

By: Morrison, et al.

H.B. No. 2997

Substitute the following for H.B. No. 2997:

By: Laubenberg

C.S.H.B. No. 2997

A BILL TO BE ENTITLED

AN ACT

relating to the reporting of abortion; creating an offense.

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

SECTION 1. This Act may be cited as the Woman's Health Protection Act.

SECTION 2. Chapter 33, Family Code, is amended by adding Section 33.012 to read as follows:

Sec. 33.012. JUDICIAL BYPASS REPORTING. (a) The supreme court shall adopt rules governing the collection of statistical information relating to applications and appeals granted under Sections 33.003(h) and 33.004(b). Information collected under this section must include the total number of petitions or motions filed under those sections, and of that number:

(1) the number of judicial bypass cases in which the court appointed a guardian ad litem;

(2) the number of judicial bypass cases in which the court appointed counsel;

(3) whether or not the court-appointed guardian ad litem and counsel were the same person;

(4) the number of judicial bypass cases in which the judge issued an order authorizing an abortion without parental notification;

(5) the number of judicial bypass cases in which the judge denied an order authorizing an abortion without parental

1 notification; and

2 (6) the number of denials described by Subdivision (5)
3 for which an appeal was filed, the number of those appeals that
4 resulted in the denials being affirmed, and the number of those
5 appeals that resulted in reversals of the denials.

6 (b) The information collected under this section shall be
7 made available to the public in aggregate form on a county basis.

8 (c) Any entity held responsible for the collection and
9 compilation of information collected under this section shall
10 ensure that none of the information included in the public reports
11 could reasonably lead to the identification of any unemancipated
12 minor who petitioned the court.

13 SECTION 3. Chapter 171, Health and Safety Code, is amended
14 by adding Subchapter C to read as follows:

15 SUBCHAPTER C. ABORTION REPORTING

16 Sec. 171.051. ABORTION REPORTING FORM. (a) Each physician
17 who performs a surgical abortion or who prescribes medication to
18 induce an abortion must submit a report to the department on each
19 abortion the physician performs or induces. The report must be
20 submitted on a form provided by the department and a copy of this
21 section must be attached to the form. The abortion report must be
22 in the following form:

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1 "THE PRINTED VERSION OF THIS PAGE CONTAINS A COPY OF THE ABORTION
2 REPORT. THE CONTENTS OF THIS PAGE CANNOT BE VIEWED ONLINE DUE TO
3 WORD PROCESSOR LIMITATIONS WITH GRAPHIC FILES. PLEASE CONTACT
4 HOUSE DOCUMENT DISTRIBUTION FOR A HARD COPY."

1 (b) The report may not identify the name of the patient by
2 any means.

3 (c) The abortion reporting form for each abortion must
4 include:

5 (1) the name of the abortion facility at which the
6 abortion was performed or induced and whether the facility is
7 licensed as an abortion facility under Chapter 245, is operating as
8 the private office of a licensed physician, or is a licensed
9 hospital, hospital satellite clinic, or ambulatory surgical
10 center;

11 (2) the signature and license number of the physician
12 who performed the abortion or prescribed the medication to induce
13 the abortion;

14 (3) the patient's age, race, marital status, and
15 municipality, county, and state of residence;

16 (4) the age of the father of the unborn child at the
17 time of the abortion;

18 (5) the type of abortion procedure;

19 (6) the date the abortion was performed;

20 (7) the specific reason the abortion was performed or
21 induced, including:

22 (A) the mother is unprepared for the
23 responsibilities of motherhood;

24 (B) the mother has all the children she wants;

25 (C) the mother cannot afford the child;

26 (D) the mother does not desire the child;

27 (E) the baby has a health problem;

- 1 (F) the father of the child wants the mother to
2 abort;
- 3 (G) a parent of the mother of the unborn child
4 opposes the pregnancy;
- 5 (H) the mother fears a loss of family support;
6 (I) the mother fears losing her job;
7 (J) a clinic counselor recommends abortion;
8 (K) the mother feels coerced to have the
9 abortion;
- 10 (L) the pregnancy was a result of rape;
11 (M) the pregnancy was a result of incest;
12 (N) the mother will suffer substantial and
13 irreversible impairment of a major bodily function if the pregnancy
14 continues; or
- 15 (O) to prevent the death of the mother;
- 16 (8) whether the patient survived the abortion, and if
17 the patient did not survive, the cause of death;
- 18 (9) the number of weeks of gestation at the time of the
19 procedure and the weight of the fetus, if determinable;
- 20 (10) the date, if known, of the patient's last
21 menstrual cycle and the method of pregnancy verification;
- 22 (11) the number of previous live births of the
23 patient;
- 24 (12) the number of previous induced abortions of the
25 patient;
- 26 (13) the number of previous miscarriages or
27 spontaneous abortions of the patient;

