

SUBJECT: Prohibiting abortion if U.S. Supreme Court were to issue judgment

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Klick, Allison, Jetton, Oliverson, Price, Smith

4 nays — Campos, Coleman, Collier, Zwiener

1 absent — Guerra

WITNESSES: For — Molly White, Conservative Republicans of Texas; Nona Ellington, Operation Outcry; Threesa Sadler, Raffa Clinic; Jon Ker, State Republican Executive Committee; Rachel Schroder, Students for Life Action; Kyleen Wright, Texans for Life Committee; Paul Linton and Joe Pojman, Texas Alliance for Life; Shannon Jaquette, Texas Catholic Conference of Bishops; Lisa Kamerer; Joseph Murphy; Jeri Lynn Scott; Denise Seibert; Terry Williams; (*Registered, but did not testify*: Abby Johnson, And Then There Were None; Jana Pinson, Pregnancy Center of the Coastal Bend; Tom Nobis, Republican Party of Texas; Victoria Avelar, Melanie Salazar and Sarah Zarr, Students For Life Action; Jenny Andrews and Amy O'Donnell, Texas Alliance for Life; Cindi Castilla, Texas Eagle Forum; Donald Garner, Texas Faith & Freedom Coalition; John Seago, Texas Right to Life; Jonathan Saenz, Jonathan Covey and Gregory McCarthy, Texas Values Action; Jason Vaughn, Texas Young Republicans; and 17 individuals)

Against — Caroline Duble, Avow; Amanda Williams, Lilith Fund; Paul Brown, Watermark Community Church; and nine individuals; (*Registered, but did not testify*: Jeff Haas and Bradley Pierce, Abolish Abortion Texas; Drucilla Tigner, ACLU of Texas; Carl Dunn, American College of Obstetricians and Gynecologists; Blake Rocap, Avow; Andrea Reyes and Tatum Zeko, Deeds Not Words; Rhea Shahane, Deeds Not Words and Texas Law Democrats; Rosann Mariappuram, Jane's Due Process; Karen Munoz and Jorge Renaud, LatinoJustice; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Christina Haarhoff, Not a Victim; Alejandro Garcia, Planned Parenthood

Texas Votes; Diana Gomez, Progress Texas; CR Cali, Sermon in the Park; Sarah Moseley, Texas Cannabis Collective; Kamyon Conner, Texas Equal Access Fund; Carisa Lopez and Jules Mandel, Texas Freedom Network; Ebony Johnson, The Afiya Center and Avow; and 68 individuals)

On — (*Registered, but did not testify*: Bruce Kendrick, Watermark Community Church)

BACKGROUND: Health and Safety Code sec. 245.002 defines "abortion" as the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means with the intent to cause an unborn child's death. The term excludes birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy.

Sec. 171.002 defines "medical emergency" as a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

DIGEST: CSHB 1280 would prohibit a person from knowingly performing, inducing, or attempting an abortion and would create a felony criminal offense for violating the prohibition.

The offense created by the bill would take effect, to the extent permitted, on the 30th day after any of the following occurred:

- the issuance of a U.S. Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, thereby allowing the states to prohibit abortion;
- the issuance of any other U.S. Supreme Court judgment in a decision that recognized, wholly or partly, the authority of the states to prohibit abortion; or

- adoption of an amendment to the U.S. Constitution that, wholly or partly, restored to the states the authority to prohibit abortion.

Offense. CSHB 1280 would create a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) for a person who knowingly performed, induced, or attempted an abortion. The bill would enhance the penalty to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the unborn child died as a result of the offense.

The bill also would subject a person who engaged in the prohibited conduct to a civil penalty of not less than \$100,000 for each violation. The attorney general would have to file an action to recover a civil penalty and could recover attorney's fees and costs incurred in bringing the action.

Exceptions. The prohibition would not apply if:

- the person performing, inducing, or attempting the abortion was a licensed physician;
- in the exercise of reasonable medical judgment, the pregnant female had a life-threatening physical condition aggravated by or arising from the pregnancy that placed her at risk of death or serious risk of substantial impairment of a major bodily function unless the abortion was performed; and
- the person performed or attempted the abortion in a manner that, in the exercise of reasonable medical judgment, provided the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create a greater risk of the pregnant female's death or a serious risk of substantial impairment of a major bodily function.

