1 auscultation, when present, for the pregnant woman to hear, in a
2 quality consistent with current medical practice and
3 simultaneously provide, in a manner understandable to a layperson,
4 a verbal explanation of the live heart auscultation;

5 Sec. 171.022 CERTIFICATION OF ULTRASOUND PROVISION. (a)

6 After the live, real-time ultrasound and the live, real-time heart
7 auscultation required by Section 171.021, and before any sedative
8 or anesthesia is given or administered to the pregnant woman and
9 before the abortion is provided, the pregnant woman must certify by
10 her signature;

11 (1) that she has been provided a live, real-time
12 ultrasound required by subdivision Section 171.021(b)(1);

13 (2) that she has had the opportunity to view the live
14 ultrasound images required by subdivision Section 171.021(b)(2);

15 (3) that she has been provided a simultaneous verbal
16 explanation of the results of the live ultrasound images, in a
17 manner understandable to a layperson, as required by Section
18 171.021(b)(3); and

19 (4) that she has been provided with the audio of the
20 live heart auscultation required by subdivision Section
21 171.021(b)(4) on a form created by the department.

22 (b) The form required by subdivision (a) must include a
23 space to be signed by the pregnant woman and the following
24 statements are to be certified by the woman undergoing the abortion
25 by initials;

26 (1) "Before my abortion and at the clinic where my
27 abortion was provided, a live, real-time obstetric ultrasound was

1 performed, and the images of my ultrasound were displayed so that I
2 could view them;"

3 (2) "A simultaneous verbal explanation of the results
4 of the live ultrasound images, including a medical description of
5 the dimensions of the embryo or fetus, the presence of cardiac
6 activity, and the presence of arms, legs, and external members and
7 internal organs, was given me in an understandable manner;" and

8 (3) "A live, real-time heartbeat, when present, and a
9 simultaneous verbal explanation of the live heart activity were
10 provided for me to hear."

11 (c) Before any sedative or anesthesia is given or
12 administered to the pregnant woman and before the abortion is
13 provided, a copy of the signed, written certification required by
14 this section must be;

15 (1) given to the physician who is to provide the
16 abortion; and

17 (2) placed in the medical file of the woman and shall
18 be kept by the abortion provider for a period of not less than seven
19 (7) years. If the woman is a minor, then the certification shall be
20 placed in the medical file of the minor and kept for at least seven
21 (7) years or for five (5) years after the minor reaches the age of
22 majority, whichever is greater.

23 Sec. 171.023 VIEWING ULTRASOUND IMAGE. (a) The pregnant
24 woman may choose to look away from the ultrasound images required to
25 be provided for, displayed to, and reviewed with the pregnant woman
26 under Section 171.021(b).

27 (b) The physician and the pregnant woman are not subject to

1 a penalty under this chapter if the pregnant woman chooses to look
2 away from the ultrasound images required by Section 171.021(b).

3 Sec. 171.024. EXCEPTION FOR MEDICAL EMERGENCY. (a) A
4 physician may perform an abortion without fulfilling the
5 requirements in Section 171.021 only in a medical emergency. A
6 physician who provides an abortion in a medical emergency shall:

7 (1) write and sign a statement certifying the nature
8 of the medical emergency;

9 (2) place the signed statement required by subsection
10 (1) in the medical file of the woman and shall be kept by the
11 abortion provider for a period of not less than seven (7) years. If
12 the woman is a minor, then the signed statement shall be placed in
13 the medical file of the minor and kept for at least seven (7) years
14 or for five (5) years after the minor reaches the age of majority,
15 whichever is greater; and

16 (3) no later than the seventh (7) day after the date
17 the abortion is provided certify to the department the specific
18 medical condition that constituted the emergency.