- 1 (14) whether the induced abortion was paid for by:
2 (A) private insurance;
3 (B) a public health plan; or
4 (C) personal payment by patient;
5 (15) whether insurance coverage was provided by:
6 (A) a fee-for-service insurance company;
7 (B) a managed care company; or
8 (C) another source;
9 (16) the fee collected for performing or inducing the
10 abortion;
11 (17) the source of referral for the abortion;
12 (18) the type of anesthetic, if any, used for each
13 abortion performed or induced;
14 (19) the method used to dispose of the fetal tissue and
15 remains;
16 (20) complications, if any, for each abortion and for
17 the aftermath of each abortion, with space for description of
18 complications available on the form; and
19 (21) whether or not the woman availed herself of the
20 opportunity to obtain a copy of the printed information required by
21 Subchapter B, and if not, whether the woman viewed the information
22 described in Section 171.014, through the Internet or by booklet.
23 (d) If the mother of the unborn child is a minor, the report
24 on each abortion must include:
25 (1) whether the minor's parent, court-appointed
26 conservator, or guardian was provided the notice required by
27 Chapter 33, Family Code, personally, by telephone, or by certified

1 mail;

2 (2) whether the minor went on to obtain the abortion
3 after the notice required by Chapter 33, Family Code, was provided;

4 (3) whether the minor was emancipated and permitted to
5 waive the notification required by Chapter 33, Family Code;

6 (4) whether judicial authorization was received,
7 waiving the notification required by Chapter 33, Family Code; and

8 (5) the entity that made the court arrangement for the
9 minor.

10 (e) The patient may fill out sections of the form applicable
11 to the patient's personal information. Sections to be filled out by
12 the patient must be at the top of the form. The bottom portion of
13 the reporting form must be completed by the physician performing or
14 inducing the abortion.

15 (f) If the patient marks one or more of Subsections
16 (c)(7)(F)-(L), the physician must make all reasonable efforts to
17 ensure that the woman is not being coerced to have the abortion.

18 (g) A copy of the abortion reporting form must be maintained
19 in the patient's medical file for not less than seven years. The
20 patient must be given a copy of the completed abortion reporting
21 form.

22 (h) An abortion reporting form for each abortion submitted
23 to the department must include as a cover page a monthly abortion
24 total form. The department must ensure that the number of abortion
25 reporting forms submitted by each physician coincides with the
26 monthly total of performed or induced abortions indicated on the
27 monthly abortion total form. The monthly abortion total form must

1 be in the following form:

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1 "THE PRINTED VERSION OF THIS PAGE CONTAINS A COPY OF THE MONTHLY
2 ABORTION TOTAL FORM. THE CONTENTS OF THIS PAGE CANNOT BE VIEWED
3 ONLINE DUE TO WORD PROCESSOR LIMITATIONS WITH GRAPHIC FILES.
4 PLEASE CONTACT HOUSE DOCUMENT DISTRIBUTION FOR A HARD COPY."

1 Sec. 171.052. ABORTION COMPLICATION REPORT. (a) The
2 department shall prepare an abortion complication report form for
3 all physicians licensed and practicing in this state. A copy of
4 this section must be attached to the form. The department shall
5 create an Internet website at which the report may be filed
6 electronically.

