

By: Corte, Wohlgemuth, et al.

H.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to regulation of abortion; creating an offense.

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

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 171 to read as follows:

CHAPTER 171. ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. SHORT TITLE. This chapter may be called the Woman's Right to Know Act.

Sec. 171.002. DEFINITION. In this chapter, "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.

Sec. 171.003. PHYSICIAN TO PERFORM. An abortion may be performed only by a physician licensed to practice medicine in this state.

Sec. 171.004. ABORTION OF FETUS AGE 16 WEEKS OR MORE. An abortion of a fetus age 16 weeks or more may be performed only at an ambulatory surgical center or hospital licensed to perform the abortion.

Sec. 171.005. DEPARTMENT TO ENFORCE. The department shall enforce this chapter.

[Sections 171.006-171.010 reserved for expansion]

1                   SUBCHAPTER B. INFORMED CONSENT

2                   Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not  
3 perform an abortion without the voluntary and informed consent of  
4 the woman on whom the abortion is to be performed.

5                   Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Except  
6 in the case of a medical emergency, consent to an abortion is  
7 voluntary and informed only if:

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

11                   (A) the name of the physician who will perform  
12 the abortion;

13                   (B) the particular medical risks associated with  
14 the particular abortion procedure to be employed, including, when  
15 medically accurate:

16                   (i) the risks of infection and hemorrhage;  
17                   (ii) the potential danger to a subsequent  
18 pregnancy and of infertility; and

19                   (iii) the prospect of increased risk of  
20 breast cancer following an induced abortion and the natural  
21 protective effect of a completed pregnancy in avoiding breast  
22 cancer;

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

25                   (D) the medical risks associated with carrying  
26 the child to term;

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

1 physician's agent informs the woman that:

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

4 (B) the father is liable for assistance in the  
5 support of the child without regard to whether the father has  
6 offered to pay for the abortion;

7 (C) public and private agencies provide  
8 pregnancy prevention counseling and medical referrals for  
9 obtaining pregnancy prevention medications or devices, including  
10 emergency contraception for victims of rape or incest; and

11 (D) the woman has the right to review the printed  
12 materials described by Section 171.014, that those materials have  
13 been provided by the Texas Department of Health and are accessible  
14 on an Internet website sponsored by the department, and that the  
15 materials describe the unborn child and list agencies that offer  
16 alternatives to abortion;

17 (3) the woman certifies in writing before the abortion  
18 is performed that the information described by Subdivisions (1) and  
19 (2) has been provided to her and that she has been informed of her  
20 opportunity to review the information described by Section 171.014;  
21 and

22 (4) before the abortion is performed, the physician  
23 who is to perform the abortion receives a copy of the written  
24 certification required by Subdivision (3).

25 (b) The information required to be provided under  
26 Subsections (a)(1) and (2) 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  
4 (a)(2)(D), the physician or the physician's agent must provide the  
5 woman with the address of the Internet website on which the printed  
6 materials described by Section 171.014 may be viewed as required by  
7 Section 171.014(e).

8           (d) The information provided to the woman under Subsection  
9 (a)(2)(B) must include, based on information available from the  
10 Office of the Attorney General and the United States Department of  
11 Health and Human Services Office of Child Support Enforcement for  
12 the three-year period preceding the publication of the information,  
13 information regarding the statistical likelihood of collecting  
14 child support.

15           (e) The department is not required to republish  
16 informational materials described by Subsection (a)(2)(B) because  
17 of a change in information described by Subsection (d) unless the  
18 statistical information in the materials changes by five percent or  
19 more.

20           Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) If the  
21 woman chooses to view the materials described by Section 171.014,  
22 the physician or the physician's agent shall furnish copies of the  
23 materials to her at least 24 hours before the abortion is to be  
24 performed. A physician or the physician's agent may furnish the  
25 materials to the woman by mail if the materials are mailed,  
26 restricted delivery to addressee, at least 72 hours before the  
27 abortion is to be performed.

1       (b) A physician or the physician's agent is not required to  
2 furnish copies of the materials if the woman provides the physician  
3 with a written statement that she chooses to view the materials on  
4 the Internet website sponsored by the department.

5       (c) The physician and the physician's agent may  
6 disassociate themselves from the materials and may choose to  
7 comment on the materials or to refrain from commenting.

8       Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department  
9 shall publish informational materials that include:

10           (1) the information required to be provided under  
11 Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

12           (2) the materials required by Sections 171.015 and  
13 171.016.

14       (b) The materials shall be published in:

15           (1) English and Spanish;

16           (2) an easily comprehensible form; and

17           (3) a typeface large enough to be clearly legible.

18       (c) The materials shall be available at no cost from the  
19 department on request. The department shall provide appropriate  
20 quantities of the materials to any person.

21       (d) The department shall annually review the materials to  
22 determine if changes to the contents of the materials are  
23 necessary. The department shall adopt rules necessary for  
24 considering and making changes to the materials.

25       (e) The department shall develop and maintain an Internet  
26 website to display the information required to be published under  
27 this section. In developing and maintaining the website the

1 department shall, to the extent reasonably practicable, safeguard  
2 the website against alterations by anyone other than the department  
3 and shall monitor the website each day to prevent and correct  
4 tampering. The department shall ensure that the website does not  
5 collect or maintain information regarding access to the website.