19 Sec 171.025 DEPARTMENT DUTIES. (a) The department shall
20 cause to be published, within sixty days after the effective date of
21 this Act, the following easily comprehensible printed materials: A
22 comprehensive list of health care providers, facilities, and
23 clinics that offer to provide obstetric ultrasounds free of charge.
24 The list shall be arranged geographically and shall include the
25 name, address, hours of operation, and telephone number of each
26 entity. The materials required under this section shall be:

27 (1) printed in a typeface large enough to be clearly

1 legible;

2 (2) available from the department upon the request by
3 any person, facility, or hospital for an amount equal to the cost
4 incurred by the department to publish the materials.

5 (b) The department shall develop and maintain a stable
6 internet website, which is reasonably safeguarded from having its
7 content altered other than by the department, to provide the
8 information described under Section 171.021(a). No information
9 regarding who uses the website shall be collected or maintained.
10 The department shall monitor the website on a daily basis to prevent
11 and correct tampering and shall immediately notify abortion
12 providers of any change in the location of the material on its
13 website.

14 (c) The website required in subsection (b) must:

15 (1) use enhanced, user-friendly search capabilities
16 to ensure that the information described in Section 171.021(a) is
17 easily accessible, and must use searchable by keywords and phrases,
18 specifically to ensure that entering the term "abortion" yields the
19 materials described in Section 171.021(a), regardless of how the
20 materials in Section 171.021(a) are labeled;

21 (2) allow the material described in Section 171.021(a)
22 to be printed;

23 (3) give clear prominent instructions on how to
24 receive the information in printed form; and

25 (4) be accessible to the public without requiring
26 registration, the use of a user name, a password, or any other user
27 identification.

1 (d) If an abortion provider has a website, the abortion
2 provider's internet website must contain at least two direct links
3 to the materials on the department's website required by Section
4 171.021(a), including at least one link prominently placed on the
5 home page of the abortion provider's internet website.

6 Sec 171.026 VIOLATION OF ULTRASOUND REQUIREMENTS. (a) An
7 abortion provider who knowingly violates any provision of Sections
8 171.021 or 171.022 of this act shall be liable for damages as
9 provided in this section and may be enjoined from such acts in
10 accordance with this section in an appropriate court.

11 (b) A cause of action for injunctive relief against any
12 person who has knowingly violated a provision of Sections 171.021
13 or 171.022 or 171.024 of this act may be maintained by the woman
14 upon whom an abortion was performed or attempted to be performed in
15 violation of this act; any person who is the spouse, parent, sibling
16 or guardian of, or a current or former licensed health care provider
17 of, the female to whom an abortion has been provided or attempted to
18 be provided in violation of this act; by a district attorney with
19 appropriate jurisdiction; or by the Attorney General. The
20 injunction shall prevent the abortion provider from providing
21 further abortions in violation of this act in the State of Texas.

22 (c) Any person who knowingly violates the terms of an
23 injunction issued in accordance with this section shall be subject
24 to civil contempt, and shall be fined Ten Thousand Dollars
25 (\$10,000.00) for the first violation, Fifty Thousand Dollars
26 (\$50,000.00) for the second violation, One Hundred Thousand Dollars
27 (\$100,000.00) for the third violation, and for each succeeding

1 violation an amount in excess of One Hundred Thousand Dollars
2 (\$100,000.00) that is sufficient to deter future violations. The
3 finances shall be the exclusive penalties for such contempt. Each
4 performance or attempted provision of an abortion in violation of
5 the terms of an injunction is a separate violation. These fines
6 shall be cumulative. No fine shall be assessed against the woman
7 for whom an abortion is provided or attempted.

8 (d) A pregnant woman for whom an abortion has been provided
9 in violation of any section of this act, or the parent or legal
10 guardian of the woman if she is an unemancipated minor subject to
11 Chapter 33, Family Code, may commence a civil action against the
12 abortion provider for any knowing or reckless violation of this act
13 for actual and punitive damages.

14 (e) An abortion provider who provides an abortion in
15 violation of any section of this act shall be considered to have
16 engaged in unprofessional conduct for which the provider's
17 certificate or license to provide health care services in this
18 state shall be revoked by the State Medical Board.

19 SECTION 2. The purpose of this Act is to protect the health
20 and safety of women.

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.