

BILL ANALYSIS

C.S.H.B. 1936
By: Springer
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that governmental entities should not support entities that provide abortions with taxpayer funds. C.S.H.B. 1936 seeks to address this issue by prohibiting a governmental entity from entering into certain transactions or a contract with certain abortion providers or affiliates.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1936 amends the Government Code to prohibit a governmental entity from entering into a taxpayer resource transaction or contract with an abortion provider, defined by the bill as a licensed abortion facility or a licensed ambulatory surgical center that is used substantially for the purpose of performing abortions, or with an affiliate, as defined by the bill, of an abortion provider. This prohibition expressly does not apply to a taxpayer resource transaction that involves a federal law that conflicts with the prohibition as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general. The bill authorizes the attorney general to bring an action in the name of the state to enjoin a violation of the prohibition and to recover reasonable attorney's fees and costs incurred in bringing such an action and waives the sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability to the extent of liability created by that authorization. The bill establishes that for purposes of its provisions a facility is not considered to be an abortion provider solely on the basis that an abortion is performed at the facility during a medical emergency.

C.S.H.B. 1936 defines, among other terms, "abortion" as an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus, not including birth control devices or oral contraceptives, and defines "taxpayer resource transaction" as a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived directly or indirectly from state or local tax revenue, regardless of whether the governmental entity receives something of value in return. The bill expressly excludes the provision of basic governmental services, including fire and police protection, from the meaning of "taxpayer resource transaction."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1936 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2270 to read as follows:

CHAPTER 2270. PROHIBITED TRANSACTIONS

Sec. 2270.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person that has a legal relationship with another person that is created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

(A) common ownership, management, or control;

(B) a franchise; or

(C) the granting or extension of a license or other agreement that authorizes the person to use the other person's brand name, trademark, service mark, or other registered identification mark.

(2) "Elective abortion" means an abortion that is not medically necessary to save the life of the pregnant female on whom the abortion is performed.

(3) "Governmental entity" means this state,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2270 to read as follows:

CHAPTER 2270. PROHIBITED TRANSACTIONS

Sec. 2270.001. DEFINITIONS. In this chapter:

(1) "Abortion" means an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. The term does not include birth control devices or oral contraceptives.

(2) "Abortion provider" means:

(A) a facility licensed under Chapter 245, Health and Safety Code; or

(B) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code, that is used substantially for the purpose of performing abortions.

(3) "Affiliate" means a person or entity who has a legal relationship with another person or entity that is created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

(A) common ownership, management, or control;

(B) a franchise; or

(C) the granting or extension of a license or other agreement authorizing the person or entity to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.

(4) "Governmental entity" means this state,

a state agency in the executive, judicial, or legislative branch of state government, or a political subdivision of this state.

(4) "Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived directly or indirectly from state or local tax revenue, regardless of whether the governmental entity receives something of value in return. The term does not include the provision of basic governmental services, including fire and police protection.

Sec. 2270.002. ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), a governmental entity may not enter into a taxpayer resource transaction with an abortion facility licensed under Chapter 245, Health and Safety Code, that performs elective abortions or an affiliate of the facility that performs elective abortions.

(b) This section does not apply to a taxpayer resource transaction that involves a federal law that conflicts with Subsection (a) as determined by the executive commissioner of the Health and Human Services Commission.

Sec. 2270.003. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 2270.002. The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this subsection.

(b) Sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability is waived to the extent of liability created by Subsection (a).

SECTION 2. Chapter 2270, Government Code, as added by this Act, applies only to a contract entered into on or after the effective

a state agency in the executive, judicial, or legislative branch of state government, or a political subdivision of this state.

(5) "Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived directly or indirectly from state or local tax revenue, regardless of whether the governmental entity receives something of value in return. The term does not include the provision of basic governmental services, including fire and police protection.

Sec. 2270.002. APPLICABILITY. For purposes of this chapter, a facility is not considered to be an abortion provider solely on the basis that an abortion is performed at the facility during a medical emergency in accordance with Section 245.016, Health and Safety Code.

Sec. 2270.003. ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), a governmental entity may not enter into a taxpayer resource transaction or contract with an abortion provider or an affiliate of an abortion provider.

(b) This section does not apply to a taxpayer resource transaction that involves a federal law that conflicts with Subsection (a) as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.

Sec. 2270.004. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 2270.003. The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this subsection.

(b) Sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability is waived to the extent of liability created by Subsection (a).

SECTION 2. Chapter 2270, Government Code, as added by this Act, applies only to a taxpayer resource transaction or contract

date of this Act.

SECTION 3. 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, 2017.

entered into on or after the effective date of this Act.

SECTION 3. Same as introduced version.