

- SUBJECT:** Creating the Choose Life license plate and account
- COMMITTEE:** Transportation — favorable, without amendment
- VOTE:** 6 ayes — Phillips, Darby, Bonnen, Fletcher, Harper-Brown, Lavender  
3 nays — Y. Davis, McClendon, Pickett  
2 absent — Martinez, Rodriguez
- WITNESSES:** For — Russ Amerling, Choose Life, Inc; Jonathan Saenz, Liberty Institute; Ronda Moreland; Kimberly Speirs  
Against — Terri Burke, ACLU of Texas; Blake Rocap, NARAL Pro-Choice Texas  
On — Ed Serna, Texas Department of Motor Vehicles
- BACKGROUND:** Transportation Code, ch. 504 authorizes the Texas Department of Motor Vehicles (TxDMV) to issue specialty license plates. The statute authorizes TxDMV to charge \$30 for specialty plates with general distribution, of which it may keep \$8 to offset administrative costs. The TxDMV director may refuse to issue a specialty license plate potentially objectionable to one or more members of the public. Current general purpose license specialty plates feature:
- universities and colleges;
  - sports teams and affiliated organizations, such as Texas PGA Junior Golf;
  - non-profit and other organizations, such as the Girl Scouts and Knights of Columbus;
  - general themes, such as “Keep Texas Beautiful”;
  - support for military and veterans groups, such as the Air Force Association; and
  - Texas heritage and themes, such as “Native Texan” and “Texas. It's Like A Whole Other Country.”

Funds collected from plates are dedicated by statute to a variety of governmental and nonprofit organizations and purposes.

DIGEST:

HB 238 would require TxDMV to issue specially designed “Choose Life” license plates, which it would design in consultation with the attorney general. After deducting administrative costs, TxDMV would deposit remaining fees for the license plates into the Choose Life account.

**Choose Life account.** The bill would establish the Choose Life account as a separate account in the General Revenue Fund, to be administered by the attorney general. The account would include money deposited from fees paid for the Choose Life plates, as well as potential gifts, grants, donations, and legislative appropriations. The attorney general could spend money in the account only to make grants to an eligible organization and to offset administrative costs. The attorney general could not discriminate against an eligible organization for being a religious or a nonreligious organization.

Money that an eligible organization received from the account could be spent only to provide:

- material needs, including clothing, housing, prenatal care, food, utilities, and transportation, for pregnant women who were considering adoption;
- support for infants awaiting placement with adoptive parents;
- training and advertising related to adoption; and
- pregnancy testing or adoption-related counseling.

Money from the account could not be used to pay an administrative, legal, or capital expense.

The attorney general would establish guidelines for spending money in the Choose Life account and for any reports or other mechanisms necessary to ensure that the spending adhered to statutory restrictions.

**Eligible recipients.** Eligible organizations would include an organization that was registered as a 501(c)(3) charity under the federal tax code, and that provided free counseling and material assistance to pregnant women considering adoption. An eligible organization could not provide abortions, make referrals to abortion providers, be affiliated with an organization that provided abortions, or contract with an organization that did so.

**Advisory committee.** The attorney general would appoint a seven-member Choose Life advisory committee, which would assist in developing rules for spending money from the Choose Life account. The committee would meet at least twice a year and review grant applications and make recommendations. Committee members would serve four year staggered terms and would not be paid for their service or reimbursed for expenses.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

HB 238 would promote adoption in the state of Texas. The bill would support Texans' right to show their support of adoption and in so doing would provide material support to adoption services. Grants made from the Choose Life account would assist women, particularly lower income women, who were considering adoption and would help meet the needs of infants in the adoption process. Nationwide, 26 states have issued nearly 650,000 Choose Life plates, raising nearly \$14 million to support adoption. The Texas Legislature should embrace this opportunity to provide substantial, material support to women and infants facing difficult circumstances.

Many needs that could be funded under the bill, such as formula, clothing, housing, transportation, and utilities currently fall through the gaps of public and private social services. HB 238 would help the state meet these needs without raising any taxes or fees. Other services eligible under the bill, such as prenatal care, are more widely available, although an eligible organization receiving Choose Life funds could provide them, too.

To assure that Choose Life funds were used to assist pregnant women and promote adoption as intended, the bill would give the attorney general oversight of the Choose Life account. The bill appropriately would deny funding to organizations that promoted abortion or affiliated organizations. Individuals would buy Choose Life license plates to demonstrate their support for human life, and most would not want their fees to support an entity that offered or counseled women to have abortions.

The bill also would help parents who wanted to adopt. Because of the shortage of infants available for adoption domestically, many couples have to go abroad to adopt. Grants from the Choose Life account could encourage more Texas women to give their children for adoption by

providing the material assistance they need to help them carry their pregnancies to term.

In this way, HB 238 would make domestic adoption easier and help many couples who could not have children provide a home for those who might otherwise have been aborted. This bill would not stop abortion, but it could help reduce its occurrence as more women received support to choose life. The Choose Life theme is critical as it has been shown to have a much broader appeal than a Choose Adoption message.

