

BILL ANALYSIS

C.S.S.B. 785
By: Shapiro
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The reporting of some general abortion statistics is currently required by the Department of State Health Services. However, the information reported does not offer the broad range of data necessary for analyzing and crafting public policy regarding abortion. Additionally, in current law there is no reporting mechanism by which abortion complications are reported, and such complications may therefore currently be categorized in reports as pregnancy-related. Such reporting may result in an inaccurate inflation of statistics regarding the risks of pregnancy and childbirth. These statistics are used in information produced by the state for public education purposes.

C.S.S.B. 785 will bolster current abortion reporting systems by improving accuracy and relevancy and will provide a specific mechanism by which physicians will report abortion complications. Currently, the majority of states require by statute comprehensive reporting of induced abortion and abortion-related complication reporting.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 7 and SECTION 9 of this bill.

ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Abortion Reporting Requirement Act.

SECTION 2. Amends Subchapter A, Chapter 171, Health and Safety Code, by adding Section 171.006, as follows:

Sec. 171.006. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE. Requires the Department of State Health Services (DSHS) to require each person that performs or induces an abortion to maintain a list of domestic violence shelters and assistance programs and to provide a referral to a domestic violence shelter or assistance program if the woman communicates that she is being abused or forced into having the abortion.

SECTION 3. Amends Chapter 171, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ABORTION REPORTING

Sec. 171.051. ABORTION REPORTING FORM. (a) Provides that a physician who performs or induces an abortion must submit a report to DSHS on each abortion performed or induced. Provides that the report must be submitted on a form provided by DSHS and a copy of this section must be attached to the form.

(b) Prohibits the report from identifying the name of the patient by any means.

(c) Sets forth the information that must be included on the abortion reporting form.

(d) Sets forth the information that must be included on the abortion reporting form if the mother of the unborn child is a minor.

(e) Provides that the patient must fill out sections of the form applicable to the patient's personal information. Provides that sections to be filled out by the patient must be at the top of the form. Provides that the bottom portion of the reporting form must be completed by the physician performing or inducing the abortion. Authorizes the waiver of the requirement that the patient fill out the top of the form only if the abortion is performed or induced to prevent the death of the mother or to avoid harm to a mother described by Sections 164.052(a)(18) and 164.052(a)(19), Occupations Code.

(f) Provides that the physician must make all reasonable efforts to ensure that the woman is not being forced to have an abortion, including reporting abuse or neglect under Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, if applicable, if the patient indicates she may be being forced to have an abortion in the space provided under Subsection (c)(7).

(g) Provides that a copy of the abortion reporting form must be maintained in the patient's medical file for not less than seven years. Provides that the patient must be given a copy of the completed abortion reporting form in person after the physician and patient complete the form.

Sec. 171.0511. FORM OF REPORT. Provides the format in which the abortion reporting form must appear.

Sec. 171.052. ABORTION COMPLICATION REPORT. (a) Requires DSHS to prepare an abortion complication report form for all physicians licensed and practicing in Texas. Provides that a copy of this section must be attached to the form. Requires DSHS to create an Internet website at which the report is authorized to be filed electronically.

(b) Requires a physician practicing in Texas who treats an illness or injury related to complications from an abortion to complete and submit an abortion complication report to DSHS. Authorizes the report to be submitted by mail or electronically filed on an Internet website created by DSHS. Sets forth the information that must be included on the report.

(c) Requires the Texas Medical Board 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 Texas and not later than December 1 of each year to all physicians licensed to practice in Texas.

(d) 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. Provides that the patient must receive a completed copy of the form in person before the person leaves the facility.

Sec. 171.0521. FORM OF COMPLICATION REPORT. Provides the format in which the abortion complication report must appear.

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

(b) Provides that a physician required to submit an abortion complication report to DSHS by Section 171.052 must submit the report as soon as practicable after treatment of the abortion complication, but in no case more than seven days after the treatment.

(c) Requires DSHS to issue in aggregate a public report summarizing the information submitted on each individual report required by Sections 171.051 and 171.052 not later than April 1 of each year. Requires the public report to cover

the entire previous calendar year and to be compiled from the data in all the abortion reporting forms and the abortion complication reports submitted to DSHS in accordance with Sections 171.051 and 171.052. Requires each public report to also provide information for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. Requires DSHS to 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.

