

1-1 By: Corte, Wohlgenuth, et al. H.B. No. 15
1-2 (Senate Sponsor - Williams)
1-3 (In the Senate - Received from the House May 1, 2003;
1-4 May 6, 2003, read first time and referred to Committee on State
1-5 Affairs; May 16, 2003, reported adversely, with favorable
1-6 Committee Substitute by the following vote: Yeas 7, Nays 1;
1-7 May 16, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 15 By: Staples

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to regulation of abortion; creating an offense.
1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-13 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
1-14 amended by adding Chapter 171 to read as follows:
1-15 CHAPTER 171. ABORTION
1-16 SUBCHAPTER A. GENERAL PROVISIONS
1-17 Sec. 171.001. SHORT TITLE. This chapter may be called the
1-18 Woman's Right to Know Act.
1-19 Sec. 171.002. DEFINITION. In this chapter, "abortion"
1-20 means the use of any means to terminate the pregnancy of a female
1-21 known by the attending physician to be pregnant with the intention
1-22 that the termination of the pregnancy by those means will, with
1-23 reasonable likelihood, cause the death of the fetus.
1-24 Sec. 171.003. PHYSICIAN TO PERFORM. An abortion may be
1-25 performed only by a physician licensed to practice medicine in this
1-26 state.
1-27 Sec. 171.004. ABORTION OF FETUS AGE 16 WEEKS OR MORE. An
1-28 abortion of a fetus age 16 weeks or more may be performed only at an
1-29 ambulatory surgical center or hospital licensed to perform the
1-30 abortion.
1-31 Sec. 171.005. DEPARTMENT TO ENFORCE. The department shall
1-32 enforce this chapter.
1-33 [Sections 171.006-171.010 reserved for expansion]
1-34 SUBCHAPTER B. INFORMED CONSENT
1-35 Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not
1-36 perform an abortion without the voluntary and informed consent of
1-37 the woman on whom the abortion is to be performed.
1-38 Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Except
1-39 in the case of a medical emergency, consent to an abortion is
1-40 voluntary and informed only if:
1-41 (1) the physician who is to perform the abortion or the
1-42 referring physician informs the woman on whom the abortion is to be
1-43 performed of:
1-44 (A) the name of the physician who will perform
1-45 the abortion;
1-46 (B) the particular medical risks associated with
1-47 the particular abortion procedure to be employed, including, when
1-48 medically accurate:
1-49 (i) the risks of infection and hemorrhage;
1-50 (ii) the potential danger to a subsequent
1-51 pregnancy and of infertility; and
1-52 (iii) the possibility of increased risk of
1-53 breast cancer following an induced abortion and the natural
1-54 protective effect of a completed pregnancy in avoiding breast
1-55 cancer;
1-56 (C) the probable gestational age of the unborn
1-57 child at the time the abortion is to be performed; and
1-58 (D) the medical risks associated with carrying
1-59 the child to term;
1-60 (2) the physician who is to perform the abortion or the
1-61 physician's agent informs the woman that:
1-62 (A) medical assistance benefits may be available
1-63 for prenatal care, childbirth, and neonatal care;

2-1 (B) the father is liable for assistance in the
 2-2 support of the child without regard to whether the father has
 2-3 offered to pay for the abortion;

2-4 (C) public and private agencies provide
 2-5 pregnancy prevention counseling and medical referrals for
 2-6 obtaining pregnancy prevention medications or devices, including
 2-7 emergency contraception for victims of rape or incest; and

2-8 (D) the woman has the right to review the printed
 2-9 materials described by Section 171.014, that those materials have
 2-10 been provided by the Texas Department of Health and are accessible
 2-11 on an Internet website sponsored by the department, and that the
 2-12 materials describe the unborn child and list agencies that offer
 2-13 alternatives to abortion;

2-14 (3) the woman certifies in writing before the abortion
 2-15 is performed that the information described by Subdivisions (1) and
 2-16 (2) has been provided to her and that she has been informed of her
 2-17 opportunity to review the information described by Section 171.014;
 2-18 and

2-19 (4) before the abortion is performed, the physician
 2-20 who is to perform the abortion receives a copy of the written
 2-21 certification required by Subdivision (3).

2-22 (b) The information required to be provided under
 2-23 Subsections (a)(1) and (2) must be provided:

2-24 (1) orally by telephone or in person; and
 2-25 (2) at least 24 hours before the abortion is to be
 2-26 performed.