Choose Life plates do advocate a particular point of view — that of promoting life over abortion. The state has a right to advocate or otherwise encourage particular public policies that it deems to be in the best interest of the public, even for controversial issues. In fact, this is part of an elected official's responsibility. The state already promotes pro-immunization policies, which are controversial among some. It is not obligated to promote all sides of every issue equally, especially when there is a clear public interest involved.

Choose Life license plates have withstood court challenges in many states, including Tennessee, Louisiana, and Florida. Recently, a court suspended the specialty license plate program in California after finding the legislature had been discriminatory by failing to approve a Choose Life plate for that state. Courts ruling on the subject have widely held that issuing the plates does not amount to a violation of the U.S. Constitution — a precedent courts in Texas would very likely follow.

Many of TxDMV's specialty license plates currently raise money for a specific cause, such as organ donation, animal protection, and literacy promotion. The anti-abortion cause is no different. If Texans can choose to spend money to support animal rights or a particular university, they also should be able to support the life of human infants. Opponents of Choose Life plates are not the subjects of discrimination, and their rights would not be violated by giving people the ability to display these plates.

**OPPONENTS  
SAY:**

If the purpose of HB 238 is to promote adoption, it should be amended to create a "Choose Adoption" license plate. In its current form, however, the bill would constitute the government's endorsement of the anti-choice side of the abortion debate.

Choose Adoption would be a less politically volatile license plate than Choose Life and also would more directly promote adoption. Choose Life is a politically charged slogan widely used by and identified with the anti-choice movement. Anti-choice advocates always have the option of expressing their points of view through bumper stickers, volunteering their time, and donating money to adoption agencies and crisis pregnancy centers. State-issued license plates simply are not an appropriate forum for debating controversial issues. The state does indeed offer other license plates that promote particular causes. None of those causes, however, is remotely as controversial as the abortion issue. Authorizing the Choose Life plates would put the state on a slippery slope — if approved, it would erode the state's ability to credibly deny other political messages about taxes, guns, the confederacy, and the role of government from appearing on a license plate.

It also is impermissible for a state to disqualify an otherwise eligible organization from receiving state funds because it engages in a constitutionally protected activity. Under this bill, organizations that counsel women about all of their pregnancy options, including abortion, would be ineligible to receive funds. However, organizations that would be eligible to receive funds from the Choose Life account would be those typically referred to as crisis pregnancy centers. These organizations are not licensed health facilities or licensed adoption centers, neither of which likely would qualify under the bill because most would refer a woman for an abortion if she sought such a referral.

Crisis pregnancy centers usually are volunteer, often religiously affiliated, organizations with the primary intent of preventing abortion and only secondarily do they encourage adoption. It would be very rare that a crisis pregnancy center provided prenatal care, which is one of the services for which Choose Life funds could be used. In fact, it is likely that few organizations that provide prenatal care would meet all of the other requirements in the bill, thus effectively establishing that Choose Life funds would not support prenatal health. However, prenatal support would help ensure that infants carried to term were born healthy and strong.

Government should not promote one ideology or political viewpoint to the exclusion of others. Doing so violates First Amendment free-speech rights. As discussed in the House committee, HB 238 would not include the authorization for a contrasting “pro-family, pro-choice” license plate. Authorizing the Choose Life plate, but not a plate expressing an

alternative viewpoint, when this suggestion was discussed during the legislative process, fails in being viewpoint neutral. This bill almost certainly would provoke a legal challenge if enacted. No matter which side the courts ultimately favored in such a dispute, the litigation would impose a costly and unnecessary burden for the state.

OTHER  
OPPONENTS  
SAY:

HB 238 would represent a legislative approach to what ultimately should be settled as an administrative matter. Under current practices, TxDMV administratively approves only license plates that are non-controversial. The department defers to the Legislature to authorize plates that could be controversial. This practice, however, brings the Legislature into the business of deciding what messages are appropriate for display on a license plate, a problematic practice in many regards.

The bill should not legislatively authorize a Choose Life plate but should instead establish an administrative process at TxDMV that would approve potentially controversial plate designs that were not deemed offensive. Many states rely on administrative approval processes for plates, even those that could be construed as having controversial messages. An administrative process removes license plates from the realm of politics, while still allowing public input in determining what plates to authorize.

NOTES:

The Legislative Budget Board (LBB) estimates no significant fiscal impact to the state from approval of the Choose Life plates. The LBB fiscal analysis cited an estimate from TxDMV that 300 Choose Life plates would be issued yearly through fiscal 2013, each generating \$22 for the Choose Life account and \$8 to cover the cost of administration.

The companion bill, SB 257 by Carona, passed the Senate by 21-9 on March 16 and was reported favorably by the House Transportation Committee on April 18, making it eligible to be considered in lieu of HB 238.