

By: Morrison

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 regional basis,  
8 as determined by the court.

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

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

16 SUBCHAPTER C. ABORTION REPORTING

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

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

25 (c) The abortion reporting form for each abortion must  
26 include:

27 (1) the name of the abortion facility at which the

1 abortion was performed or induced and whether the facility is  
2 licensed as an abortion facility under Chapter 245, is operating as  
3 the private office of a licensed physician, or is a licensed  
4 hospital, hospital satellite clinic, or ambulatory surgical  
5 center;

6 (2) the signature and license number of the physician  
7 who performed the abortion or prescribed the medication to induce  
8 the abortion;

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

11 (4) the age of the father of the unborn child at the  
12 time of the abortion;

13 (5) the type of abortion procedure;

14 (6) the date the abortion was performed;

15 (7) the specific reason the abortion was performed or  
16 induced, including:

17 (A) the mother is not ready for the  
18 responsibilities of motherhood;

19 (B) the mother cannot afford the child;

20 (C) the mother does not desire to have the child;

21 (D) the baby has a health problem;

22 (E) the father of the child prefers abortion over  
23 childbirth;

24 (F) the parents of the mother of the unborn child  
25 oppose the pregnancy;

26 (G) the mother fears a loss of family support;

27 (H) the mother fears losing her job;

- 1                   (I) a clinic counselor recommends abortion as the  
2 best option;
- 3                   (J) the mother feels coerced to have the  
4 abortion;
- 5                   (K) the pregnancy was a result of rape;  
6                   (L) the pregnancy was a result of incest;  
7                   (M) the mother will suffer substantial and  
8 irreversible impairment of a major bodily function if the pregnancy  
9 continues; or
- 10                   (N) to prevent the death of the mother;
- 11                   (8) whether the patient survived the abortion, and if  
12 the patient did not survive, the cause of death;
- 13                   (9) the number of weeks of gestation based on the best  
14 medical judgment of the attending physician at the time of the  
15 procedure and the weight of the fetus, if determinable;
- 16                   (10) the date, if known, of the patient's last  
17 menstrual cycle and the method of pregnancy verification;
- 18                   (11) the number of previous live births of the  
19 patient;
- 20                   (12) the number of previous induced abortions of the  
21 patient;
- 22                   (13) the number of previous spontaneous abortions of  
23 the patient;
- 24                   (14) whether the induced abortion was paid for by:
- 25                   (A) private insurance;  
26                   (B) a public health plan; or  
27                   (C) personal payment by patient;

1           (15) whether insurance coverage was provided by:

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

3                   (B) a managed care company; or

4                   (C) another source;

5           (16) the fee collected for performing or inducing the  
6 abortion;

7           (17) the source of referral for the abortion;

8           (18) the type of anesthetic, if any, used for each  
9 abortion performed or induced;

10           (19) the method used to dispose of the fetal tissue and  
11 remains;

12           (20) complications, if any, for each abortion and for  
13 the aftermath of each abortion, with space for description of  
14 complications available on the form; and

15           (21) whether or not the woman availed herself of the  
16 opportunity to obtain a copy of the printed information required by  
17 Subchapter B, and if not, whether the woman viewed the information  
18 described in Section 171.014, through the Internet or by booklet.

19           (d) If the mother of the unborn child is a minor, the report  
20 on each abortion must include:

21                   (1) whether the minor's parent or guardian was  
22 provided the notice required by Chapter 33, Family Code,  
23 personally, by telephone, or by certified mail;

24                   (2) to the best of the physician's information or  
25 belief, whether the minor went on to obtain the abortion after the  
26 parental notice required by Chapter 33, Family Code, was provided;

27                   (3) whether the minor was emancipated and permitted to

1 waive the notification required by Chapter 33, Family Code;

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

5 (5) the process the physician or the physician's agent  
6 used to inform the female of the judicial bypass, whether court  
7 forms were provided to her, and what entity made the court  
8 arrangement for the minor.

9 (e) The patient must fill out sections of the form  
10 applicable to the patient's personal information. Sections to be  
11 filled out by the patient must be at the top of the form. The bottom  
12 portion of the reporting form must be completed by the physician  
13 performing or inducing the abortion. The requirement that the  
14 patient fill out the top portion of the form may be waived only if  
15 the abortion is performed or induced to prevent the death of the  
16 mother or to avoid irreversible and substantial bodily harm.

