

## **BILL ANALYSIS**

C.S.H.B. 2997  
By: Morrison  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The purpose of this legislation is to ensure that there is accurate and complete reporting of abortion statistics in Texas to the Department of State Health Services (DSHS). Currently the state requires minimal basic information on abortion procedures to be reported, and there is little penalty or enforcement if the information is not submitted or submitted with knowing falsity. Although the DSHS currently does collect some information, this bill will expand that information to include areas such as abortion complications and the judicial bypass, where there is little non-anecdotal evidence to review in policymaking. This type of information will be especially helpful in assessing the effectiveness of the Parental Notification Laws. Further, there is no statute requiring the Department to collect this information and report it in aggregate form, and there is no direct accountability for the provider to collect and submit this data. This substitute will include enforcement penalties in order to ensure that the most complete set of data is collected.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 2 and SECTION 7 of this bill.

### **ANALYSIS**

The substitute provides for the establishment of the Woman's Health Protection Act.

The substitute provides for judicial bypass reporting. The supreme court shall adopt rules governing the collection of statistical information relating to applications and appeals granted. The substitute provides a list of information that is to be collected and included in the report.

The substitute provides that the information collected shall be made available to the public in aggregate form on a county basis. Any entity held responsible for the collection and compilation of information collected under this section shall ensure that none of the information included in the public reports could reasonably lead to the identification of any unemancipated minor who petitioned the court.

The substitute provides for the creation of an abortion reporting form. That each physician who performs a surgical abortion or who prescribes medication to induce an abortion must submit a report to the department on each abortion the physician performs or induces. The substitute requires that the report must be submitted on a form provided by the department and that a copy of the appropriate section of the Health and Safety Code be included. The substitute provides a formatted copy of the form to be submitted. The report may not identify the name of the patient by any means. The substitute provides a list of information that is to be collected and included in the report. The substitute provides a list of additional information that is to be collected and included in the report if the mother of the unborn child is a minor.

The substitute provides that the patient may fill out sections of the form applicable to the patient's personal information and that the sections to be filled out by the patient must be at the top of the form. The bottom portion of the reporting form must be completed by the physician performing or inducing the abortion.

The substitute provides that if the patient marks one or more certain sections of the form, the physician must make all reasonable efforts to ensure that the woman is not being coerced to have

the abortion. A copy of the abortion reporting form must be maintained in the patient's medical file for not less than seven years. The patient must be given a copy of the completed abortion reporting form. An abortion reporting form for each abortion submitted to the department must include as a cover page a monthly abortion total form. The department must ensure that the number of abortion reporting forms submitted by each physician coincides with the monthly total of performed or induced abortions indicated on the monthly abortion total form. Provides a formatted copy of the form to be submitted.

The substitute provides for the creation of an abortion complication report. The department shall prepare an abortion complication report form for all physicians licensed and practicing in this state. The appropriate section of the Health and Safety Code must be attached to the form. The department shall create an Internet website at which the report may be filed electronically.

The substitute provides that a physician practicing in the state who treats an illness or injury related to complications from a performed or induced abortion shall complete and submit an abortion complication report to the department. The report may be submitted by mail or electronically filed on a website created by the department. The substitute provides a list of information that is to be collected and included in the report.

The substitute provides that the Texas State Board of Medical Examiners shall ensure that abortion complication report forms, together with a copy of the appropriate section of the Health and Safety Code, are provided:

- to a physician who becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is licensed; and
- not later than December 1 of each year to all physicians licensed to practice in this state.

The substitute provides that a copy of the abortion complication reporting form must be maintained in the patient's medical file for not less than seven years, and that the patient must receive a copy of the form. Provides a formatted copy of the form to be submitted.

The substitute provides for reporting requirements. Provides that each physician performing or inducing an abortion must complete and submit an abortion reporting form for each abortion not later than the 15th day of each month for abortions performed or induced in the previous calendar month.

The substitute provides that a physician required to submit an abortion complication report to the department must submit the report as soon as is practicable after treatment of the abortion complication, but in no case more than seven days after the treatment.

The substitute provides that not later than April 1 of each year, the department shall issue in aggregate a public report summarizing the information submitted on each individual report required by this Act. The public report shall cover the entire previous calendar year and shall be compiled from the data in all the abortion reporting forms and the abortion complication reports submitted to the department in accordance with this Act. Each public report shall also provide information for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The department shall ensure that none of the information included in the public reports could reasonably lead to identification of any physician who performed or induced an abortion or treated abortion-related complications or of any woman who has had an abortion.