(d) Provides that all information and records held by DSHS under this subchapter are confidential and are not open records for the purposes of Chapter 552, Government Code, except as provided by Subsection (c) and Section 245.023. Prohibits that information from being released or made public on subpoena or otherwise, except that release is authorized conditionally for statistical purposes; with the consent of all parties involved; to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter or Chapter 245; or to appropriate state licensing boards to enforce state licensing laws.

(e) Prohibits DSHS or an employee of DSHS from disclosing reports or contents of the reports required by this section and Sections 171.051 and 171.052 to a person or entity outside of DSHS in a manner or fashion that permits the person or entity to identify in any way the person who is the subject of the report.

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

Sec. 171.054. MODIFICATION OF FORM CONTENTS. Authorizes DSHS 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 DSHS from omitting information required by this subchapter from forms or reports.

Sec. 171.055. PENALTIES. (a) Provides that a physician who does not submit a report required by Sections 171.051 or 171.052 within 30 days of the date the report was due is 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 Sections 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 DSHS, a court is authorized to direct the physician 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 or more citizens of Texas to petition a court for an injunction against the executive commissioner of the Health and Human Services Commission (executive commissioner) requiring that a complete public report be issued within a period stated by court order or that enforcement action be taken if DSHS fails to issue the public report required by Section 171.053 or fails in any way to enforce this subchapter. Provides that failure to comply with the injunction subjects the executive commissioner to sanctions for civil contempt.

Sec. 171.056. OFFENSE. (a) Provides that a person commits an offense if the person fails to submit a form or report required by this subchapter; intentionally, knowingly, or recklessly submits false information on a form or report required by this subchapter; includes the name or identifying information of the woman who had the abortion in a form or report required by this subchapter; or includes the name or identifying information of a physician in a public report required by Section 171.053(c).

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

(c) Provides that a physician commits an offense if they perform or induce an abortion without making a reasonable effort to ensure that the abortion is not the result of coercion, as defined by Section 1.07, Penal Code.

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

SECTION 4. Amends Section 245.001, Health and Safety Code, to authorize the citation of this chapter as the Texas Abortion Facility Licensing Act, rather than the Texas Abortion Facility Reporting and Licensing Act.

SECTION 5. Amends Section 254.005(e), Health and Safety Code, to delete existing text including the report required under Section 245.011 with the annual report.

SECTION 6. Amends Section 248.003, Health and Safety Code, to make a conforming change.

SECTION 7. 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 applications and appeals granted under Sections 33.003(h) and 33.004(b). Provides that information collected under this section must include the total number of petitions or motions filed under those sections and of that number, certain information.

(b) Requires the information collected under this section to be made available to the public in aggregate form by county.

(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 the minor.

SECTION 8. Repeals Section 245.011 (Reporting Requirements; Criminal Penalty), Health and Safety Code.

SECTION 9. (a) Requires the Supreme Court of Texas to adopt rules as required by Section 33.012, Family Code, as added by this Act, and DSHS to provide for distribution of the forms required by Subchapter C, Chapter 171, Health and Safety Code, as added by this Act, along with instructions for completing the forms not later than December 1, 2007.

(b) Requires the Texas Medical Board to distribute forms as required by Section 171.052(c), Health and Safety Code, as added by this Act, not later than January 1, 2008.

(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, 2008.

(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 March 1, 2008.

(e) Makes application of this Act prospective to January 1, 2008.

SECTION 10. (a) Effective date: September 1, 2007, except as provided by Subsection (b) or (c) of this section.

(b) Effective date of Section 171.056, Health and Safety Code, as added by this Act: March 1, 2008.

(c) Effective date of Sections 5 and 8 of this Act: January 1, 2008.

EFFECTIVE DATE

(a) Effective date: September 1, 2007, except as provided by Subsection (b) or (c) of this section.

(b) Effective date of Section 171.056, Health and Safety Code, as added by this Act: March 1, 2008.

