

By: Patrick, et al.

S.B. No. 16

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. Subsections (a), (b), and (c), Section 171.012, 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 physician's name [~~of the physician who~~

1 ~~will perform 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 the pregnant woman[~~7~~] that those  
6 materials:

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

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

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

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

16 (4) at least two hours before the abortion:

17 (A) the physician who is to perform the abortion  
18 or an agent of the physician who is also a sonographer certified by  
19 a national registry of medical sonographers performs a sonogram on  
20 the pregnant woman on whom the abortion is to be performed;

21 (B) the physician who is to perform the abortion  
22 displays the sonogram images in a quality consistent with current  
23 medical practice in a manner that the pregnant woman may view them;

24 (C) the physician who is to perform the abortion  
25 provides, in a manner understandable to a layperson, a verbal  
26 explanation of the results of the sonogram images, including a  
27 medical description of the dimensions of the embryo or fetus, the

1 presence of cardiac activity, and the presence of external members  
2 and internal organs; and

3 (D) the physician who is to perform the abortion  
4 or an agent of the physician who is also a sonographer certified by  
5 a national registry of medical sonographers makes audible the heart  
6 auscultation for the pregnant woman to hear, if present, in a  
7 quality consistent with current medical practice and provides, in a  
8 manner understandable to a layperson, a simultaneous verbal  
9 explanation of the heart auscultation;

10 (5) before receiving a sonogram under Subdivision  
11 (4)(A) and [~~(3) the woman certifies in writing~~] before the abortion  
12 is performed, the pregnant woman completes and certifies with her  
13 signature an election form that states as follows:

14 "ABORTION AND SONOGRAM ELECTION

15 (1) THE INFORMATION AND PRINTED MATERIALS  
16 DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH  
17 AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO  
18 ME.

19 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF  
20 AN ABORTION.

21 (3) I UNDERSTAND THAT I HAVE A RIGHT TO VIEW THE  
22 SONOGRAM IMAGES. I ELECT \_\_\_\_ TO VIEW \_\_\_\_ NOT TO VIEW  
23 THE SONOGRAM IMAGES.

24 (4) I UNDERSTAND THAT I HAVE A RIGHT TO HEAR THE  
25 HEART AUSCULTATION. I ELECT \_\_\_\_ TO HEAR \_\_\_\_ NOT TO  
26 HEAR THE HEART AUSCULTATION.

27 (5) I ELECT TO \_\_\_\_ RECEIVE \_\_\_\_ NOT RECEIVE A VERBAL

1 EXPLANATION OF THE SONOGRAM IMAGES (CHECK ONE OF THE  
2 FOLLOWING) :

3       BECAUSE I AM PREGNANT AS A RESULT OF A SEXUAL  
4 ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL  
5 CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT  
6 AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I  
7 REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK  
8 OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

9       BECAUSE I AM A MINOR AND OBTAINING AN ABORTION  
10 IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER  
11 CHAPTER 33, TEXAS FAMILY CODE.

12       BECAUSE MY FETUS HAS AN IRREVERSIBLE MEDICAL  
13 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE  
14 DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL  
15 FILE.

16 I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND  
17 WITHOUT COERCION.

18  
19 \_\_\_\_\_  
20 SIGNATURE

\_\_\_\_\_ DATE"

21 ~~[that the information described by Subdivisions (1) and (2) has~~  
22 ~~been provided to her and that she has been informed of her~~  
23 ~~opportunity to review the information described by Section~~  
24 ~~171.014]; [and]~~

25 (6) ~~[(4)]~~ before the abortion is performed, the  
26 physician who is to perform the abortion receives a copy of the  
27 signed, written certification required by Subdivision (5); and

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

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

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

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

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

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

18          Sec. 171.0121. VIEWING PRINTED MATERIALS AND SONOGRAM  
19 IMAGE; HEARING HEART AUSCULTATION OR VERBAL EXPLANATION. (a) A  
20 pregnant woman may choose not to view the printed materials  
21 provided under Section 171.012(a)(3) after she has been provided  
22 the materials.

23          (b) A pregnant woman may choose not to view the sonogram  
24 images required to be provided to and reviewed with the pregnant  
25 woman under Section 171.012(a)(4).

26          (c) A pregnant woman may choose not to hear the heart  
27 auscultation required to be provided to and reviewed with the

pregnant woman under Section 171.012(a)(4).

(d) A pregnant woman may choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(4)(C) if:

(1) the woman's pregnancy is a result of a sexual assault, incest, or other violation of the Penal Code that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury;

(2) the woman is a minor and obtaining an abortion in accordance with judicial bypass procedures under Chapter 33, Family Code; or

(3) the fetus has an irreversible medical condition or abnormality, as previously identified by reliable diagnostic procedures and documented in the woman's medical file.

(e) The physician and the pregnant woman are not subject to a penalty under this chapter solely because the pregnant woman chooses not to view the printed materials or the sonogram images, hear the heart auscultation, or receive the verbal explanation, as described by this section.

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

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

1 medical emergency; and

2 (2) not later than the 30th 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. Subsection (a), Section 171.013, Health and  
7 Safety Code, is 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 sonogram services at no cost to the  
9 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. Subsection (a), Section 164.055, Occupations  
20 Code, is amended 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 purposes of this Act include, but are not  
27 limited to:

1           (1) protecting the physical and psychological health  
2 and well-being of pregnant women;

3           (2) providing pregnant women access to information  
4 that would allow her to consider the impact an abortion would have  
5 on her unborn child; and

6           (3) protecting the integrity and ethical standards of  
7 the medical profession.

8           SECTION 8. If any provision of this Act or its application  
9 to any person or circumstance is held invalid, the invalidity does  
10 not affect other provisions or applications of this Act that can be  
11 given effect without the invalid provision or application, and to  
12 this end the provisions of the Act are severable.

13          SECTION 9. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2011.