2-27 (c) When providing the information under Subsection
 2-28 (a)(2)(D), the physician or the physician's agent must provide the
 2-29 woman with the address of the Internet website on which the printed
 2-30 materials described by Section 171.014 may be viewed as required by
 2-31 Section 171.014(e).

2-32 (d) The information provided to the woman under Subsection
 2-33 (a)(2)(B) must include, based on information available from the
 2-34 Office of the Attorney General and the United States Department of
 2-35 Health and Human Services Office of Child Support Enforcement for
 2-36 the three-year period preceding the publication of the information,
 2-37 information regarding the statistical likelihood of collecting
 2-38 child support.

2-39 (e) The department is not required to republish
 2-40 informational materials described by Subsection (a)(2)(B) because
 2-41 of a change in information described by Subsection (d) unless the
 2-42 statistical information in the materials changes by five percent or
 2-43 more.

2-44 Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) If the
 2-45 woman chooses to view the materials described by Section 171.014,
 2-46 the physician or the physician's agent shall furnish copies of the
 2-47 materials to her at least 24 hours before the abortion is to be
 2-48 performed. A physician or the physician's agent may furnish the
 2-49 materials to the woman by mail if the materials are mailed,
 2-50 restricted delivery to addressee, at least 72 hours before the
 2-51 abortion is to be performed.

2-52 (b) A physician or the physician's agent is not required to
 2-53 furnish copies of the materials if the woman provides the physician
 2-54 with a written statement that she chooses to view the materials on
 2-55 the Internet website sponsored by the department.

2-56 (c) The physician and the physician's agent may
 2-57 disassociate themselves from the materials and may choose to
 2-58 comment on the materials or to refrain from commenting.

2-59 Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department
 2-60 shall publish informational materials that include:

2-61 (1) the information required to be provided under
 2-62 Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

2-63 (2) the materials required by Sections 171.015 and
 2-64 171.016.

2-65 (b) The materials shall be published in:

2-66 (1) English and Spanish;

2-67 (2) an easily comprehensible form; and

2-68 (3) a typeface large enough to be clearly legible.

2-69 (c) The materials shall be available at no cost from the

3-1 department on request. The department shall provide appropriate
3-2 quantities of the materials to any person.

3-3 (d) The department shall annually review the materials to
3-4 determine if changes to the contents of the materials are
3-5 necessary. The department shall adopt rules necessary for
3-6 considering and making changes to the materials.

3-7 (e) The department shall develop and maintain an Internet
3-8 website to display the information required to be published under
3-9 this section. In developing and maintaining the website the
3-10 department shall, to the extent reasonably practicable, safeguard
3-11 the website against alterations by anyone other than the department
3-12 and shall monitor the website each day to prevent and correct
3-13 tampering. The department shall ensure that the website does not
3-14 collect or maintain information regarding access to the website.

3-15 (f) In addition to any other organization or entity, the
3-16 department shall use the American College of Obstetricians and
3-17 Gynecologists as the resource in developing information required to
3-18 be provided under Sections 171.012(a)(1)(B) and (D), Sections
3-19 171.012(a)(2)(A), (B), and (C), and Section 171.016, and in
3-20 maintaining the department's Internet website.

3-21 Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE
3-22 AGENCIES. The informational materials must include either:

3-23 (1) geographically indexed materials designed to
3-24 inform the woman of public and private agencies and services that:

3-25 (A) are available to assist a woman through
3-26 pregnancy, childbirth, and the child's dependency, including:

3-27 (i) a comprehensive list of adoption
3-28 agencies;

3-29 (ii) a description of the services the
3-30 adoption agencies offer; and

3-31 (iii) a description of the manner,
3-32 including telephone numbers, in which an adoption agency may be
3-33 contacted;

3-34 (B) do not provide abortions or abortion-related
3-35 services or make referrals to abortion providers; and

3-36 (C) are not affiliated with organizations that
3-37 provide abortions or abortion-related services or make referrals to
3-38 abortion providers; or

3-39 (2) a toll-free, 24-hour telephone number that may be
3-40 called to obtain an oral list and description of agencies described
3-41 by Subdivision (1) that are located near the caller and of the
3-42 services the agencies offer.

3-43 Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF
3-44 UNBORN CHILD. (a) The informational materials must include
3-45 materials designed to inform the woman of the probable anatomical
3-46 and physiological characteristics of the unborn child at two-week
3-47 gestational increments from the time when a woman can be known to be
3-48 pregnant to full term, including any relevant information on the
3-49 possibility of the unborn child's survival.

