

## **BILL ANALYSIS**

Senate Research Center  
79R8219 MSE-F

S.B. 1381  
By: Shapiro  
State Affairs  
3/23/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Currently, the state requires minimal information on abortion procedures to be reported, and there is little penalty or enforcement if the information is not submitted or is submitted with the knowledge that the information is false. Further, there is no statute requiring the Department of State Health Services (DSHS) to collect this information and report it in aggregate form.

As proposed, S.B. 1381 ensures that there is accurate and complete reporting of abortion statistics in Texas to DSHS. S.B. 1381 expands the information currently collected by DSHS to include areas such as abortion complications and judicial bypass. This type of information will assist in assessing the effectiveness of the parental notification law and will provide non-anecdotal evidence for policy making. DSHS is required to make an annual report summarizing the information collected from each abortion report. Finally, S.B. 1381 includes enforcement penalties in order to ensure that the most complete set of data is collected.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Section 33.012, Family Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

[While the statutory reference in this bill is to the Texas Department of Health (department), the following amendments affect the Department of State Health Services, as the successor agency to the department.]

SECTION 1. Amends Chapter 33, Family Code, by adding Section 33.012, as follows:

Sec. 33.012. JUDICIAL BYPASS REPORTING. (a) Requires the supreme court to adopt rules governing the collection of statistical information relating to the applications and appeals granted under Sections 33.003(h) (relating to judicial approval of a minor's application for abortion without parental consent) and 33.004(b) (relating to an appeal of a denied application). Requires information collected under this section to include the total number of petitions or motions filed under those sections, and of that number, certain other statistics.

(b) Requires the information collected under this section to be made available to the public in aggregate form on a regional basis, as determined by the court.

(c) Requires any entity held responsible for the collection and compilation of information collected under this section to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female.

SECTION 2. Amends Chapter 171, Health and Safety Code, by adding Subchapter C, as follows:

#### **SUBCHAPTER C. ABORTION REPORTING**

Sec. 171.051. ABORTION REPORTING FORM. (a) Requires a physician who performs a surgical abortion to submit a report to the Texas Department of Health

(department) on each abortion the physician performs. Requires the report to be submitted on a form provided by the department and requires a copy of this section to be attached to the form.

- (b) Prohibits the report from identifying the name of the patient by any means.
- (c) Requires the abortion reporting form for each abortion to include certain information.
- (d) Requires the report on each abortion to include certain information if the patient is a minor.
- (e) Sets forth requirements for sections of the form to be filled out by the patient and the physician performing the abortion.
- (f) Requires a copy of the abortion reporting form to be maintained in the patient's medical file for not less than seven years. Requires the patient to be given a copy of the completed form.
- (g) Requires an abortion reporting form for each abortion submitted to the department to include, as a cover page, a monthly abortion total form. Requires the department to ensure that the number of abortion reporting forms submitted by each physician coincides with the monthly total of abortions indicated on the monthly abortion total form.

Sec. 171.052. ABORTION COMPLICATION FORM. (a) Requires the department to prepare an abortion complication report form for all physicians licensed and practicing in this state. Requires a copy of this section to be attached to the form. Requires the department to create an Internet website at which the report can be filed electronically.

- (b) Requires a physician practicing in this state who treats an illness or injury related to complications from a performed abortion to complete and submit an abortion complication report to the department. Authorizes the report to be filed by mail or electronically filed on a website created by the department. Sets forth requirements for the contents of an abortion complication form.
- (c) Requires the Texas State Board of Medical Examiners to ensure that abortion complication report forms required by this section, together with a copy of this section, 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 in this state.
- (d) Requires a copy of the abortion complication reporting form to be maintained in the patient's medical file for not less than seven years. Requires the patient to receive a copy of the form.

Sec. 171.053. REPORTING REQUIREMENTS. (a) Requires a physician performing an abortion to complete and submit an abortion reporting form for each abortion as required by Section 171.051 not later than the 15th day of each month for abortions performed in the previous calendar month.

- (b) Requires a physician required to submit an abortion complication report to the department by Section 171.052 to 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.
- (c) Requires the department, not later than April 1 of each year, to issue in aggregate a public report summarizing the information submitted on each individual report required by Sections 171.051 and 171.052. Sets forth requirements for the contents of the annual report.

(d) Provides that, except as provided by Section 245.023 (Public Information; Toll-Free Telephone Number), all information and records held by the department under this subchapter are confidential and are not open records for the purposes of Chapter 552 (Public Information), Government Code. Prohibits that information from being released or made public on subpoena or otherwise, except that the release is authorized to be made under certain circumstances.

(e) Prohibits the department or an employee of the department from disclosing to a person or entity outside of the department the reports or contents of the reports required by this section and Sections 171.051 and 171.052 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.

(f) Authorizes the department to alter the reporting dates established by this section for administrative convenience or fiscal savings or another valid reason provided that physicians performing abortions submit the forms monthly and the department issues its reports once a year.

Sec. 171.054. MODIFICATION OF FORM CONTENTS. Authorizes the department to alter the information required to be reported by this subchapter only in order to update or to clarify the requirements of those sections. Prohibits the department from omitting information required by this subchapter from forms or reports.

Sec. 171.055. PENALTIES. (a) Requires a physician who does not submit a report required by Section 171.051 or 171.052 within 30 days of the date of the report was due to 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.

(b) Provides that a physician required to file a report by Section 171.051 or 171.052 who has not submitted a complete report before the first anniversary of the date the report was due is subject to a late fee under Subsection (a) and, in an action brought by the department, is authorized to 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.

(c) Authorizes any group of 10 citizens of this state, if the department fails to issue the public report required by Section 171.053 or fails in any way to enforce this subchapter, to 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. Provides that failure to comply with the injunction subjects the executive commissioner to sanctions for civil contempt.

Sec. 171.056. OFFENSE. (a) Sets forth actions that constitute an offense under this section.

(b) Provides that a person who discloses confidential identifying information in violation of Section 171.053(a) commits an offense.

(c) Provides that an offense under this section is a Class A misdemeanor.

SECTION 3. Amends Section 245.001, Health and Safety Code, as follows:

Sec. 245.001. SHORT TITLE. Authorizes this chapter (Abortion Facilities) to be cited as the Texas Abortion Facility Licensing Act.

SECTION 4. Amends Section 248.003, Health and Safety Code, to make a conforming change.

SECTION 5. Repealer: Section 245.011 (Reporting Requirements; Criminal Penalty), Health and Safety Code.

SECTION 6. (a) Requires the Supreme Court of Texas to adopt rules as required by Section 33.012, Family Code, as added by this Act, not later than December 1, 2005. Requires the Department of State Health Services to provide for the distribution of the forms required by Sections 171.051 and 171.052, Health and Safety Code, as added by this Act, along with instructions for completing the form, not later than December 1, 2005.

(b) Requires the Texas State Board of Medical Examiners to distribute forms as required by Section 171.051, Health and Safety Code, as added by this Act, not later than February 28, 2006.

(c) Provides that a physician is not required to submit a report under Section 171.051, Health and Safety Code, as added by this Act, before January 1, 2006.

(d) Provides that a physician is not required to submit a report under Section 171.052, Health and Safety Code, as added by this Act, before January 1, 2006.

(e) Makes application of this Act prospective to January 1, 2006.

SECTION 7. (a) Effective date: September 1, 2005, excepting Subsections (b) and (c).

(b) Provides that Section 171.056, Health and Safety Code, as added by this Act, takes effect March 1, 2006.

(c) Provides that SECTION 5 of this Act takes effect January 1, 2006.