

By: Shapiro

S.B. No. 1381

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. 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 notification; and

(6) the number of denials described by Subdivision (5)

1 for which an appeal was filed, the number of those appeals that
2 resulted in the denials being affirmed, and the number of those
3 appeals that resulted in reversals of the denials.

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

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

12 SECTION 2. Chapter 171, Health and Safety Code, is amended
13 by adding Subchapter C to read as follows:

14 SUBCHAPTER C. ABORTION REPORTING

15 Sec. 171.051. ABORTION REPORTING FORM. (a) A physician who
16 performs a surgical abortion must submit a report to the department
17 on each abortion the physician performs. The report must be
18 submitted on a form provided by the department and a copy of this
19 section must be attached to the form.

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

22 (c) The abortion reporting form for each abortion must
23 include:

24 (1) the name of the abortion facility at which the
25 abortion was performed and whether the facility is licensed as an
26 abortion facility under Chapter 245, is operating as the private
27 office of a licensed physician, or is a licensed hospital, hospital

1 satellite clinic, or ambulatory surgical center;

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

4 (3) the age of the father of the unborn child at the
5 time of the abortion;

6 (4) the type of abortion procedure;

7 (5) the date the abortion was performed;

8 (6) whether the patient survived the abortion, and if
9 the patient did not survive, the cause of death;

10 (7) the number of weeks of gestation based on the best
11 medical judgment of the attending physician at the time of the
12 procedure and the weight of the fetus, if determinable;

13 (8) the date, if known, of the patient's last menstrual
14 cycle and the method of pregnancy verification;

15 (9) the number of previous live births of the patient;

16 (10) the number of previous induced abortions of the
17 patient;

18 (11) the number of previous spontaneous abortions of
19 the patient;

20 (12) whether the induced abortion was paid for by:

21 (A) private insurance;

22 (B) a public health plan; or

23 (C) personal payment by patient;

24 (13) whether insurance coverage was provided by:

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

26 (B) a managed care company; or

27 (C) another source;

1 (14) the fee collected for the abortion;

2 (15) the type of anesthetic, if any, used for each
3 abortion performed;

4 (16) the method used to dispose of the fetal tissue and
5 remains;

6 (17) complications, if any, for each abortion and for
7 the aftermath of each abortion, with space for description of
8 complications available on the form; and

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

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

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

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

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

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

26 (5) the process the physician or the physician's agent
27 used to inform the female of the judicial bypass, whether court

1 forms were provided to her, and what entity made the court
2 arrangement for the minor.

3 (e) The patient must fill out sections of the form
4 applicable to the patient's personal information. Sections to be
5 filled out by the patient must be at the top of the form. The bottom
6 portion of the reporting form must be completed by the physician
7 performing the abortion. The requirement that the patient fill out
8 the top portion of the form may be waived only if the abortion is
9 performed to prevent the death of the mother or to avoid
10 irreversible and substantial bodily harm.

11 (f) A copy of the abortion reporting form must be maintained
12 in the patient's medical file for not less than seven years. The
13 patient must be given a copy of the completed abortion reporting
14 form.

15 (g) An abortion reporting form for each abortion submitted
16 to the department must include as a cover page a monthly abortion
17 total form. The department must ensure that the number of abortion
18 reporting forms submitted by each physician coincides with the
19 monthly total of abortions indicated on the monthly abortion total
20 form.

21 Sec. 171.052. ABORTION COMPLICATION REPORT. (a) The
22 department shall prepare an abortion complication report form for
23 all physicians licensed and practicing in this state. A copy of
24 this section must be attached to the form. The department shall
25 create an Internet website at which the report may be filed
26 electronically.

27 (b) A physician practicing in the state who treats an

1 illness or injury related to complications from a performed
2 abortion shall complete and submit an abortion complication report
3 to the department. The report may be submitted by mail or
4 electronically filed on a website created by the department. The
5 report must include:

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

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

9 (3) the name of the facility that performed the
10 abortion, if known;

11 (4) the license number and signature of the physician
12 who treated the abortion complication;

13 (5) the date on which the abortion complication was
14 diagnosed and treated;

15 (6) a description of the abortion complication;

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

18 (8) the week of gestation at which the abortion was
19 performed based on the best medical judgment of the attending
20 physician at the time of treatment for the abortion complication;

