

SUBJECT: Revising informed consent for abortion, including mandatory ultrasound

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Solomons, Cook, Craddick, Geren, Harless, Hilderbran, Jones, Swinford

4 nays — Menendez, Farabee, Lucio, Maldonado

1 present, not voting — S. Turner

2 absent — Gallego, Oliveira

SENATE VOTE: On final passage, May 1 — 20-10 (Davis, Ellis, Gallegos, Hinojosa, Shapleigh, Van De Putte, Watson, Wentworth, West, Whitmire)

WITNESSES: *(On House companion bill, HB 36):*
For — Angie Andino; J. Brent Bullock, Texas Pastor Council; Brandi Dudley; Linda Flower, Texas Physicians Resource Council; Ardith Frank; MerryLynn Gerstenschlager, Texas Eagle Forum; Elizabeth Graham, Texas Right to Life; Tricia Heflin; Christine Kasper, Houston Coalition for Life; John Link; Mikeal Love; Dustin Matocha, Young Conservatives of Texas; Christine Melchor, Houston Coalition for Life; Juli Morrison; Myra Myers, Texas Justice Foundation Operation Outcry; Anne Newman, Trinity Legal Center; Patrick Nunnally; Dennis Opferman; Julia Russell; Jonathan Saenz, Free Market Foundation; Stacy Sullivan; Angelica Talavera; William Turpin; Judy Vatterott, Life Advocates Houston; Molly White, Women for Life International, Incorporated; Terry Williams, Central Texas LifeCare; Kyleen Wright, Texans for Life; *(Registered, but did not testify):* Jennifer Allmon, The Texas Catholic Conference, Roman Catholic Bishops; Adam Black, Texas Right to Life; Deirdre Cooper, Texas Alliance for Life; Julie Drenner, Texans for Family Values; Ann Hettinger, Concerned Women for America; Marian Matthews, Concerned Women for America; Judy Najarian, Foundation for Life; Beverly Nuckols, Texas Alliance for Life; Ryan Paylor, Texas Conservative Coalition; Susan Paynter, Christian Life Commission, Baptist General Convention of Texas; Joe Pojman, Texas Alliance for Life, Incorporated; Beverly Roberts, Concerned Women for America; and 69 individuals)

Against — Terri Burke, American Civil Liberties Union of Texas; Russell Crawford; Harold Huff; Mike Hull, Texas Association of Obstetricians & Gynecologists; (*Registered, but did not testify*: Charlie Earle; Randall Ellis, Legacy Community Health Services; Noelia Flores, La Fe Policy Research & Education Center; Andrea Guttin; Simone Nichols; Lesley Ramsey, Texas Association of Planned Parenthood Affiliates; Blake Rocap, National Association for the Repeal of Abortion Laws Pro-Choice Texas; Rebecca Snearly; Scott Spear, Planned Parenthood of the Texas Capital Region; Shelly Strauss; Danielle Tierney; Janice Williams, State League of Women Voters)

On — (*Registered, but did not testify*: Jeffrey Matthews)

BACKGROUND: Under Health and Safety Code, ch. 171, the Woman's Right to Know Act, a person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed. In order for consent to be considered informed and voluntary, the woman must be informed of:

- the name of the physician who will perform the abortion;
- the risks associated with abortion and with carrying the child to term;
- the probable gestational age of the unborn child at the time the abortion is to be performed;
- available assistance for prenatal and neonatal care, and childbirth;
- the father's liability for child support;
- private agencies provide pregnancy prevention counseling and medical referrals; and
- the woman's right to review printed materials provided by the Department of State Health Services.

Prior to the abortion, the woman must certify in writing that she received the above information, and the physician who is to perform the abortion must retain a copy of this certification.

The information in the printed materials, the name of the physician who will perform the abortion, and the probable gestational age of the unborn child at the time the abortion is to be performed must be provided orally, by telephone, or in person and at least 24 hours prior to performance of the abortion.