7 (b) A physician practicing in the state who treats an
8 illness or injury related to complications from a performed or
9 induced abortion shall complete and submit an abortion complication
10 report to the department. The report may be submitted by mail or
11 electronically filed on a website created by the department. The
12 report must include:

13 (1) the date and type of the original abortion;

14 (2) the name and type of facility where the abortion
15 complication was diagnosed and treated;

16 (3) the name of the facility and of the physician who
17 performed the abortion or prescribed the medication to induce the
18 abortion, if known;

19 (4) the license number and signature of the physician
20 who treated the abortion complication;

21 (5) the date on which the abortion complication was
22 diagnosed and treated;

23 (6) a description of the abortion complication;

24 (7) the patient's age, race, marital status, and
25 municipality, county, and state of residence;

26 (8) the week of gestation at which the abortion was
27 performed or induced;

1 (9) the number of previous live births by the patient;

2 (10) the number of previous performed or induced
3 abortions for the patient;

4 (11) the number of previous miscarriages or
5 spontaneous abortions by the patient;

6 (12) whether treatment for the abortion complication
7 was paid for by:

8 (A) private insurance;

9 (B) a public health plan; or

10 (C) personal payment by the patient;

11 (13) whether insurance coverage was provided by:

12 (A) a fee-for-service insurance company;

13 (B) a managed care company; or

14 (C) another source; and

15 (14) the type of follow-up care recommended and
16 whether the physician who filed the report provides the follow-up
17 care.

18 (c) The Texas State Board of Medical Examiners shall ensure
19 that abortion complication report forms required by this section,
20 together with a copy of this section, are provided:

21 (1) to a physician who becomes newly licensed to
22 practice in this state, at the same time as official notification to
23 that physician that the physician is licensed; and

24 (2) not later than December 1 of each year to all
25 physicians licensed to practice in this state.

26 (d) A copy of the abortion complication reporting form must
27 be maintained in the patient's medical file for not less than seven

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1 years. The patient must receive a copy of the form. The abortion
2 complication report must be in the following form:

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1 "THE PRINTED VERSION OF THIS PAGE CONTAINS A COPY OF THE ABORTION
2 COMPLICATION REPORT. THE CONTENTS OF THIS PAGE CANNOT BE VIEWED
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1 Sec. 171.053. REPORTING REQUIREMENTS. (a) Each physician
2 performing or inducing an abortion must complete and submit an
3 abortion reporting form for each abortion as required by Section
4 171.051 not later than the 15th day of each month for abortions
5 performed or induced in the previous calendar month.

6 (b) A physician required to submit an abortion complication
7 report to the department by Section 171.052 must submit the report
8 as soon as is practicable after treatment of the abortion
9 complication, but in no case more than seven days after the
10 treatment.

11 (c) Not later than April 1 of each year, the department
12 shall issue in aggregate a public report summarizing the
13 information submitted on each individual report required by
14 Sections 171.051 and 171.052. The public report shall cover the
15 entire previous calendar year and shall be compiled from the data in
16 all the abortion reporting forms and the abortion complication
17 reports submitted to the department in accordance with Sections
18 171.051 and 171.052. Each public report shall also provide
19 information for all previous calendar years, adjusted to reflect
20 any additional information from late or corrected reports. The
21 department shall ensure that none of the information included in
22 the public reports could reasonably lead to identification of any
23 physician who performed or induced an abortion or treated
24 abortion-related complications or of any woman who has had an
25 abortion.

26 (d) Except as provided by Section 245.023, all information
27 and records held by the department under this subchapter are

1 confidential and are not open records for the purposes of Chapter
2 552, Government Code. That information may not be released or made
3 public on subpoena or otherwise, except that release may be made:

4 (1) for statistical purposes, but only if a person,
5 patient, physician, or facility is not identified;

6 (2) with the consent of each person, patient,
7 physician, and facility identified in the information released;

8 (3) to medical personnel, appropriate state agencies,
9 or county and district courts to enforce this chapter or Chapter
10 245; or

11 (4) to appropriate state licensing boards to enforce
12 state licensing laws.

13 (e) The department or an employee of the department may not
14 disclose to a person or entity outside of the department the reports
15 or contents of the reports required by this section and Sections
16 171.051 and 171.052 in a manner or fashion that permits the person
17 or entity to whom the report is disclosed to identify in any way the
18 person who is the subject of the report.

19 (f) The department may alter the reporting dates
20 established by this section for administrative convenience or
21 fiscal savings or another valid reason provided that physicians
22 performing or inducing abortions submit the forms monthly and the
23 department issues its report once a year.

24 Sec. 171.054. MODIFICATION OF FORM CONTENTS. The
25 department may alter the information required to be reported by
26 this subchapter only in order to update or to clarify the
27 requirements of those sections. The department may not omit

1 information required by this subchapter from forms or reports.