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

22 (10) the number of previous abortions performed on the
23 patient;

24 (11) the number of previous spontaneous abortions by
25 the patient;

26 (12) whether treatment for the abortion complication
27 was paid for by:

- (A) private insurance;
- (B) a public health plan; or
- (C) personal payment by the patient;

(13) whether insurance coverage was provided by:

- (A) a fee-for-service insurance company;
- (B) a managed care company; or
- (C) another provider; and

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

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

(1) 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

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

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

Sec. 171.053. REPORTING REQUIREMENTS. (a) A physician performing an abortion must 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) A physician required to submit an abortion complication

1 report to the department by Section 171.052 must submit the report
2 as soon as is practicable after treatment of the abortion
3 complication, but in no case more than seven days after the
4 treatment.

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

19 (d) Except as provided by Section 245.023, all information
20 and records held by the department under this subchapter are
21 confidential and are not open records for the purposes of Chapter
22 552, Government Code. That information may not be released or made
23 public on subpoena or otherwise, except that release may be made:

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

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

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

4 (4) to appropriate state licensing boards to enforce
5 state licensing laws.

6 (e) The department or an employee of the department may not
7 disclose to a person or entity outside of the department the reports
8 or contents of the reports required by this section and Sections
9 171.051 and 171.052 in a manner or fashion that permits the person
10 or entity to whom the report is disclosed to identify in any way the
11 person who is the subject of the report.

12 (f) The department may alter the reporting dates
13 established by this section for administrative convenience or
14 fiscal savings or another valid reason provided that physicians
15 performing abortions submit the forms monthly and the department
16 issues its report once a year.

17 Sec. 171.054. MODIFICATION OF FORM CONTENTS. The
18 department may alter the information required to be reported by
19 this subchapter only in order to update or to clarify the
20 requirements of those sections. The department may not omit
21 information required by this subchapter from forms or reports.

22 Sec. 171.055. PENALTIES. (a) A physician who does not
23 submit a report required by Section 171.051 or 171.052 within 30
24 days of the date the report was due shall be subject to a late fee of
25 \$500 for each additional 30-day period or portion of a 30-day period
26 the report is overdue.

27 (b) A physician required to file a report by Section 171.051

1 or 171.052 who has not submitted a complete report before the first
2 anniversary of the date the report was due is subject to a late fee
3 under Subsection (a) and, in an action brought by the department,
4 may be directed by a court to submit a complete report within a
5 period stated by court order or be subject to sanctions for civil
6 contempt.

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

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

18 (1) fails to submit a form or report required by this
19 subchapter;

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

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

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

27 (b) A person who discloses confidential identifying

1 information in violation of Section 171.053(e) commits an offense.

2 (c) An offense under this section is a Class A misdemeanor.

3 SECTION 3. Section 245.001, Health and Safety Code, is
4 amended to read as follows:

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

7 SECTION 4. Section 248.003, Health and Safety Code, is
8 amended to read as follows:

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

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

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

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

16 (4) an ambulatory surgical center required to be
17 licensed under Chapter 243 (Texas Ambulatory Surgical Center
18 Licensing Act);

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

21 (6) a facility required to be licensed under Chapter
22 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

23 (7) a child care institution, foster group home,
24 foster family home, and child-placing agency, for children in
25 foster care or other residential care who are under the
26 conservatorship of the Department of Protective and Regulatory
27 Services; or

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

3 SECTION 5. Section 245.011, Health and Safety Code, is
4 repealed.

5 SECTION 6. (a) Not later than December 1, 2005:

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

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

12 (b) Not later than February 28, 2006, the Texas State Board
13 of Medical Examiners shall distribute forms as required by Section
14 171.052(c), Health and Safety Code, as added by this Act.

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

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

21 (e) The changes in law made by this Act apply only to an
22 offense committed on or after January 1, 2006. For purposes of this
23 section, an offense is committed before January 1, 2006, if any
24 element of the offense occurs before that date. An offense
25 committed before January 1, 2006, is covered by the law in effect
26 when the offense was committed, and the former law is continued in
27 effect for that purpose.

1 SECTION 7. (a) Except as provided by Subsection (b) or (c)
2 of this section, this Act takes effect September 1, 2005.

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

5 (c) Section 5 of this Act takes effect January 1, 2006.