

By: Corte, Wohlgemuth, et al.

H.B. No. 15

Substitute the following for H.B. No. 15:

By: Madden

C.S.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; and

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

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

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

24 (b) The information required to be provided under
25 Subsections (a)(1) and (2) must be provided:

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

27 (2) at least 24 hours before the abortion is to be

1 performed.

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

7 Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) If the
8 woman chooses to view the materials described by Section 171.014,
9 the physician or the physician's agent shall furnish copies of the
10 materials to her at least 24 hours before the abortion is to be
11 performed. A physician or the physician's agent may furnish the
12 materials to the woman by mail if the materials are mailed,
13 restricted delivery to addressee, at least 72 hours before the
14 abortion is to be performed.

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

19 (c) The physician and the physician's agent may
20 disassociate themselves from the materials and may choose to
21 comment on the materials or to refrain from commenting.

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

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

26 (2) the materials required by Sections 171.015 and
27 171.016.

1 (b) The materials shall be published in:

2 (1) English and Spanish;

3 (2) an easily comprehensible form; and

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

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

8 (d) The department shall annually review the materials to
9 determine if changes to the contents of the materials are
10 necessary. The department shall adopt rules necessary for
11 considering and making changes to the materials.

12 (e) The department shall develop and maintain an Internet
13 website to display the information required to be published under
14 this section. In developing and maintaining the website the
15 department shall, to the extent reasonably practicable, safeguard
16 the website against alterations by anyone other than the department
17 and shall monitor the website each day to prevent and correct
18 tampering. The department shall ensure that the website does not
19 collect or maintain information regarding access to the website.

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 woman of public and private agencies and services that:

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

26 (i) a comprehensive list of adoption
27 agencies;

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

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

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

8 (C) are not affiliated with organizations that
9 provide abortions or abortion-related services or make referrals to
10 abortion providers; or

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

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

22 (b) The materials must include color pictures representing
23 the development of the child at two-week gestational increments.
24 The pictures must contain the dimensions of the unborn child and
25 must be realistic.

26 (c) The materials provided under this section must be
27 objective and nonjudgmental and be designed to convey only accurate

1 scientific information about the unborn child at the various
2 gestational ages.

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

8 Sec. 171.018. OFFENSE. A physician who intentionally
9 performs an abortion on a woman in violation of this subchapter
10 commits an offense. An offense under this section is a misdemeanor
11 punishable by a fine not to exceed \$10,000. In this section,
12 "intentionally" has the meaning assigned by Section 6.03(a), Penal
13 Code.

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

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

18 (1) a hospital licensed under Chapter 241 (Texas
19 Hospital Licensing Law); ~~or~~

20 (2) the office of a physician licensed under Subtitle
21 B, Title 3, Occupations Code, unless the office is used
22 substantially for the purpose of performing ~~more than 300~~
23 abortions; or

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

26 (b) For purposes of this section, a facility is used
27 substantially for the purpose of performing abortions if the

1 facility:

2 (1) is a provider for performing:

3 (A) at least 10 abortion procedures during any
4 month; or

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

6 (2) operates less than 20 days in a month and the
7 facility, in any month, is a provider for performing a number of
8 abortion procedures that would be equivalent to at least 10
9 procedures in a month if the facility were operating at least 20
10 days in a month;

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

15 (4) applies for an abortion facility license.

16 (c) For purposes of this section, an abortion facility is
17 operating if the facility is open for any period of time during a
18 day and has on site at the facility or on call a physician available
19 to perform abortions. [In computing the number of abortions
20 performed in the office of a physician under Subsection (a)(2), an
21 abortion performed in accordance with Section 245.016 is not
22 included.]

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

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

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

3 (a) The rules must contain minimum standards to protect the
4 health and safety of a patient of an abortion facility and must
5 contain provisions requiring compliance with the requirements of
6 Subchapter B, Chapter 171.

7 SECTION 5. The Texas Department of Health shall prepare the
8 informational materials required by Section 171.014, Health and
9 Safety Code, as added by this Act, and shall have the materials
10 available for distribution as required by Chapter 171, Health and
11 Safety Code, as added by this Act, not later than December 1, 2003.

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

17 SECTION 7. This Act takes effect September 1, 2003, and
18 applies only to an abortion that is performed on or after January 1,
19 2004. An abortion that is performed before January 1, 2004, is
20 governed by the law as it existed immediately before the effective
21 date of this Act, and that law is continued in effect for that
22 purpose.