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

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

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

1 monthly total of performed or induced abortions indicated on the  
2 monthly abortion total form.

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

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

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

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

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

21 (4) the license number and signature of the physician  
22 who treated the abortion complication;

23 (5) the date on which the abortion complication was  
24 diagnosed and treated;

25 (6) a description of the abortion complication;

26 (7) the patient's year of birth, race, marital status,  
27 and municipality, county, and state of residence;

1           (8) the week of gestation at which the abortion was  
2 performed or induced based on the best medical judgment of the  
3 attending physician at the time of treatment for the abortion  
4 complication;

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

6           (10) the number of previous performed or induced  
7 abortions for the patient;

8           (11) the number of previous spontaneous abortions by  
9 the patient;

10          (12) whether treatment for the abortion complication  
11 was paid for by:

12                   (A) private insurance;

13                   (B) a public health plan; or

14                   (C) personal payment by the patient;

15          (13) whether insurance coverage was provided by:

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

17                   (B) a managed care company; or

18                   (C) another provider; and

19          (14) the type of follow-up care recommended and  
20 whether the physician who filed the report provides the follow-up  
21 care.

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

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



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

3           (d) A copy of the abortion complication reporting form must  
4 be maintained in the patient's medical file for not less than seven  
5 years. The patient must receive a copy of the form.

6           Sec. 171.053. REPORTING REQUIREMENTS. (a) A physician  
7 performing or inducing an abortion must complete and submit an  
8 abortion reporting form for each abortion as required by Section  
9 171.051 not later than the 15th day of each month for abortions  
10 performed or induced in the previous calendar month.

11           (b) A physician required to submit an abortion complication  
12 report to the department by Section 171.052 must submit the report  
13 as soon as is practicable after treatment of the abortion  
14 complication, but in no case more than seven days after the  
15 treatment.

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

1 physician who performed or induced an abortion or treated  
2 abortion-related complications or of any woman who has had an  
3 abortion.

4 (d) Except as provided by Section 245.023, all information  
5 and records held by the department under this subchapter are  
6 confidential and are not open records for the purposes of Chapter  
7 552, Government Code. That information may not be released or made  
8 public on subpoena or otherwise, except that release may be made:

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

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

13 (3) to medical personnel, appropriate state agencies,  
14 or county and district courts to enforce this chapter or Chapter  
15 245; or

16 (4) to appropriate state licensing boards to enforce  
17 state licensing laws.

18 (e) The department or an employee of the department may not  
19 disclose to a person or entity outside of the department the reports  
20 or contents of the reports required by this section and Sections  
21 171.051 and 171.052 in a manner or fashion that permits the person  
22 or entity to whom the report is disclosed to identify in any way the  
23 person who is the subject of the report.

24 (f) The department may alter the reporting dates  
25 established by this section for administrative convenience or  
26 fiscal savings or another valid reason provided that physicians  
27 performing or inducing abortions submit the forms monthly and the

1 department issues its report once a year.

2 Sec. 171.054. MODIFICATION OF FORM CONTENTS. The  
3 department may alter the information required to be reported by  
4 this subchapter only in order to update or to clarify the  
5 requirements of those sections. The department may not omit  
6 information required by this subchapter from forms or reports.

7 Sec. 171.055. PENALTIES. (a) A physician who does not  
8 submit a report required by Section 171.051 or 171.052 within 30  
9 days of the date the report was due shall be subject to a late fee of  
10 \$500 for each additional 30-day period or portion of a 30-day period  
11 the report is overdue.

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

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

1       Sec. 171.056. OFFENSE. (a) A person commits an offense if  
2 a person knowingly or recklessly:

3           (1) fails to submit a form or report required by this  
4 subchapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

5           (4) an ambulatory surgical center required to be  
6 licensed under Chapter 243 (Texas Ambulatory Surgical Center  
7 Licensing Act);

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

10           (6) a facility required to be licensed under Chapter  
11 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

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

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

19           SECTION 6. Section 245.011, Health and Safety Code, is  
20 repealed.

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

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

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

1 (b) Not later than February 28, 2006, the Texas State Board  
2 of Medical Examiners shall distribute forms as required by Section  
3 171.052(c), Health and Safety Code, as added by this Act.

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

7 (d) A physician is not required to submit a report under  
8 Section 171.052, Health and Safety Code, as added by this Act,  
9 before March 1, 2006.

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

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

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

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