(c) Effective date of Sections 5 and 8 of this Act: January 1, 2008.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute makes a change to require that the Department of State Health Services (DSHS) require that each person that performs or induces an abortion maintain a list of domestic violence shelters and assistance programs and provide a referral to a domestic violence shelter or assistance program if the woman communicates to the facility performing or inducing the abortion that the woman is being abused or is being forced into having the abortion.

The substitute makes a change to require that the abortion reporting form for each abortion must include certain information, rather than space for reporting certain information.

The substitute makes the following changes to the abortion reporting form: requires the municipality and county of the facility at which the abortion was performed; requires the patient's nation of residence, regardless of whether or not they are a resident of the United States; requires the age of the father of the unborn child at the time of the abortion; requires that certain specific reasons be included in a space for the patient to optionally indicate the specific reason the abortion was performed or induced; no longer requires the date, if known, of the patient's last menstrual cycle; requires whether the abortion was paid for by certain types of payment; requires whether there was no insurance coverage or insurance coverage was provided by certain types of providers; requires the fee collected for performing or inducing the abortion; requires whether or not the woman availed herself of the opportunity to view, rather than obtain a copy of, the printed information required by Subchapter B, and, if so, rather than if not, whether the woman viewed the information described in Section 171.014, Health and Safety Code, through the Internet or by booklet.

The substitute makes a change to require that if the mother of the unborn child is a minor, the report on each abortion must include certain information, rather than space for reporting certain information, and must no longer include the age of the father.

The substitute makes a change to provide that the patient must, rather than may, fill out sections of the form applicable to the patient's personal information. Makes a change to remove language that provided that a patient is not subject to any penalty for failing to fill out any part of the form or filling the form out incorrectly.

The substitute makes a change to provide that the bottom portion of the reporting form must be completed by the physician performing or inducing the abortion. Makes a change to provide that the requirement that the patient fill out the top portion of the form may be waived only if the abortion is performed or induced to prevent the death of the mother or to avoid harm to a mother described by Section 164.052(a)(18), Occupations Code, or harm to a mother who is a minor described by Section 164.052(a)(19), Occupations Code.

The substitute makes a change to remove Sec. 171.051(i) from the original bill, regarding a monthly abortion total form.

The substitute makes a change to include Sec. 171.0511, Health and Safety Code, which includes a copy of the actual abortion reporting form.

The substitute makes a change to require that the abortion complication report form must include certain information, rather than require that the abortion complication report must include certain information only if known by the physician.

The substitute makes the following changes to the abortion complication report: requires the name and type of the facility where the abortion was performed, if known; no longer requires the name of the physician who performed or induced the abortion; requires the patient's age, rather than year of birth; requires the patient's nation of residence, regardless of whether or not they are a resident of the United States; requires whether treatment for the abortion complication was paid for by certain types of payment; requires the fee collected for treatment for the abortion complication; requires whether there was no insurance coverage or insurance coverage was provided by certain types of providers; and no longer requires whether the physician who filed the report provided the follow-up care recommended.

The substitute makes a change to require that the patient receive a copy of the completed abortion complication report in person before the person leaves the facility.

The substitute makes a change to include Sec. 171.0521, Health and Safety Code, which includes a copy of the actual abortion complication report.

The substitute makes a change to provide that a physician who does not submit, rather than who intentionally or knowingly does not submit, a report required by Section 171.051 or 171.052, Health and Safety Code, within a certain deadline is subject to a certain penalty.

The substitute makes a change to provide that a person, rather than a person other than the patient, commits an offense if a person commits certain actions. Makes a change to provide that a person commits an offense if a person intentionally, knowingly, or recklessly submits false information on a form or report required by this subchapter. Makes a change to provide that an offense under this section is a Class A, rather than Class C, misdemeanor.

The substitute makes a change to provide that the information collected under Section 33.012, Family Code, regarding judicial bypass reporting, shall be made available to the public in aggregate form by county, rather than on a statewide basis. Makes a change to provide that certain entities shall ensure that none of the information included in the public reports could reasonably lead to identification of the minor, rather than any individual female or judge.

The substitute makes a change to provide that DSHS shall provide for distribution of the forms required by Subchapter C, Chapter 171, rather than Sections 171.051 and 171.052, Health and Safety Code, as added by this act, along with instructions for completing the forms.

The substitute makes other non-substantive, technical, clarifying, and conforming changes.