2 Sec. 171.055. PENALTIES. (a) A physician who does not
3 submit a report required by Section 171.051 or 171.052 within 30
4 days of the date the report was due shall be subject to a late fee of
5 \$500 for each additional 30-day period or portion of a 30-day period
6 the report is overdue.

7 (b) A physician required to file a report by Section 171.051
8 or 171.052 who has not submitted a complete report before the first
9 anniversary of the date the report was due is subject to a late fee
10 under Subsection (a) and, in an action brought by the department,
11 may be directed by a court to submit a complete report within a
12 period stated by court order or be subject to sanctions for civil
13 contempt.

14 (c) If the department fails to issue the public report
15 required by Section 171.053 or fails in any way to enforce this
16 subchapter, any group of 10 or more citizens of this state may
17 petition a court for an injunction against the executive
18 commissioner of the Health and Human Services Commission requiring
19 that a complete public report be issued within a period stated by
20 court order or that enforcement action be taken. Failure to comply
21 with the injunction subjects the executive commissioner to
22 sanctions for civil contempt.

23 Sec. 171.056. OFFENSE. (a) A person commits an offense if
24 a person intentionally, knowingly, recklessly, or with criminal
25 negligence:

26 (1) fails to submit a form or report required by this
27 subchapter;

1 (2) submits false information on a form or report
2 required by this subchapter;

3 (3) includes the name or identifying information of
4 the woman who had the abortion in a form or report required by this
5 subchapter; or

6 (4) includes the name or identifying information of a
7 physician in a public report required by Section 171.053(c).

8 (b) A person who discloses confidential identifying
9 information in violation of Section 171.053(e) commits an offense.

10 (c) A physician commits an offense if the physician performs
11 or induces an abortion without making a reasonable effort to ensure
12 that the abortion is not the result of coercion, as defined by
13 Section 1.07, Penal Code.

14 (d) An offense under this section is a Class A misdemeanor.

15 SECTION 4. Section 245.001, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 245.001. SHORT TITLE. This chapter may be cited as
18 the Texas Abortion Facility [~~Reporting and~~] Licensing Act.

19 SECTION 5. Section 248.003, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

22 (1) a home and community support services agency
23 required to be licensed under Chapter 142;

24 (2) a person required to be licensed under Chapter 241
25 (Texas Hospital Licensing Law);

26 (3) an institution required to be licensed under
27 Chapter 242;

1 (4) an ambulatory surgical center required to be
2 licensed under Chapter 243 (Texas Ambulatory Surgical Center
3 Licensing Act);

4 (5) a birthing center required to be licensed under
5 Chapter 244 (Texas Birthing Center Licensing Act);

6 (6) a facility required to be licensed under Chapter
7 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

8 (7) a child care institution, foster group home,
9 foster family home, and child-placing agency, for children in
10 foster care or other residential care who are under the
11 conservatorship of the Department of Protective and Regulatory
12 Services; or

13 (8) a person providing medical or nursing care or
14 services under a license or permit issued under other state law.

15 SECTION 6. Section 245.011, Health and Safety Code, is
16 repealed.

17 SECTION 7. (a) Not later than December 1, 2005:

18 (1) the Supreme Court of Texas shall adopt rules as
19 required by Section 33.012, Family Code, as added by this Act; and

20 (2) the Department of State Health Services shall
21 provide for distribution of the forms required by Sections 171.051
22 and 171.052, Health and Safety Code, as added by this Act, along
23 with instructions for completing the forms.

24 (b) Not later than December 1, 2005, the Texas State Board
25 of Medical Examiners shall distribute forms as required by Section
26 171.052(c), Health and Safety Code, as added by this Act.

27 (c) A physician is not required to submit a report under

1 Section 171.051, Health and Safety Code, as added by this Act,
2 before January 1, 2006.

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

6 (e) The changes in law made by this Act apply only to an
7 offense committed on or after January 1, 2006. For purposes of this
8 section, an offense is committed before January 1, 2006, if any
9 element of the offense occurs before that date. An offense
10 committed before January 1, 2006, is covered by the law in effect
11 when the offense was committed, and the former law is continued in
12 effect for that purpose.

13 SECTION 8. (a) Except as provided by Subsection (b) or (c)
14 of this section, this Act takes effect September 1, 2005.

15 (b) Section 171.056, Health and Safety Code, as added by
16 this Act, takes effect January 1, 2006.

17 (c) Section 6 of this Act takes effect January 1, 2006.