3-50 (b) The materials must include color pictures representing
3-51 the development of the child at two-week gestational increments.
3-52 The pictures must contain the dimensions of the unborn child and
3-53 must be realistic.

3-54 (c) The materials provided under this section must be
3-55 objective and nonjudgmental and be designed to convey only accurate
3-56 scientific information about the unborn child at the various
3-57 gestational ages.

3-58 Sec. 171.017. PERIODS RUN CONCURRENTLY. If the woman is an
3-59 unemancipated minor subject to Chapter 33, Family Code, the 24-hour
3-60 periods established under Sections 171.012(b) and 171.013(a) may
3-61 run concurrently with the period during which actual or
3-62 constructive notice is provided under Section 33.002, Family Code.

3-63 Sec. 171.018. OFFENSE. A physician who intentionally
3-64 performs an abortion on a woman in violation of this subchapter
3-65 commits an offense. An offense under this section is a misdemeanor
3-66 punishable by a fine not to exceed \$10,000. In this section,
3-67 "intentionally" has the meaning assigned by Section 6.03(a), Penal
3-68 Code.

3-69 SECTION 2. Section 245.004, Health and Safety Code, is

4-1 amended to read as follows:

4-2 Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a)
4-3 The following facilities need not be licensed under this chapter:

4-4 (1) a hospital licensed under Chapter 241 (Texas
4-5 Hospital Licensing Law); ~~[or]~~

4-6 (2) the office of a physician licensed under Subtitle
4-7 B, Title 3, Occupations Code, unless the office is used
4-8 substantially for the purpose of performing ~~[more than 300]~~
4-9 abortions; or

4-10 (3) an ambulatory surgical center licensed under
4-11 Chapter 243 [in any 12-month period].

4-12 (b) For purposes of this section, a facility is used
4-13 substantially for the purpose of performing abortions if the
4-14 facility:

4-15 (1) is a provider for performing:

4-16 (A) at least 10 abortion procedures during any
4-17 month; or

4-18 (B) at least 100 abortion procedures in a year;
4-19 (2) operates less than 20 days in a month and the
4-20 facility, in any month, is a provider for performing a number of
4-21 abortion procedures that would be equivalent to at least 10
4-22 procedures in a month if the facility were operating at least 20
4-23 days in a month;

4-24 (3) holds itself out to the public as an abortion
4-25 provider by advertising by any public means, including advertising
4-26 placed in a newspaper, telephone directory, magazine, or electronic
4-27 medium, that the facility performs abortions; or

4-28 (4) applies for an abortion facility license.

4-29 (c) For purposes of this section, an abortion facility is
4-30 operating if the facility is open for any period of time during a
4-31 day and has on site at the facility or on call a physician available
4-32 to perform abortions. [In computing the number of abortions
4-33 performed in the office of a physician under Subsection (a)(2), an
4-34 abortion performed in accordance with Section 245.016 is not
4-35 included.]

4-36 SECTION 3. Section 245.007, Health and Safety Code, is
4-37 amended to read as follows:

4-38 Sec. 245.007. FEES. The board shall set fees imposed by
4-39 this chapter in amounts reasonable and necessary to defray the cost
4-40 of administering this chapter and Chapter 171.

4-41 SECTION 4. Section 245.010(a), Health and Safety Code, is
4-42 amended to read as follows:

4-43 (a) The rules must contain minimum standards to protect the
4-44 health and safety of a patient of an abortion facility and must
4-45 contain provisions requiring compliance with the requirements of
4-46 Subchapter B, Chapter 171.

4-47 SECTION 5. The Texas Department of Health shall prepare the
4-48 informational materials required by Section 171.014, Health and
4-49 Safety Code, as added by this Act, and shall have the materials
4-50 available for distribution as required by Chapter 171, Health and
4-51 Safety Code, as added by this Act, not later than December 1, 2003.

4-52 SECTION 6. If any provision of this Act or its application
4-53 to any person or circumstance is held invalid, the invalidity does
4-54 not affect other provisions or applications of the Act that can be
4-55 given effect without the invalid provision or application, and to
4-56 this end the provisions of this Act are severable.

4-57 SECTION 7. This Act takes effect September 1, 2003, and
4-58 applies only to an abortion that is performed on or after January 1,
4-59 2004. An abortion that is performed before January 1, 2004, is
4-60 governed by the law as it existed immediately before the effective
4-61 date of this Act, and that law is continued in effect for that
4-62 purpose.

4-63 * * * * *