

SUBJECT: Prohibiting transactions between governmental entity, abortion provider

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Phelan, Harless, Holland, Hunter, P. King, Parker, Springer
4 nays — Deshotel, Guerra, Raymond, E. Rodriguez
2 absent — Hernandez, Smithee

SENATE VOTE: On final passage, April 2 — 20-11 (Alvarado, Hinojosa, Johnson, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire, and Zaffirini)

WITNESSES: *On House companion bill, HB 1929:*
For — Caryl Ayala, Concerned Parents of Texas; Ann Hettinger, Concerned Women for America; Melanie Salazar and Jerry Sharp, Students for Life Action; Sarah Zarr, Students for Life of America; Kyleen Wright, Texans for Life; Jenny Andrews, Amy O'Donnell, and Joe Pojman, Texas Alliance for Life; Philip Sevilla, Texas Leadership Institute for Public Advocacy; Elizabeth Graham, Emily Horne, and John Seago, Texas Right To Life; Mary Castle and Nicole Hudgens, Texas Values Action; Jennifer Allmon, The Texas Catholic Conference of Bishops; and 12 individuals; (*Registered, but did not testify:* Cindy Asmussen, Southern Baptists of Texas Convention; Maureen Davis, Concerned Parents and Grandparents; James Dickey, Republican Party of Texas; Terry Harper, Republican Party; Bill Kelly, City of Houston Mayor's Office; Mia McCord, Texas Conservative Coalition; Rebecca Parma, Texas Right to Life; Jonathan Saenz, Texas Values; Girien Salazar, Christian Life Commission-BGCT; Thomas Schlueter, Texas Apostolic Prayer Network; Jason Vaughn, Texas Young Republicans; and 21 individuals)

Against — Stephanie Hayden, City of Austin; Stacy Alexander; Elizabeth Ela; Amy Kamp; Vanessa MacDougal; (*Registered, but did not testify:* Drucilla Tigner, ACLU of Texas; Raymond Hampton, American College

of Obstetricians and Gynecologists; Chas Moore, Austin Justice Coalition; Jonathan Lewis, Center for Public Policy Priorities; Jamaal Smith, City of Houston Mayor's Office; Tina Hester, Jane's Die Process; Amanda Boudreault, League of Women Voters Texas; Erika Galindo, Lilith Fund for Reproductive Equity; Aimee Arrambide, Blake Rocap, and Jasmine Wang, NARAL Pro-Choice Texas; Brett Barnes and Sarah Wheat, Planned Parenthood of Greater Texas; Elaina Fowler, Planned Parenthood Texas Votes; Samantha Robles and Wesley Story, Progress Texas; Phil Bunker, Teamsters Joint Council 58; Carisa Lopez and Katherine Miller, Texas Freedom Network; Elizabeth Ballew, Texas Handmaids; Valerie Street, Texas Progressive Action Network; Jen Ramos, Texas Young Democrats; and 67 individuals)

On — (*Registered, but did not testify*: Lesly French, Office of the Attorney General)

BACKGROUND: Health and Safety Code sec. 245.002(1) defines "abortion" as the act of using or prescribing an instrument, a drug, medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include 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(3) 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: SB 22 would prohibit a governmental entity, defined as the state, a state agency in the executive, judicial, or legislative branch, or a political

subdivision, from entering into a taxpayer resource transaction with an abortion provider or affiliate of an abortion provider. This prohibition would not apply to a taxpayer resource transaction that was subject to a federal law in conflict with the bill's prohibition as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.

Definitions. The bill would define "taxpayer resource transaction" as a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provided to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity received something of value in return. The term would exclude the provision of basic public services, including fire and police protection and utilities, by a governmental entity to an abortion provider or affiliate in the same manner the entity provided services to the general public.

A taxpayer resource transaction would include advocacy or lobbying by or on behalf of a governmental entity on behalf of an abortion provider or affiliate's interests but would not include:

- an officer or employee of a governmental entity providing information to a member of the Legislature or appearing before a legislative committee at the request of the member or committee;
- an elected official advocating for or against or otherwise influencing or attempting to influence the outcome of pending legislation; or
- an individual speaking as a private citizen on a matter of public concern.

The bill would define an "abortion provider" as a licensed abortion facility or an ambulatory surgical center that performed more than 50 abortions in any 12-month period. "Affiliate" would mean a person or entity who entered into with another person or entity a legal relationship that was created by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a

license, that demonstrated:

- common ownership, management, or control between the parties to the relationship;
- a franchise granted by the person or entity to the affiliate; or
- the granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service marks, or other registered identification mark.

Exemptions. The bill would not apply to:

- a licensed general or special hospital;
- a licensed physician's office that performed 50 or fewer abortions in any 12-month period;
- a state hospital providing inpatient care and treatment for persons with mental illness;
- a public or private higher education teaching hospital; or
- an accredited residency program providing training to resident physicians.

A facility would not be considered an abortion provider when abortions were performed in medical emergencies as defined in Health and Safety Code sec. 171.002.

Other provisions. The bill would allow the attorney general to bring an action to enjoin a violation of prohibited transactions and recover reasonable attorney's fees and costs. The bill would waive sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability.

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, 2019. It would apply only to a transaction entered into on or after the effective date.

SUPPORTERS
SAY:

SB 22 would close loopholes to ensure that taxpayers were not inadvertently subsidizing abortion by prohibiting state and local governments from entering into contracts with abortion providers and their affiliates.

The bill would provide greater transparency and accountability to contracts and transactions entered into by cities, counties, and hospital districts. Although the Legislature has taken steps through budget riders to prevent state funds from flowing to abortion providers and their affiliates, this bill would create a permanent ban on the use of public funds to subsidize abortions opposed by many Texans for moral or other reasons.

The bill would not reduce access to health care because the state has invested more funds and increased the number of available providers for women's health care programs, such as the Healthy Texas Women program, which helps decrease the maternal mortality rate by providing preventive screenings for cholesterol, diabetes, and high blood pressure.

OPPONENTS
SAY:

SB 22 would reduce access to reproductive health care by preventing political subdivisions, the state, and state agencies from contracting with entities that are abortion providers or affiliated with an abortion provider. The bill could contribute to increased teen pregnancy and maternal mortality rates by requiring local government entities to exclude health care providers with the most experience providing essential and affordable services, such as reproductive health care and cancer screenings.

The bill would limit the ability of cities, counties, and hospital districts to address the unique needs of their communities. Texas has multiple health care crises, including sexually transmitted infections and virus outbreaks. The bill could undermine future partnerships to address emerging local issues, potentially jeopardizing the health of vulnerable populations. Decisions about contracting with health care providers should be left to local elected officials, who are accountable to their voters.

NOTES:

According to the Legislative Budget Board, it is assumed the bill would not apply to Medicaid because doing so could conflict with federal

requirements and lead to a loss of federal matching funds for Medicaid.