

By: Corte

H.B. No. 36

A BILL TO BE ENTITLED

AN ACT

relating to informed consent to an abortion.

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

SECTION 1. Section 171.002, Health and Safety Code, is amended to read as follows:

Sec. 171.002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Abortion" [~~,"abortion"~~] means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

(2) "Medical emergency" means a condition exists that, in a physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function.

SECTION 2. Sections 171.012(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Consent [~~Except in the case of a medical emergency, consent~~] to an abortion is voluntary and informed only if:

(1) the physician who is to perform the abortion or the referring physician informs the pregnant woman on whom the abortion is to be performed of:

(A) the name of the physician who will perform

1 the abortion;

2 (B) the particular medical risks associated with  
3 the particular abortion procedure to be employed, including, when  
4 medically accurate:

5 (i) the risks of infection and hemorrhage;

6 (ii) the potential danger to a subsequent  
7 pregnancy and of infertility; and

8 (iii) the possibility of increased risk of  
9 breast cancer following an induced abortion and the natural  
10 protective effect of a completed pregnancy in avoiding breast  
11 cancer;

12 (C) the probable gestational age of the unborn  
13 child at the time the abortion is to be performed; and

14 (D) the medical risks associated with carrying  
15 the child to term;

16 (2) the physician who is to perform the abortion or the  
17 physician's agent informs the pregnant woman that:

18 (A) medical assistance benefits may be available  
19 for prenatal care, childbirth, and neonatal care;

20 (B) the father is liable for assistance in the  
21 support of the child without regard to whether the father has  
22 offered to pay for the abortion; and

23 (C) public and private agencies provide  
24 pregnancy prevention counseling and medical referrals for  
25 obtaining pregnancy prevention medications or devices, including  
26 emergency contraception for victims of rape or incest; [~~and~~]

27 (3) the physician who is to perform the abortion or the

1 physician's agent:

2 (A) provides [~~(D)~~] the pregnant woman with [~~has~~  
3 ~~the right to review~~] the printed materials described by Section  
4 171.014; and

5 (B) informs her [~~7~~] that those materials:

6 (i) have been provided by the [~~Texas~~  
7 Department of State Health Services;

8 (ii) [and] are accessible on an Internet  
9 website sponsored by the department;

10 (iii) [~~7, and that the materials~~] describe  
11 the unborn child and list agencies that offer alternatives to  
12 abortion; and

13 (iv) include a list of agencies that offer  
14 obstetric ultrasound services at no cost to the pregnant woman;

15 (4) at least two hours before the abortion, the  
16 physician who is to perform the abortion or the physician's agent:

17 (A) performs an obstetric ultrasound on the  
18 pregnant woman on whom the abortion is to be performed;

19 (B) displays the ultrasound images in a quality  
20 consistent with current medical practice in a manner that the  
21 pregnant woman may view them;

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

1           (D) makes audible the heart auscultation for the  
2 pregnant woman to hear, if present, in a quality consistent with  
3 current medical practice and provides, in a manner understandable  
4 to a layperson, a simultaneous verbal explanation of the heart  
5 auscultation;

6           (5) [~~(3)~~] the pregnant woman certifies in a signed,  
7 written statement [~~writing~~] before the abortion is performed that:

8           (A) the information and the printed materials  
9 described by Subdivisions (1), [~~and~~] (2), and (3) have [~~has~~] been  
10 provided and explained to her [~~and that she has been informed of her~~  
11 ~~opportunity to review the information described by Section~~  
12 ~~171.014~~]; [~~and~~]

13           (B) she has been provided with and has had the  
14 opportunity to review the ultrasound images and hear the heart  
15 auscultation required by Subdivision (4); and

16           (C) she understands the nature and consequences  
17 of an abortion;

18           (6) [~~(4)~~] before the abortion is performed, the  
19 physician who is to perform the abortion receives a copy of the  
20 signed, written certification required by Subdivision (5); and

21           (7) the pregnant woman is provided the name of each  
22 person who provides or explains the information required under this  
23 subsection [~~(3)~~].