CSHB 1280 would prohibit a physician from taking an action that constituted an exception if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function arose from a claim or diagnosis that the female would engage in conduct that might result in the female's

death or in substantial impairment of a major bodily function.

Medical treatment provided to a pregnant female by a licensed physician that resulted in the accidental or unintentional injury or death of the unborn child would not constitute a violation.

The bill could not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion was performed, induced, or attempted.

Other provisions. The fact that the conduct prohibited by the bill would be subject to a civil or criminal penalty would not abolish or impair any remedy for the conduct that was available in a civil suit.

In addition to any other penalty that could be imposed by the bill, the appropriate licensing authority would be required to revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performed, induced, or attempted an abortion in violation of the bill.

CSHB 1280 would declare its provisions to be severable. If any provision of the bill or the application of such provision to any person or circumstance was declared invalid for any reason, such declaration would not affect the validity of the remaining portions of the bill.

The bill would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 1280 would protect the lives of unborn children by enacting a prohibition on abortion that would go into effect if the U.S. Supreme Court were wholly or partly to reverse its precedent preventing states from banning abortion. If the Supreme Court were to allow states to protect unborn children before viability, Texas would need a law to ensure it could return to its roots of protecting life from conception. At least 10 other states have passed similar legislation.

The bill would clear up confusion about whether the state's pre-*Roe* statutes are still valid. Although the Legislature never explicitly repealed those laws, a non-binding 5th Circuit Court of Appeals opinion suggests that the Legislature's enactment of laws such as those governing abortion on minors and regulating abortion facilities effectively repealed the pre-*Roe* laws. The Legislature regularly enacts legislation that is contingent on future state or federal actions.

While some criticize the bill for lacking an exception for pregnancy resulting from rape or incest, ending the life of an unborn child because of a terrible crime against the mother would not bring justice. A number of adult women have come forward who were conceived as a result of rape and have expressed gratitude for their lives. While some also have criticized the bill for lacking an exception for instances of severe fetal abnormality, such diagnoses can be in error and should not automatically provide a reason for ending the life of the unborn child.

Many options are available to help women with childbirth and adoption, and the state provides social services such as Medicaid and the Children's Health Insurance Program that can help low-income Texans with the costs of raising a child. The lives and mental health of pregnant women must be protected, but the sanctity of life demands protection of unborn children who have no ability to protect themselves without the involvement of the state. Many Texans believe that abortion is not in fact health care but that it amounts to violence against both the woman and the unborn child.

An immediate ban on abortion, which some have called for, has been passed by other states and been blocked by federal or state courts. CSHB 1280 would strengthen the commitment of Texas to the U.S. Constitution by requiring the state to wait to prohibit abortion until one month following a Supreme Court decision that recognized the authority of states to stop the procedure.

**CRITICS
SAY:**

CSHB 1280 is extreme legislation that would make virtually all abortions illegal in Texas if federal law were to allow states to prohibit abortion.

The bill would be an unconstitutional intrusion into a deeply personal medical decision that should be made by women in consultation with their families and doctors, not dictated by politicians. It would send women back to a time half a century ago when illegal abortions were responsible for nearly one in five pregnancy-related deaths in the country.

The bill could force a woman to continue her pregnancy even when it resulted from rape or incest. It also has no exception for the tragic cases of severe fetal abnormality and could force a woman to continue a pregnancy of an unborn child who was not expected to live after birth.

The bill would stigmatize abortion providers by adding criminal penalties for first- or second-degree felonies. Major medical organizations have stated that timely, compassionate reproductive health care is essential to a woman's health. The consequences of being unable to obtain an abortion can profoundly impact a woman's life, health, and well-being.

OTHER
CRITICS
SAY:

By waiting until the U.S. Supreme Court declares that states could once again prohibit abortions, CSHB 1280 would continue the failed strategy of the past 48 years since the court's *Roe v. Wade* ruling. The Legislature should take action now ensure the sanctity of life by passing legislation to protect the lives of unborn children from the moment of fertilization.