DIGEST:

CSSB 182 would amend Health and Safety Code, ch. 171 to add that consent to an abortion was voluntary and informed only if the physician or the physician's agent:

- provided the pregnant woman with the printed materials she currently has a right to review;
- informed her that she was not required to review those materials; and
- provided her with a form entitled "Ultrasound Election" that stated "Texas law requires you to undergo an ultrasound prior to receiving an abortion," with space for the woman to elect whether or not to see and hear the ultrasound, with the statement, "I am making this election of my own free will and without coercion."

For the consent to be voluntary and informed, the woman would have to undergo an ultrasound, prior to the abortion, and be allowed to view and hear it, and to hear an explanation of the sound and images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs, unless she elected on the Ultrasound Election form to not view the image or hear the heartbeat or explanations.

The woman also would have to certify in a signed, written statement that she was provided with the required information and printed materials and that they were explained to her. The physician who was to perform the abortion would receive a copy of the signed, written certification.

The pregnant woman would have to be provided with the names of each person who provided or explained required information. The information required to be provided to the woman 24 hours prior to the abortion could not be provided by audio or video recording.

The information related to public and private agencies would have to include a comprehensive list of agencies and organizations that offered obstetric ultrasound services at no cost to the pregnant woman.

The physician and the pregnant woman would not be subject to a penalty solely because she chose not to view the printed materials or ultrasound images or requested not to hear the heartbeat.

A physician could perform an abortion without obtaining informed consent in a medical emergency, and would be required to include in the patient's medical records a statement signed by the physician that certified the nature of the emergency. The physician would have to certify to the Department of State Health Services the specific medical condition that constituted the emergency no later than the seventh day after the date the abortion was performed.

"Medical emergency" would be defined to mean a condition existed that, in a physician's good faith clinical judgment, complicated that medical condition of the pregnant woman and necessitated the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 182 would help to ensure that a woman making a decision about abortion had access to all medical information pertaining to the decision, including an ultrasound. An ultrasound gives a woman a clearer view of what she is choosing with abortion and who is affected by that choice. The bill would be an additional measure of informed consent and would provide women seeking an abortion with the same kind of medically accurate information they would receive for any surgical procedure, including risks, benefits, and the chance for a second opinion. CSSB 182 aims to protect women's health by making sure that if a woman chooses abortion, she does so in a fully informed manner. If a woman did not choose to view the image or hear the ultrasound or explanation, she would not be required to do so.

Women should be able to change their minds, and all medical treatments pertaining to an abortion procedure, including an ultrasound, should be made available to a woman in her decision-making process. Clinics often conduct only perfunctory counseling sessions before abortions and rush women through the process without ensuring that they understand the information and have considered their options. Some women say they would not have had an abortion if they had known more about the procedure and the development of the unborn child. Informing a woman fully of her unborn child's gestational development through ultrasound

images could reduce the number of abortions because it would demonstrate more graphically the humanity of the child in the womb.

Performing an ultrasound already is the standard of care prior to an abortion procedure. The bill would put into statute what is already standard practice. It would pose no additional cost to the woman seeking an abortion, as most, if not all, clinics already include an ultrasound in the price of the abortion

OPPONENTS
SAY:

CSSB 182 is based on the erroneous and patronizing assumption that women are making uninformed choices about abortion. Informed consent already is required for all surgical procedures, including abortion, and most women already have an ultrasound procedure before an abortion and the opportunity to view the ultrasound images. Requiring a woman to have an ultrasound and elect whether or not to see or hear it would inappropriately emotionalize a woman's decision.

Electing to end a pregnancy is a difficult choice. When a woman has made her decision, the effect of this bill would not be to help a woman make an informed choice but to shame her for that choice. This bill would be especially traumatic for victims of sexual assault and incest or women seeking an abortion due to a severe fetal abnormality as it would not exempt from the requirements women in these already painful situations.

The bill would needlessly infringe on a woman's relationship with her doctor. The doctor, in consultation with the patient should determine whether a woman should undergo an ultrasound before an abortion. Although a woman could choose not to view or hear the ultrasound, it still would have to be performed, whether or not it was medically necessary, adding an unnecessary cost to the procedure.

NOTES:

The House companion bill, HB 36 by Corte, was heard and left pending in the House State Affairs Committee on April 21.