24           (b) The information required to be provided under  
25 Subsections (a)(1) and (2) may not be provided by audio or video  
26 recording and must be provided:

27           (1) orally by telephone or in person; and

1 (2) at least 24 hours before the abortion is to be  
2 performed.

3 (c) When providing the information under Subsection (a)(3)  
4 [~~(a)(2)(D)~~], the physician or the physician's agent must provide  
5 the pregnant woman with the address of the Internet website on which  
6 the printed materials described by Section 171.014 may be viewed as  
7 required by Section 171.014(e).

8 SECTION 3. Subchapter B, Chapter 171, Health and Safety  
9 Code, is amended by adding Sections 171.0121 and 171.0122 to read as  
10 follows:

11 Sec. 171.0121. VIEWING PRINTED MATERIALS AND ULTRASOUND  
12 IMAGE. (a) A pregnant woman may choose not to view the printed  
13 materials provided under Section 171.012(a)(3) after she has been  
14 provided the materials.

15 (b) A pregnant woman may avert her eyes from the ultrasound  
16 images required to be provided to and reviewed with the pregnant  
17 woman under Section 171.012(a)(4).

18 (c) The physician and the pregnant woman are not subject to  
19 a penalty under this chapter solely because the pregnant woman  
20 chooses not to view the printed materials or the ultrasound images  
21 as described by this section.

22 Sec. 171.0122. EXCEPTION FOR MEDICAL EMERGENCY. A  
23 physician may perform an abortion without obtaining informed  
24 consent under this subchapter in a medical emergency. A physician  
25 who performs an abortion in a medical emergency shall:

26 (1) include in the patient's medical records a  
27 statement signed by the physician certifying the nature of the

1 medical emergency; and

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

6 SECTION 4. Section 171.013(a), Health and Safety Code, is  
7 amended to read as follows:

8 (a) The [~~If the woman chooses to view the materials~~  
9 ~~described by Section 171.014, the~~] physician or the physician's  
10 agent shall furnish copies of the materials described by Section  
11 171.014 to the pregnant woman [~~her~~] at least 24 hours before the  
12 abortion is to be performed and shall direct the pregnant woman to  
13 the Internet website required to be published under Section  
14 171.014(e). The [A] physician or the physician's agent may furnish  
15 the materials to the pregnant woman by mail if the materials are  
16 mailed, restricted delivery to addressee, at least 72 hours before  
17 the abortion is to be performed.

18 SECTION 5. Section 171.015, Health and Safety Code, is  
19 amended to read as follows:

20 Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE  
21 AGENCIES. The informational materials must include [~~either~~]:

22 (1) geographically indexed materials designed to  
23 inform the pregnant woman of public and private agencies and  
24 services that:

25 (A) are available to assist a woman through  
26 pregnancy, childbirth, and the child's dependency, including:

27 (i) a comprehensive list of adoption

1 agencies;

2 (ii) a description of the services the  
3 adoption agencies offer; ~~and~~

4 (iii) a description of the manner,  
5 including telephone numbers, in which an adoption agency may be  
6 contacted; and

7 (iv) a comprehensive list of agencies and  
8 organizations that offer obstetric ultrasound services at no cost  
9 to the pregnant woman;

10 (B) do not provide abortions or abortion-related  
11 services or make referrals to abortion providers; and

12 (C) are not affiliated with organizations that  
13 provide abortions or abortion-related services or make referrals to  
14 abortion providers; and ~~or~~

15 (2) a toll-free, 24-hour telephone number that may be  
16 called to obtain an oral list and description of agencies described  
17 by Subdivision (1) that are located near the caller and of the  
18 services the agencies offer.

19 SECTION 6. Section 164.055(a), Occupations Code, is amended  
20 to read as follows:

21 (a) The board may take an appropriate disciplinary action  
22 against a physician who violates Section 170.002 or Chapter 171,  
23 Health and Safety Code. The board may refuse to admit to  
24 examination or refuse to issue a license or renewal license to a  
25 person who violates that section or chapter.

26 SECTION 7. The purpose of this Act is to protect the health  
27 and safety of women.

1           SECTION 8. This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution. If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect September 1, 2009.