The substitute provides that all information and records held by the department under this subchapter are confidential and are not open except as provided under open records requirements for abortion facilities in the Health and Safety Code. The substitute provides that information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, physician, or facility is not identified;
- (2) with the consent of each person, patient, physician, and facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts for enforcement purposes; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

The substitute provides that the department or an employee of the department may not disclose to a person or entity outside of the department the reports or contents of the reports required by this Act in a manner or fashion that permits the person or entity to whom the report is disclosed to identify in any way the person who is the subject of the report.

The substitute provides that the department may alter the reporting dates established by this section for administrative convenience or fiscal savings or another valid reason provided that physicians performing or inducing abortions submit the forms monthly and the department issues its report once a year.

The substitute provides guidelines for modification of reporting forms by the department. Provides that the department may alter the information required to be reported by this subchapter only in order to update or to clarify the requirements of those sections. The department may not omit information required by this subchapter from forms or reports.

The substitute provides penalties for failure to report. The substitute provides that a physician who does not submit a report required by this Act within 30 days of the date the report was due shall be subject to a late fee of \$500 for each additional 30-day period or portion of a 30-day period the report is overdue.

The substitute provides that a physician required to file a report by this Act, who has not submitted a complete report before the first anniversary of the date the report was due is subject to a late fee and, in an action brought by the department, may be directed by a court to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

The substitute provides that if the department fails to issue the public report required by this Act or fails in any way to enforce this subchapter, any group of 10 or more citizens of this state may petition a court for an injunction against the executive commissioner of the Health and Human Services Commission requiring that a complete public report be issued within a period stated by court order or that enforcement action be taken. Failure to comply with the injunction subjects the executive commissioner to sanctions for civil contempt.

The substitute provides that a person commits an offense if a person intentionally, knowingly, recklessly or with criminal negligence:

- (1) fails to submit a form or report required by this subchapter;
- (2) submits false information on a form or report required by this subchapter;
- (3) includes the name or identifying information of the woman who had the abortion in a form or report required by this subchapter; or
- (4) includes the name or identifying information of a physician in a public report required by this Act.

The substitute provides that a person who discloses confidential identifying information in violation of this Act commits an offense. The substitute provides that a physician commits an offense if the physician performs or induces an abortion without making a reasonable effort to ensure that the abortion is not the result of coercion. The substitute provides that an offense under is a Class A misdemeanor.

The substitute provides changes the short title from Texas Abortion Reporting and Licensing Act, to the Texas Abortion Facility Licensing Act. The substitute provides conforming changes.

The substitute repeals Section 245.011, Health and Safety Code.

The substitute provides that not later than December 1, 2005: (1) the Supreme Court of Texas shall adopt rules (2) the Department of State Health Services shall provide for distribution of the forms along with instructions for completing the forms.

The substitute provides that not later than December 1, 2005, the Texas State Board of Medical Examiners shall distribute forms.

The substitute provides that a physician is not required to submit an Abortion Reporting Form before January 1, 2006.

The substitute provides that a physician is not required to submit an Abortion Complication Report before January 1, 2006.

Provides that the changes in law made by this Act apply only to an offense committed on or after January 1, 2006. For purposes of this section, an offense is committed before January 1, 2006, if any element of the offense occurs before that date. An offense committed before January 1, 2006, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

#### **EFFECTIVE DATE**

Except as provided by Subsection (b) or (c) of this section, this Act takes effect September 1, 2005.

Section 171.056, Health and Safety Code, as added by this Act, takes effect March 1, 2006.

Section 6 of this Act takes effect January 1, 2006.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute requires that information collected relating to judicial bypass reported be made available to the public in aggregate form on a county basis, rather than a regional basis. Provides that the information collected relating to judicial bypass may not lead to the identification of any unemancipated minor who petitioned the court, rather than an individual female. Expands the requirement of those physicians who are required to file a report to include a physician who prescribes medication to induce an abortion. Modifies language related to the portion of the abortion report that is to be filled out, if the patient is a minor. Provides that a patient may, rather than shall, fill out sections of the form applicable to the patient's personal information. Includes formatted copies of the forms to be submitted under this Act.