6 (f) In addition to any other organization or entity, the  
7 department shall use the American College of Obstetricians and  
8 Gynecologists as the resource in developing information required to  
9 be provided under Sections 171.012(a)(1)(B) and (D), Sections  
10 171.012(a)(2)(A), (B), and (C), and Section 171.016, and in  
11 maintaining the department's Internet website.

12 Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE  
13 AGENCIES. The informational materials must include either:

14 (1) geographically indexed materials designed to  
15 inform the woman of public and private agencies and services that:

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

18 (i) a comprehensive list of adoption  
19 agencies;

20 (ii) a description of the services the  
21 adoption agencies offer; and

22 (iii) a description of the manner,  
23 including telephone numbers, in which an adoption agency may be  
24 contacted;

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

27 (C) are not affiliated with organizations that

1 provide abortions or abortion-related services or make referrals to  
2 abortion providers; or

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

7 Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF  
8 UNBORN CHILD. (a) The informational materials must include  
9 materials designed to inform the woman of the probable anatomical  
10 and physiological characteristics of the unborn child at two-week  
11 gestational increments from the time when a woman can be known to be  
12 pregnant to full term, including any relevant information on the  
13 possibility of the unborn child's survival.

14 (b) The materials must include color pictures representing  
15 the development of the child at two-week gestational increments.  
16 The pictures must contain the dimensions of the unborn child and  
17 must be realistic.

18 (c) The materials provided under this section must be  
19 objective and nonjudgmental and be designed to convey only accurate  
20 scientific information about the unborn child at the various  
21 gestational ages.

22 Sec. 171.017. PERIODS RUN CONCURRENTLY. If the woman is an  
23 unemancipated minor subject to Chapter 33, Family Code, the 24-hour  
24 periods established under Sections 171.012(b) and 171.013(a) may  
25 run concurrently with the period during which actual or  
26 constructive notice is provided under Section 33.002, Family Code.

27 Sec. 171.018. OFFENSE. A physician who intentionally

1 performs an abortion on a woman in violation of this subchapter  
2 commits an offense. An offense under this section is a misdemeanor  
3 punishable by a fine not to exceed \$10,000. In this section,  
4 "intentionally" has the meaning assigned by Section 6.03(a), Penal  
5 Code.

6 SECTION 2. Section 245.004, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a)  
9 The following facilities need not be licensed under this chapter:

10 (1) a hospital licensed under Chapter 241 (Texas  
11 Hospital Licensing Law); ~~[or]~~

12 (2) the office of a physician licensed under Subtitle  
13 B, Title 3, Occupations Code, unless the office is used  
14 substantially for the purpose of performing ~~[more than 300]~~  
15 abortions; or

16 (3) an ambulatory surgical center licensed under  
17 Chapter 243 ~~[in any 12-month period]~~.

18 (b) For purposes of this section, a facility is used  
19 substantially for the purpose of performing abortions if the  
20 facility:

21 (1) is a provider for performing:

22 (A) at least 10 abortion procedures during any  
23 month; or

24 (B) at least 100 abortion procedures in a year;

25 (2) operates less than 20 days in a month and the  
26 facility, in any month, is a provider for performing a number of  
27 abortion procedures that would be equivalent to at least 10



1 procedures in a month if the facility were operating at least 20  
2 days in a month;

3 (3) holds itself out to the public as an abortion  
4 provider by advertising by any public means, including advertising  
5 placed in a newspaper, telephone directory, magazine, or electronic  
6 medium, that the facility performs abortions; or

7 (4) applies for an abortion facility license.

8 (c) For purposes of this section, an abortion facility is  
9 operating if the facility is open for any period of time during a  
10 day and has on site at the facility or on call a physician available  
11 to perform abortions. [~~In computing the number of abortions~~  
12 ~~performed in the office of a physician under Subsection (a)(2), an~~  
13 ~~abortion performed in accordance with Section 245.016 is not~~  
14 ~~included.]~~

15 SECTION 3. Section 245.007, Health and Safety Code, is  
16 amended to read as follows:

17 Sec. 245.007. FEES. The board shall set fees imposed by  
18 this chapter in amounts reasonable and necessary to defray the cost  
19 of administering this chapter and Chapter 171.

20 SECTION 4. Section 245.010(a), Health and Safety Code, is  
21 amended to read as follows:

22 (a) The rules must contain minimum standards to protect the  
23 health and safety of a patient of an abortion facility and must  
24 contain provisions requiring compliance with the requirements of  
25 Subchapter B, Chapter 171.

26 SECTION 5. The Texas Department of Health shall prepare the  
27 informational materials required by Section 171.014, Health and

1 Safety Code, as added by this Act, and shall have the materials  
2 available for distribution as required by Chapter 171, Health and  
3 Safety Code, as added by this Act, not later than December 1, 2003.

4 SECTION 6. If any provision of this Act or its application  
5 to any person or circumstance is held invalid, the invalidity does  
6 not affect other provisions or applications of the Act that can be  
7 given effect without the invalid provision or application, and to  
8 this end the provisions of this Act are severable.

9 SECTION 7. This Act takes effect September 1, 2003, and  
10 applies only to an abortion that is performed on or after January 1,  
11 2004. An abortion that is performed before January 1, 2004, is  
12 governed by the law as it existed immediately before the effective  
13 date of this Act, and that law is continued in effect for that  
14 purpose.